COMMONWEALTH of VIRGINIA

Office of the Governor

Janet Vestal Kelly

Secretary of Health and Human Resources

January 14, 2025

To: Governor Glenn A. Youngkin
        The Honorable L. Louise Lucas, Chair, Senate Finance and Appropriations
        The Honorable Luke E. Torian, Chair, House Appropriations

From: Janet V. Kelly, Secretary, Health and Human Resources

Re: Item 267 A.1, Special Session I, 2024 Appropriations Act

Item 267. A.1. of the Special Session I, 2024 Appropriation Act requires the Secretary of Health and Human Resources to submit an annual report on the sexually violent predator's referrals commitment and bed utilization to the Governor and the General Assembly. 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.

Item 267 A.1, Sexually Violent Predator Referrals, Commitments, and Bed Utilization Forecast

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Executive Summary

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 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 for fiscal years 2020 through 2021. As such, the DOC, DBHDS and the OAG agreed that data for those years should be used for the purpose of forecasting with caution.

Based on the available data, this forecast suggests that, despite a slight reduction in the census numbers from FY 2020 to FY 2022, the VCBR census may continue to grow over the upcoming six years. Changes in the state responsible (SR) population of DOC inmates and limited community resources for SVP individuals who may be suitable for conditional release have historically contributed to this growth. In more recent years, trends such as the closing of Hiram Davis Medical Center, increasing medical needs in the aging SVP population and changes to the procedures for housing individuals being held on emergency custody orders (ECOs) are also being monitored for their impact on the census. Virginia continues to have the one of the highest rates 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, 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". Investment in community-based resources would help to slow VCBR census growth, provide a continuum of treatment and supervision, and offer less costly alternatives to secure confinement.

Forecast

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

Table 1. 2024 Forecast - Predicted Census Growth at VCBR between FY 2025 and FY 2030

Fiscal Year	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
Census (June 30th)	417	421	426	431	437	442

Table 2 provides a detailed explanation of how the projected census estimates were calculated. The FY 2025 census prediction is based on the June 30, 2024 census of 411 plus line 10.

Table 2. Annual Six-Year VCBR Census Forecast

	Fiscal Year	FY25	FY26	FY27	FY28	FY29	FY30
1	Dept. of Corrections (DOC) Sex Offender Pool Forecast	791	712	734	764	792	761
2	Adjusted DOC SVP Eligible Pool (- 40%)	475	427	440	458	475	457
3	SOSA[1] Evaluation Request Rate (8%)	38	34	35	37	38	36
4	CRC referral to OAG (70%)	27	28	25	26	27	25
5	Found SVP at Trial (90%)	24	22	23	23	24	23
6	SVP Released by Court to Conditional Release Directly from DOC (16%)	4	4	4	4	4	4
7	VCBR New Admissions	20	18	19	19	20	19
8	Discharges to Conditional Release, Unconditional Release, Commissioner's Petition, Death	45	45	45	45	45	45
9	VCBR Revocation Admissions	31	31	31	31	31	31
10	Adjusted VCBR Admissions (net)	6	4	5	5	6	5
11	Projected VCBR Census at end of FY (as of June 30th)	417	421	426	431	437	442

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?

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[1] "SOSA" refers to the DOC Sex Offender Screening and Assessment Unit.

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).

Eleven variables are used to calculate the SVP forecast (Table 2). Each year, the impact of each variable is reassessed. Some variables may be adjusted or 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 is 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 (-40 percent). This reduction of 40 percent represents a significant change from previous forecasts, which used 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. Instead, these individuals had been filtered out during the Code mandated screening process. To avoid artificial inflation of the SVP eligible pool, the DOC has reduced to adjust for individuals who may be included but do not actually have SVP predicate offenses. Recent improvements in the DOC's data keeping process led to the decision that 40 percent represents a more accurate reduction than the 18 percent used in previous years.

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 SVP consideration.

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 Office of the Attorney General (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 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 and instead believes that they 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 historical data, its apparent usefulness in predicting the VCBR census in last year's report (FY 2024 forecasted 413, actual census 411) and some variability in the numbers from FY 2020 to present.

Line 7 – VCBR New Admissions. This is the number of individuals civilly committed to VCBR after initial SVP disposition. 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 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 VCBR, estimates are made of how many individuals may become eligible for discharge to SVP conditional release during the upcoming year, how many individuals may be unconditionally discharged as "no longer SVP" by the courts, and how many VCBR residents may die each year. The previous six years of discharges showed variability ranging from 56 in

FY 2019 to 84 in FY 2022 and 45 in FY 2024. COVID led to cases being delayed as courts shut down temporarily and then returned slowly before finally returning to normal functioning. Although the impact of COVID does not appear to be an issue with the current SVP system, there is concern that the FY 2022 number of 84 may have been unusually high due to a 'rebound effect' or courts being more sympathetic to releasing individuals due to the concern over the deaths occurring in hospitals and other facilities. In looking at the percentage of change in the discharge numbers over the past six years, the average percentage change was 0%. There is also concern that the existing resources in the community are all currently being used to capacity and there is no indication that any new resources will become available in the future. As such, the determination was made to use the FY 2024 number of 45 as an anticipated rate of discharge for the upcoming six-year period assuming there will be no change to the limited community resources currently available.

Line 9 – VCBR Revocation Admissions. DBHDS 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 later be admitted to VCBR should they violate the conditions of their release and be deemed not suitable to remain in the community. Other cases are returned to VCBR because they are unable to access nursing home care, inpatient substance abuse treatment or other community resources needed to continue residing in the community. As the population of SVP individuals on conditional release in the community grows and ages, so does the number of individuals who could potentially have their conditional release revoked and require commitment to VCBR. It is worth noting that very few individuals on SVP Conditional Release have re-offended sexually. DBHDS had anticipated an average of 31 revocations (resulting in commitment to VCBR) each fiscal year based on data from the past six years.

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).

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

Historically, multiple variables have consistently contributed to the VCBR census since the onset of SVP civil commitment. One of these is the SVP Release Forecast provided by the DOC. This forecast is based on the Approved State Responsible (SR) Forecast provided to the DOC. The DOC then uses those numbers to determine how many SVP eligible offenders may be released in the upcoming years (SVP Release Forecast). Any changes to the larger population of inmates influences the numbers of SVP individuals. The 2024 SVP Release Forecast is lower than the 2023 SVP Release Forecast. For the five years that the two forecasts overlap (FY 2025 to FY

2029), the 2024 SVP Release Forecast is 15 individuals (1.9 percent) lower, on average, than the 2023 SVP Release Forecast. The decrease in the SVP Release Forecast corresponds to the 2024 Secretary of Public Safety and Homeland Security (SPSHS) Approved SR Population being lower than the 2023 SPSHS Approved SR Population Forecast. Other variables that have consistently contributed to the VCBR census include: 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.

Over the past few years, other trends and changes have been identified that may contribute significantly to the VCBR census and require further monitoring. One of these variables is the number of individuals who are held on ECOs but housed at VCBR. To avoid potential liability, individuals held under an ECO, 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. It is difficult to predict how many of those under an ECO may opt for transfer to VCBR and what impact it will have on the overall census.

Changes in available community resources may also significantly impact the census of VCBR. When more resources are available, 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 began needing nursing home care, hospice, assisted living facilities, inpatient substance abuse treatment or became homeless through no fault of their own. As the existing population of SVP individuals ages, this problem is expected to worsen should no other resources become available. 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. All these variables can fluctuate over time and unexpectedly impact the VCBR census.
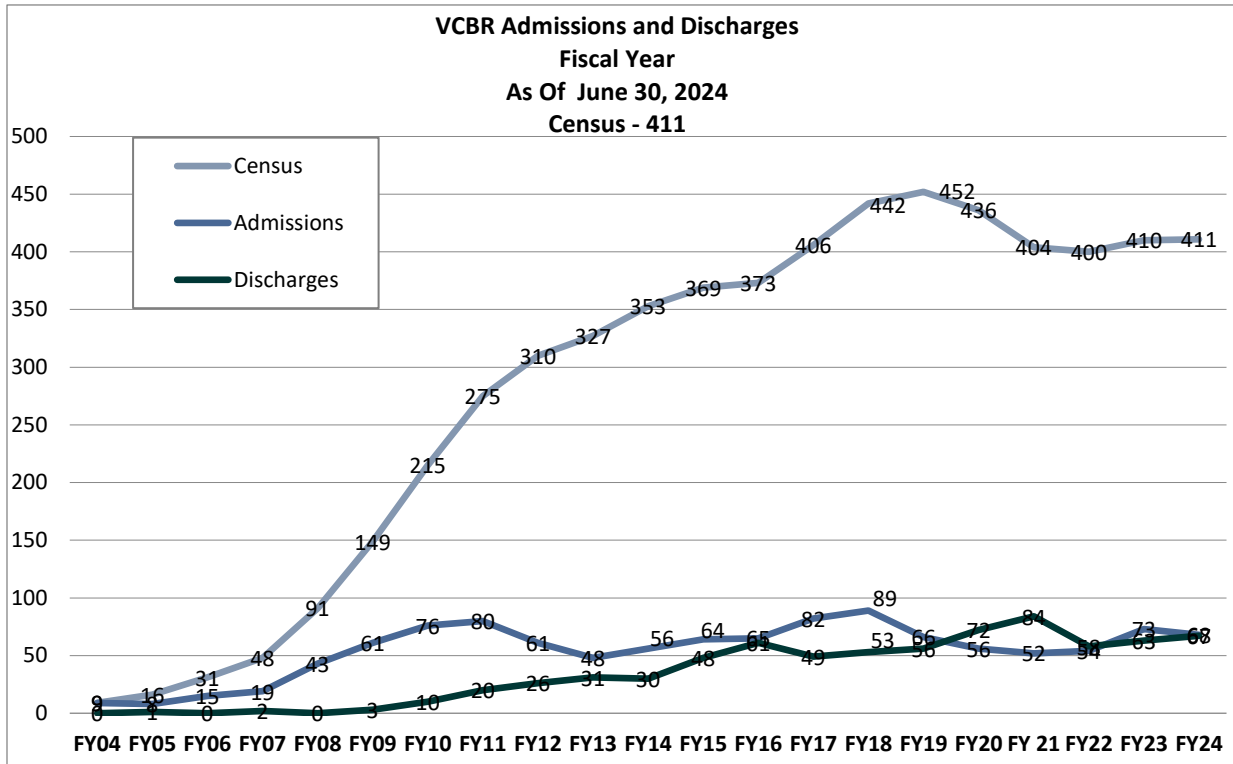
Conclusion

Based on these determinations, this forecast suggests that the VCBR census may continue to grow over the upcoming six years. The forecast anticipates that the census of VCBR may reach 442 by June 30, 2030. There has been a 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."

Appendices

Appendix A - VCBR Census, Admissions and Discharges FY 2004 to FY 2024

VCBR Admissions and Discharges
Fiscal Year
As Of June 30, 2024
Census - 411

Legend:
- Census
- Admissions
- Discharges

Census values: 9, 16, 31, 48, 91, 149, 215, 275, 310, 327, 353, 369, 373, 406, 442, 452, 436, 404, 400, 410, 411

Admissions values: 8, 15, 19, 43, 43, 61, 76, 80, 61, 48, 56, 64, 65, 82, 89, 53, 66, 72, 52, 73, 68

Discharges values: 0, 1, 2, 2, 0, 3, 10, 20, 26, 31, 30, 48, 65, 49, 56, 56, 56, 84, 54, 65, 66

X-axis: FY04 FY05 FY06 FY07 FY08 FY09 FY10 FY11 FY12 FY13 FY14 FY15 FY16 FY17 FY18 FY19 FY20 FY21 FY22 FY23 FY24

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 their release date or being considered for parole.

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

VCBR: Virginia Center for Behavioral Rehabilitation.