



COMMONWEALTH of VIRGINIA
Office of the Governor

William A. Hazel, Jr., MD
Secretary of Health and Human Resources

December 7, 2011

The Honorable Robert F. McDonnell
Governor of Virginia
Patrick Henry Building
P.O. Box 1475
Richmond, VA 23218

Dear Governor McDonnell:

Pursuant to Item 273 B.1-3. of the 2011 *Appropriation Act*, I submit to you the enclosed report on current Sexually Violent Predator (SVP) cases and a forecast of SVP eligibility, civil commitments, and SVP conditional releases, including projected bed space requirements.

DBHDS and the Department of Corrections (DOC) have been collaborating more closely on data collection, interpretation and refinement. As a result, the forecast has been adjusted to reflect a more accurate projection. The projection methodology used by DOC has been improving each year since the inception of the SVP program and the two agencies are in agreement with the high degree of accuracy that is now produced by the process each year.

If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Hazel, Jr.", written in a cursive style.

William A. Hazel, Jr., M.D.

Enc.

Cc: Hon. Kenneth T. Cuccinelli, II
Hon. Marla Graff Decker
Mr. Harold W. Clarke
James W. Stewart, III
Ms. Jill Ryan

WAH:raw



COMMONWEALTH of VIRGINIA
Office of the Governor

William A. Hazel, Jr., MD
Secretary of Health and Human Resources

December 7, 2011

The Honorable Charles J. Colgan, Chair
Senate Finance Committee
10th Floor, General Assembly Building
910 Capitol Street
Richmond, VA 23219

Dear Senator Colgan:

Pursuant to Item 273 B.1-3. of the 2011 *Appropriation Act*, I submit to you the enclosed report on current Sexually Violent Predator (SVP) cases and a forecast of SVP eligibility, civil commitments, and SVP conditional releases, including projected bed space requirements.

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Hon. Marla Graff Decker
Mr. Harold W. Clarke
Mr. James W. Stewart, III.
Ms. Jill Ryan
Mr. Dick Hickman
Mr. Joe Flores

WAH:raw



COMMONWEALTH of VIRGINIA

Office of the Governor

December 7, 2011

William A. Hazel, Jr., MD
Secretary of Health and Human Resources

The Honorable Lacey E. Putney, Chair
House Appropriations Committee
General Assembly Building
P.O. Box 406
Richmond, VA 23218

Dear Delegate Putney:

Pursuant to Item 273 B.1-3. of the 2010 *Appropriation Act*, I submit to you the enclosed report on current Sexually Violent Predator (SVP) cases and a forecast of SVP eligibility, civil commitments, and SVP conditional releases, including projected bed space requirements.

DBHDS and the Department of Corrections (DOC) have been collaborating more closely on data collection, interpretation and refinement. As a result, the forecast has been adjusted to reflect a more accurate projection. The projection methodology used by DOC has been improving each year since the inception of the SVP program and the two agencies are in agreement with the high degree of accuracy that is now produced by the process each year.

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Hon. Marla Graff Decker
Mr. Harold W. Clarke
James W. Stewart, III
Ms. Jill Ryan
Mr. Paul Van Lenten, Jr.
Ms. Susan E. Massart

WAH:raw

**Sexually Violent Predator
Referrals, Commitments, and Bed Utilization
Forecast for FY2012 – FY2017**



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

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

December 1, 2011

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I. Executive Summary

This report is submitted in accordance with Item 273 B.1-3. of the 2011 *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.

The commitment of individuals as Sexually Violent Predators (SVP) involves the court and three state agencies: the Department of Corrections (DOC), the Office of the Attorney General (OAG), and the Department of Behavioral Health and Developmental Services (DBHDS).

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 (PGH) in Nottoway County. This facility was designed with a capacity of 300 beds. The 2010 SVP Forecast predicted that by July 1, 2011, census would be approximately 292 residents and would reach 300 in October. On 1 July 2011, VCBR housed 275 residents, 17 fewer than predicted by the 2010 SVP Forecast.

This year's forecast (for the period July 1, 2011 through June 30, 2012) predicts a monthly average admission rate of 5.00. This number is 1.42 fewer admissions per month than predicted by last year's forecast. This represents a significant reduction in admission rate to the VCBR. At this rate, reaching the 300 maximum-capacity census level occurs later than expected by the end of February 2012. Admission rates for the upcoming five years vary between 4.00 to 4.58 per month. At these rates (calculating from July 1, 2011), census will reach 450 around September 2015.

There are several possible explanations for this change in admission rate:

- an increase in use of SVP conditional release, which diverts more individuals away from the VCBR to the community; or,
- an increase in the number of individuals being discharged from VCBR to SVP conditional release in the community.

These issues and the six-year forecast are presented below.

II. Forecast and Discussion

In the year since the last DBHDS forecast (July 2010), the average monthly admission rate to VCBR increased from 6.33 to 6.67. However, during the present calendar year (January 2011 through September 2011), the admission rate has fallen to 5.38 per month. The present forecast predicts a continuing general decrease in admissions to between 4.00 and 5.00 per month through the remainder of this measurement period (through June 2017). Much of this decrease can be explained by two primary factors.

1. There is an increase in the number of SVP cases being diverted from commitment at the VCBR to SVP conditional release in the community.
2. There is an increase in the number of residents at the VCBR being granted SVP conditional release from the facility.

However, the actual impact of these factors often overlap and are shaped by other factors, such as the return to VCBR of persons previously placed on SVP conditional release due to new offenses or technical violations.

Uncounted variance: Other uncounted sources of variation in the forecast include admission of persons found Unrestorably Incompetent to Stand Trial (URIST) and female SVP. Because the overall number of these types of cases is small, their effect on the census is not included in calculating the forecast.¹

SVP-eligible inmates released from the DOC: For 2011, the DOC reported the below projections based on its forecast simulation model.

DOC SVP-eligible inmate yearly forecast (2011) for the six years 2012 to 2017

FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
629	509	567	493	546	526

Increased use of SVP conditional release before commitment to VCBR: During FY 2009-10, 17 individuals were placed on SVP conditional release. During FY 2010-11, 22 individuals were placed on SVP conditional release. The use of conditional release lowers bed census and slows growth by deflecting individuals who would have been admitted to the VCBR.

Increased discharge from VCBR to SVP conditional release: Since the SVP program opened in 2003, 71 individuals have been granted conditional release. Of these, 16 individuals have been granted conditional release from VCBR. Conditional releases from VCBR make up 23% of all conditional releases.

- In FY2008-09, 2 were conditionally released from VCBR.
- In FY2009-10, 5 were conditionally released from VCBR.
- In 2010-11, 10 were conditionally released from VCBR.
- In the first three months of FY2011-12, 7 have been conditionally released from VCBR.

¹ For example, since 2003, only three females have been committed as SVP. During any single year, the VCBR receives between 1 and 3 URIST admissions. There is no way to predict when either type of admission is likely to occur.

Changes to the DBHDS VCBR mandate: In 2011, the Virginia General Assembly instructed DBHDS to increase capacity at VCBR by up to 150 additional residents. In response, DBHDS is currently modifying 150 single-resident rooms for double occupancy.

- This change will raise the maximum census for the facility from 300 to 450.
- At the current forecast admissions between 2012 and 2017, VCBR will reach its maximum capacity of 450 residents during early 2015.
- By the end of this forecast period (30 June 2017) the VCBR census is predicted to be 589.

Other modifications underway to accommodate the increased census include expansion of food service capacity, adding electrical circuits to resident rooms to accommodate the increased load, HVAC improvements and adjustments to accommodate increased heating and cooling loads, expansion and retooling of medical capacity -. Quarterly reports are provided to the legislature per Item 319 of the 2011 *Appropriation Act*.

Table 1. SVP Forecast for FY2011 to FY2017, Including VCBR Bed Census²

Row		FY 2012 ³	FY2013	FY2014	FY2015	FY2016	FY2017
1	DOC SVP-Eligible inmates ⁴	3644	3709	3716	3796	3822	3871
2	SVP-eligible to be released by year ⁵	629	509	567	493	546	526
3	CRC evaluation (Static-99) (22%)	138	112	125	109	120	116
4	Petition to civilly commit filed (59%)	81	66	74	64	71	68
5	Found SVP at trial (90%)	73	59	67	58	64	61
6	Disposition = Civil Commitment to VCBR (82%) ⁶	60	48	55	48	53	50
7	Disposition = Conditional Release ⁷	23	21	22	20	21	21
8	Projected VCBR Census ⁸ (275)	335	383	438	486	539	589
9	Projected Conditional Release Census ⁹ (57)	80	103	124	146	166	187
10	Projected Commitments to VCBR, by month	5.00	4.00	4.58	4.00	4.42	4.20

² Percentages for each row are based on observed outcomes for the past Fiscal Year.

³ Beginning on July 1, 2011.

⁴ Data provided by the DOC.

⁵ This figure does not include individuals found Unrestorably Incompetent To Stand Trial (URIST).

⁶ Based on court final disposition rates.

⁷ Based on court final disposition rates (18%), plus estimates of releases from VCBR.

⁸ Population bases of 275 as of 30 June 2011.

⁹ Population bases of 57 as of 30 June 2011.

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 then DMHMRSAS open and operate a secure civil commitment program for individuals found to be sexually violent predators. In October of that year, the Department 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 the DMHMRSAS and the 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. 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 consisting 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.

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 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. The OAG has expanded its SVP unit and maintains a SVP tracking database. The 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 identifies 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 reconciles these data sets to each other. From these data, rates of evaluation, probable cause, finding of SVP, and civil commitments are established. These percentages form the basis for calculating the 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 DBHDS knows approximately how many inmates in DOC having convictions for SVP predicate crimes will enter the SVP-eligible pool each year. From the previous years experience it is possible to predict with high accuracy the Static-99 hit-rate and CRC evaluation rate for any given month. It is also known, on average for each year, the rates at which cases will ultimately be civilly committed to the VCBR, conditionally released to the community, or released without conditions.

However, two factors contribute to forecast adjustments:

- the amount of time between commitment by the court and arrival at VCBR; and
- final disposition of a case (to full release, to SVP conditional release, or to VCBR).

After final disposition and before admission to VCBR, there are often appeals and other court continuances that push back final admission. In an extreme case, five years passed before one individual was admitted to VCBR. Further, at any given time, between 80 to 100 cases are pending final disposition. Cases may remain in this status for as little as a few hours (when inmates stipulate that they are SVP) or as long as five years (when individuals oppose commitment using all available legal means). Any or all of these cases could be committed to the VCBR on any day. These cases are factored into the overall forecast calculation and variance.