



COMMONWEALTH of VIRGINIA

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November 15, 2023

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

From: John Littel, Secretary, Health and Human Resources

RE: Item 283 A.1, 2023 Appropriation Act

Item 283.A.1. of the 2023 Appropriation Act requires the Secretary of Health and Human Resources to submit an annual report to the Governor and the Senate Finance and Appropriations and House Appropriations Committees by November 15 of each year. The language reads:

A.1 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 Appropriations 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.



Virginia Department of Behavioral Health
and Developmental Services

Report on SVP Referrals, Commitments and Bed Utilization Report, Forecast for FY 2024 - FY 2029

Item 283.A.1 of the 2023 Appropriations Act

January 15, 2025

DBHDS Vision: A Life of Possibilities for All Virginians

Preface

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

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Introduction

Pursuant to budget language, staff from the Department of Behavioral Health & 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 may 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 for fiscal years 2020 through 2021. As such, DOC, DBHDS and OAG agreed data for those years should be interpreted with caution.

Based on this determination, this forecast suggests that the VCBR census may continue to grow over the next six years but at a slower rate than previously anticipated. 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. 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 contribute to a growing census and cost of VCBR. For more information, the reader is directed to the report submitted to the General Assembly dated October 1, 2020, “Program and Community Alternatives to Reduce SVP Civil Commitment.” Importantly, investment in community-based resources would slow VCBR census growth, provide a continuum of treatment and supervision, and offer less costly alternatives to secure confinement.

Forecast

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

Table 1. 2023 Forecast - Predicted Census Growth at VCBR between FY 2024 and FY 2029

Fiscal Year	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Census (June 30th)	413	415	417	419	421	423

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	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
1	Dept. of Corrections (DOC) Sex Offender Pool Forecast	791	767	769	764	779	787
2	Adjusted DOC SVP Eligible Pool (- 18%)	649	629	631	626	639	645
3	SOSA ¹ Evaluation Request Rate (8%)	52	50	50	50	51	52
4	CRC referral to OAG (70%)	36	35	35	35	36	36
5	Found SVP at Trial (90%)	33	32	32	32	32	32
6	SVP Released by Court to Conditional Release Directly from DOC (16%)	5	5	5	5	5	5
7	VCBR New Admissions	28	27	27	27	27	27
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)	3	2	2	2	2	2
11	Projected VCBR Census at end of FY (as of June 30 th)	413 ²	415	417	419	421	423

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

² The actual census at VCBR on June 30, 2023 was 410. This was added to the adjusted net admissions which results in a projected census of 413 for June 30, 2024.

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 SVP criteria?
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 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 in 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 in Appendix B.

Discussion

The VCBR census is influenced by several factors, including:

- 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. One example of a variable that was difficult to predict was the impact of COVID-19, which had a significant impact on all aspects of the SVP system for FY 2020 and FY 2021. Another variable that may have a significant impact on this forecast and the census of VCBR is the number of individuals who are held on emergency custody orders but housed at VCBR. To avoid potential liability, individuals with no criminal obligations (i.e., probation violations, pending criminal charges, etc.) who are being held only on civil detainers are now being offered the option of being housed at VCBR as opposed to being held in jail. As this is a new process, it is difficult to determine how many individuals may opt for transfer to VCBR and what, if any, impact it will have on the overall census.

An additional variable is the population of state responsible DOC inmates. This forecast is based on the Approved State Responsible (SR) Forecast provided to DOC. DOC then uses those numbers to determine how many SVP eligible offenders may be released in the upcoming years. Any changes to the larger population of inmates may influence the numbers of SVP individuals. Last year's forecast noted declines in the SR population through the end of FY 2023 due to the retroactive nature of enhanced earned sentence credits that went into effect on July 1, 2022. After FY 2023, the Approved SR Population Forecast called for an average annual increase of 0.4% through the end of FY 2028. This year, the forecasted numbers appear slightly lower due to the number of SVP in the total SR Population being slightly (0.3%) lower on Day 0 of the 2023 Forecast (n = 8,981 on 1/31/23) than on Day 0 of the 2022 Forecast (n = 9,010 on 6/30/22). As a result, there are fewer SVP to be released, especially in the earlier years of the forecast. However, the 2023 Approved Total SR Forecast has an annual growth rate of 0.81% through FY 2029 which explains the increase in SVP releases seen in this report for FY 2027 through FY 2029. More SVP eligible inmates starting their incarceration and serving their time will lead to more potential SVPs being released in later years.

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. All these variables can fluctuate over time and unexpectedly impact the VCBR census.

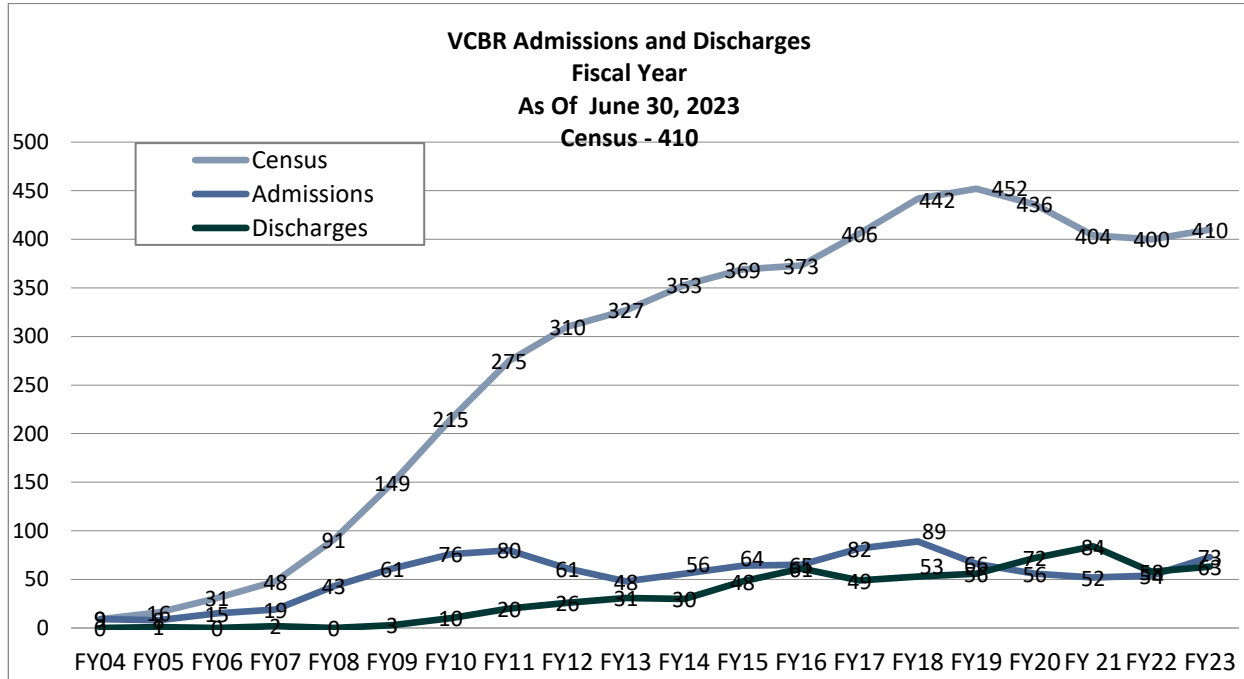
Conclusion

This forecast suggests that the VCBR census may continue to grow over the upcoming six years but at a slower rate than previously anticipated. The forecast anticipates that the census of VCBR may reach approximately 423 by June 30, 2029. 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."

Overall, fluctuations in the SVP system in response to COVID, changes to the DOC SR population and changes in the management of individuals held on ECOs have led to variability in the data over the last four years and difficulty in predicting future trends with this population. 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 2-3 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 2023



Appendix B – Forecast Variables

The line numbers below coincide with the forecast information shown in Table 2.

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%). 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. 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, DOC reduced the pool by 18% 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 – SOSA Request for Evaluation Rate (8%). Prior to 2019, this variable was anticipated to

be approximately 12%. 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%). 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 OAG to pursue SVP proceedings. Both DOC and DBHDS agree 70% is a responsible estimate given historical rates of referral.

Line 5 – Found SVP at Trial (90%). After cases are reviewed by the CRC, they are referred to the OAG for final review and the decision is made 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%). 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 and 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 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, it's apparent usefulness in predicting the VCBR census in last year's report (forecasted 412, actual census 410) and some variability in the numbers from FY 2022 and FY 2023.

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 (1 or 2 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, an estimate of this value is developed. The number 53 was selected in 2019, as it was the average of the total number of discharges from VCBR for FY 2017 to FY 2019. Due to the potential impact of the pandemic on data from FY 2020 – FY 2022, unusually high numbers of discharges (including deaths) for FY 2020 and FY 2021, and then a return to a range of numbers more consistent with pre-pandemic numbers

for FY 2022 and FY 2023, the decision was made to continue use of this number for this forecast. VCBR's ability to prepare individuals for successful release is a major factor in reducing census growth. This 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. Very few individuals on 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. Due to this number's effectiveness in predicting the census in last year's forecast and variability in the numbers from FY 2022 and FY 2023, this average was used for this report.

Line 10 – Adjusted VCBR Admissions (net). This line is an estimate of the final yearly admissions to VCBR, adjusted for discharges. It represents the total admissions to 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 a number of issues that are discussed in the section below, should be interpreted with caution.

Appendix C – Terminology

SVP Conditional Release: §37.2-912 A-B, allows for some individuals to be placed in the community on intensive SVP supervision provided by DOC. 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.