

**Sexually Violent Predator
Referrals, Commitments, and Bed Utilization
Forecast for FY2011 – FY2016**



**To the Governor and
Chairmen of the House Appropriations and Senate Finance
Committees of the General Assembly**

**Prepared by the
Secretary of Health and Human Resources**

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I. Executive Summary

This report is submitted in accordance with Item 273 B.1-3. of the 2010 *Appropriations Act*, which directs that:

B.1. The Secretary of Health and Human Resources, in collaboration with the Office of the Attorney General and the Secretary of Public Safety, 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 October 1 of each year.

This report is an update of the current cases and an update on the forecast

Persons civilly committed as Sexually Violent Predators are housed in the Virginia Center for Behavioral Rehabilitation (VCBR) on the grounds of the Piedmont Geriatric Hospital in Nottoway County. This facility has a capacity of 300 beds. As of 1 July 2010, it housed 215 residents.

The current average monthly admission rate is 6.00 residents. At this rate, 72 residents will be admitted to the VCBR during the current fiscal year, bringing the census to 287 by July 1, 2011. At 6.00 admissions per month, maximum capacity will be reached at VCBR no later than October 2011.

Table 1. SVP Forecast for FY2010 to FY2016, Including VCBR Bed Census¹

Row		FY 2011 ²	FY2012	FY2013	FY2014	FY2015	FY2016
1	DOC SVP-Eligible inmates	4,205	4,152	4,146	4,240	4,353	4,482
2	SVP-eligible to be released by year ³ (20.13%)	846	836	835	854	876	902
3	CRC evaluation (Static-99) (19.45%)	165	163	162	166	170	175
4	SVP Petition filed by OAG ⁴ (62%)	102	101	100	103	105	109
5	Found SVP at trial (90%)	92	91	90	93	95	98
6	Disposition = Civil Commitment to VCBR (84%)⁵	77	76	76	78	80	82
7	Disposition = Conditional Release (16%) ⁶	15	15	15	15	15	16
8	Projected VCBR Census⁷ (215)	292	368	444	522	602	684
9	Projected Conditional Release Census ⁸ (49)	64	79	94	109	124	140
10	Projected Commitments to VCBR, by month	6.42	6.33	6.33	6.50	6.67	6.83
11	Projected releases from VCBR, by year ⁹	5	7	9	10	11	13

¹ Percentages for each row are based on observed outcomes for the past fiscal year.

² Beginning on July 1, 2010.

³ This figure includes individuals found Unrestorably Incompetent To Stand Trial (URIST).

⁴ Rows 5, 6, 7, and 8 are based on OAG data.

⁵ Based on court final disposition rates.

⁶ Based on court final disposition rates.

⁷ Population bases of 215 as of 30 June 2010.

⁸ Population bases of 49 as of 30 June 2010.

⁹ To date, there have been 7 releases from VCBR. While this is too little data upon which to model a release rate, the projected figures quoted above are presented as a rough estimate of these numbers.

III. Appendices

Appendix A: Background

In 1997 the Commonwealth took steps to protect citizens from sexual victimization by enacting several key pieces of legislation. Through the so called "Megan's Laws," enacted into law in 1998 and 1999 (SB369/Howell and HB570/Deeds), the Commonwealth created a system for tracking known sex offenders through mandatory registration and notification of local law enforcement of their presence in the community, and by making it possible for employers to screen sex offenders out of certain jobs by providing access to the sex offender registry. The Commonwealth has also enacted stiffer sentences for all types of sexual crimes, thereby keeping these individuals out of the community for longer terms.

In 1999, the final piece of this legislative agenda was put in place when the General Assembly passed, and the Governor signed, legislation making it possible to civilly commit persons found to be sexually violent predators (SVP).

In April 2003, the Governor signed legislation enacting the SVP civil commitment statutes, mandating that the Department of Behavioral Health and Developmental Services (DBHDS, previously named DMHMRSAS) open and operate a secure civil commitment program for individuals found to be sexually violent predators. In October of that year, DBHDS opened in temporary quarters to house and treat SVP in Dinwiddie County; the Virginia Center for Behavioral Rehabilitation. The first civilly committed SVP resident arrived at the program during the first week of December 2003.

In 2006, the General Assembly, at the request of DBHDS and the Department of Corrections (DOC), replaced the Rapid Risk Assessment for Sexual Recidivism (RRASOR) with the Static-99 risk-screening instrument. This provision became effective on July 1, 2006. The 2006 General Assembly also expanded the list of SVP predicate crimes from 4 to 28 (total possible combinations). This provision went into effect on January 1, 2007. In combination, these changes increased the number of inmates becoming eligible for SVP civil commitment by approximately 350 percent.

A replacement SVP facility, designed specifically to serve the SVP population, was constructed on the grounds of the Piedmont Geriatric Hospital in Nottoway County, and began receiving residents on March 2008. This facility has an ultimate capacity of 300 beds. The efficiency of its design allows fewer staff to provide greater monitoring than the Dinwiddie facility.

This new facility was designed to meet needs anticipated under the pre-2006 SVP *Code* list of four SVP qualifying crimes. The expansion of these qualifying crimes by the 2006 General Assembly from four to 28 means that the facility will reach maximum capacity sooner than planned.

Appendix B: Definitions

Commitment Review Committee, CRC. The *Code of Virginia* established a SVP processing work group, including members from DOC, DMHMRSAS, and OAG.

Input data. Information relating to SVP cases between identification as SVP eligible and CRC recommendation.

Output data. Information relating to SVP cases at and beyond the date of final court disposition.

SVP-eligible pool. All inmates being released between target dates, which are currently serving sentences on conviction for one of the SVP predicate crimes, or having been charged with an SVP predicate crime and found URIST.

SVP-ineligible rate. Individuals screened for SVP civil commitment for which it is found that they are not eligible for further SVP consideration.

STATIC-99 hit rate. The percentage of inmates in the SVP-eligible pool, who scored at or above the inclusion threshold on the STATIC-99.

SVP commitment rate. The percentage of inmates in the CRC-evaluation pool who were ultimately civilly committed to VCBR.

SVP conditional release rate. The percentage of inmates in the CRC-evaluation pool who were ultimately civilly committed as an SVP to conditional release.

VCBR. The Virginia Center for Behavioral Rehabilitation.

URIST. Unrestorably Incompetent to Stand Trial as defined by §19.2-169.1 and .3.

Appendix C: Methodology and Limits on Forecast Reliability

Methodology. Each of the agencies involved in developing the SVP Forecast –DBHDS, DOC, and the Office of the Attorney General (OAG) – has developed data management and tracking systems. The DOC has a full-time SVP screening unit responsible for providing Static-99 scores on all SVP-eligible inmates, and has implemented case-tracking software. The OAG has expanded its SVP unit and maintains a SVP tracking database. DBHDS maintains a tracking database for SVP, the SVPTracker system. Information from each of these systems is brought together in the DBHDS Office of SVP Services (OSVP) to develop the SVP forecast. Specifically:

- DOC documents the number of SVP-eligible inmates pending release each month during the upcoming year, and the upcoming 6 years, and identifies how many could be expected to reach or surpass the Static-99 threshold and continue forward to SVP evaluation and CRC consideration. These "input" data form the basis for identifying the monthly and yearly SVP evaluation and CRC review rates.
- OAG provides monthly case updates documenting where each case is in the SVP civil commitment process. These "output" data document the actual rate of full release, civil commitment, and conditional release. This data is combined by the OSVP is the basis for forecasting civil commitment and conditional release rates.
- DBHDS rationalizes these data to each other and tracks cases as they enter the CRC process, documenting SVP evaluations, CRC recommendations, and rates of commitment to VCBR, conditional release, or full release. These combined data are the basis for the final forecast.

Limits on Reliability and Forecast Accuracy. All forecasts operate below perfect accuracy. Often, missing data will skew the direction of a forecast toward over- or under-predicting actual outcomes. In the present case, for each year's forecast we know exactly how many inmates in DOC having convictions for SVP predicate crimes will enter the SVP-eligible pool each year and can predict with high accuracy the Static-99 hit-rate and CRC evaluation rate for any given month. We also know, on average for each year, the rates at which cases will ultimately be civilly committed to VCBR, conditionally released to the community, or released without conditions.

What remains difficult to reliably predict is the pace at which cases will roll forward from the CRC to final placement. For example, in 2006 the predicted monthly commitment rate was 4.36; the actual rate was .89. The forecast for 2007 predicted VCBR census would increase by 7 each month and reach 98 by July 2008. The actual rate was closer to 4 per month, on average, with a census on July 1, 2008 of 88. This discrepancy resulted from using CRC recommendation data as opposed to final disposition data. The CRC data was used originally because sufficient final disposition data was lacking and because legislative changes taking effect only a few months prior to the development of the forecast so dramatically increased the number of cases being processed.

More experience with the SVP process has increased the accuracy of the forecast. For example, last year's forecast predicted that the 1 July 2010 census at VCBR would be 213. The actual census on that date was 215.

In FY2008 the first female was found SVP. There have been 19 total female inmates who became, or will become, eligible for release between calendar years 2007 and 2010:

- 2007 = 2 female SVP-eligible inmates. One was found SVP and placed on Conditional Release. She has violated the conditions of her SVP release and will be committed to the VCBR after serving her jail sentence.
- 2008 = 7. None committed or placed on SVP conditional release
- 2009 = 10. One found SVP and committed to the VCBR.

From these limited data it is not possible to accurately predict how many females will be committed as SVP over the next six years.

Currently, any females found SVP and placed at VCBR will be housed separate from male residents. Due to the need to house females and males separately, the commitment of one female to VCBR, removes one unit of 25 beds from availability for use by males. They are not included in the forecast but account for much less than 1% of total case referrals.

Since implementation, approximately 16 individuals found URIST have been evaluated for SVP civil commitment. At present, 8 of these individuals are housed at VCBR, with most awaiting final disposition. It is impossible to predict how many or when such cases will come into the system or be committed to VCBR. They are not included in the forecast but account for much less than 1% of total case referrals.

Appendix D: SVP Commitment Process and Unmeasured Variance in the Commitment Rate

Department of Corrections data identifies how many inmates, currently incarcerated in DOC, will become SVP-eligible in each of the six fiscal years between 2010 and 2015.

- FY2011 = 4,205 SVP-eligible inmates.
- FY2012 = 4,152 SVP-eligible inmates.
- FY2013 = 4,146 SVP-eligible inmates.
- FY2014 = 4,240 SVP-eligible inmates.
- FY2015 = 4,353 SVP-eligible inmates.
- FY2016 = 4,482 SVP-eligible inmates.

DOC Sex Offender Screening Unit screens each eligible inmate who is scheduled for release each month using a scientifically validated actuarial instrument (currently the Static-99). Inmates reaching or exceeding the threshold score are referred to the DBHDS for SVP evaluation.

DBHDS Office of SVP Services recruits, vetts, and trains qualified mental health professionals to serve as Commissioner Appointed Evaluators to conduct SVP evaluations for the Commitment Review Committee (CRC).

Commitment Review Committee recommendations are advisory and a recommendation does not predict an outcome. Other factors occurring after the CRC review can cause cases to be dropped from further consideration or otherwise diverted from the course recommended by the CRC:

- Cases recommended for conditional release sometimes are committed by the court to VCBR.
- A few cases recommended for civil commitment are ordered by the court to conditional release.
- Some cases recommended for SVP civil commitment or conditional release are not filed by OAG or are released by the courts.

Exceeding census capacity. Several factors impact when the maximum 300-bed capacity will be reached at VCBR; the commitment of female SVP, an increase in the monthly rate of commitments to VCBR; and the failure of individuals on SVP conditional release resulting in their commitment or re-commitment to the facility.

Variance in monthly commitment rate. As of the date of the preparation of this forecast, the average monthly admission rate to the VCBR is 6.42 individuals per month. There are currently 49 individuals on SVP conditional release. About 18% of this number can be expected to violate the conditions of their release. Some of these individuals will be thereafter committed to the VCBR. This will raise the admission rate by a small number above the predicted 6.00 per month.

For example, with 49 individuals on conditional release, if 18% violate some condition of their release, this will amount to about 9 individuals. If 50% of these nine are committed to the VCBR, this will raise the census by 5.