

April 20, 2020

Via email

FOR IMMEDIATE CONSIDERATION:

After a town hall telephone conference with Justin Fairfax Friday, April 10, 2020, Just Future Project shared much of the following information with the Lieutenant Governor upon his request: We would like to share some of the same information with you to give you more insight into the SVP Civil Commitment scheme in Virginia, especially now as people in the Virginia Center for Behavioral Rehabilitation (VCBR) are facing this crisis pandemic in a [prison environment](#) .

The Virginia economy is struggling significantly and in light of the ongoing emergency budget discussions, it is time to take a hard look into VCBR and its associated costs to Virginia taxpayers with zero increase in public safety. Ethically and morally Virginia should immediately divest itself of this corrupt extra punishment. Financially, Virginia can no longer afford to be participants in this scheme. The Attorney General's office, enabled by the Virginia State Legislature has for far too long operated in the shadow area of jurisprudence. There simply is no criminal-civil hybrid in the law except for that which the Virginia Legislature created. Virginia is currently building an addition to VCBR at a construction cost of 110 million dollars providing another 250 beds which will incur associated per person yearly costs. More scandalous is the [projection](#) of how Virginia is planning to have those beds filled and the need projected for another 250 bed facility in 2024 to be funded in 2022.

([Hyperlinked herein are the actual costs of the SVP Act in Virginia in detail](#)) Virginia's 2019 budget included a minimum price tag of \$58,000,000 for the Sexually Violent Predators Act. We have researched the portions of the budgets from VCBR, Virginia Department of Corrections, the Attorney General's office, and the Department of Behavioral Health and Developmental Services that work together to facilitate this system. The multiple other costs to the Virginia court system would make total costs to Virginia taxpayers for 2019 \$70,000,000 plus. With the additional facility, these costs will rise significantly in future years with no increase to public safety as indicated by comparison to states without this questionable scheme.

The population of people being imprisoned at the Virginia Center for Behavioral Rehabilitation, all 460 of them (two are transgendered women), have served their sentences. Period. They are incarcerated for what they might do in the future. As people who have yet to finish their sentences should and are being released from prison early, so should all people who have completed their sentences, yet are currently imprisoned. Every single person held in VCBR has not only completed their sentences, but in some cases have doubled their time served. A majority of the people at VCBR are over 50 and/or vulnerable with health concerns.

While the 2010 Census showed 19.5% of Virginians are African Americans, a FOIA received by Just Future Project from DBHDS, Fall 2019, shows that 60% of people detained at VCBR are African Americans. Anecdotally, another skewed percentage of individuals at VCBR identify as LGBTQ.

Many of the people now imprisoned at VCBR were served the SVP Petition near the end of their prison sentences, many of which were extremely lengthy. All had completed their sentences before their SVP trials were concluded, yet they waited in prisons or jails for months or years before the conclusion of their SVP trials. The majority stipulate with the promise of conditional release by the Attorney General's office only to be committed directly to VCBR. It is important to note that these persons are not found to be mentally ill, which under civil law is a prerequisite of civil commitment.

Just Future Project is flagging one particularly egregious case where an [emergency motion](#) filed has gone unanswered. The judge stated on the record that the Commonwealth, after resting its case, had not met its burden of proof to civilly commit the individual to VCBR, and has held Galen Baughman for an additional three months, (at the cost of an additional \$18,000 at \$200 dollars per day) for the Commonwealth to "try again". Because of Covid-19 the Chief Judge in Arlington has suspended all proceedings; Galen's new trial date is June 25th adding an additional \$7,200 dollars to the cost. The technical violation was filed after the facility director at VCBR was deposed for a civil rights class action through actions informed by Galen Baughman's Soros Justice Fellowship (not pursued after Galen Baughman's arrest) in conjunction with a Use of Excessive Force case stemming from guards at VCBR deliberately breaking a prisoner's arm that did go to court; and Galen's TEDx talk was released. In addition, probation had Galen's phone and computer forensically scrubbed and found no new crime with which to charge Galen. Galen Baughman won his initial SVP jury trial in 2012 (at that time Mr. Baughman was held two years past his release date from his original sentence awaiting his SVP trial). Four years ago he was detained by Virginia on a technical probation violation that called for bond and no jail time. Please note, there was no new crime. Galen's trial has been on-going for 10 months. Galen is still in the Arlington County Detention Center. The technical violation called for bond and the guidelines called for no jail time. This case is a clear example of the [abuses being carried out by the office of the Attorney General](#) under the SVP Act at an astronomical cost to Virginia's taxpayers. An evaluator was legally hired under CRC guidelines finding Galen not to meet the criteria for an SVP. The AG's office then hired directly out of the AG's office funds the state's second, and illegally hired evaluator, Michelle Sjolinder, whose bill as of last October was \$38,000. Her billing continues and will be well over 100 hours at \$130 per hour. How much did the two trials to further incarcerate a man who had served his time and committed no new crime cost the Commonwealth of Virginia?

Of the people at VCBR some have been imprisoned there for many years because they cannot progress in the "treatment regime". They cannot read or write and/or have an intellectual disability. Two JFP members spoke with representatives of the Department of Justice October 31, 2019 and a litigation referring to mistreatment to those with disabilities was referenced. Others who work efficiently through the program are held back in treatment due to arbitrary rules and unmet goals that have no bearing on the likelihood to commit a sex offense.

The individuals who are released from prison living in the community navigating the purposely difficult probation rules for people who have been convicted of sex offenses are often arrested on technical probation violations which have no correlation to any sex offense. The Commonwealth's SVP division

will often then file an SVP petition and begin an extremely expensive litigation process [to the Commonwealth of Virginia] that is heavily weighted by statute for the prosecution. Those citizens are often ripped from the community and placed in VCBR indeterminately, civilly committed under the Commonwealth's SVP Act. Of the few who are released conditionally each year, many are sent back for minor infractions of their release plans which are not probation or registry rules. Last fall, at a family and/or support-person information session held at VCBR, Dr. Sarah Webster, a VCBR therapist reported that less than 2% of individuals are returned for any sexually related infraction. Dr. Webster reported that the majority are returned for minor drug and alcohol consumption based on urinalysis and/or self-reporting.

In this time of pandemic crisis Virginia is losing a frightening number of its citizens in 'congregate living arrangements'. VCBR falls into this category. VCBR is technically not a prison and is therefore not governed under Virginia and federal laws regulating prisons such as the 2013 Congressional Deaths in Custody Act. Nor is it a hospital, therefore not governed under the myriad of federal and state laws regulating medical care and unexpected deaths at a hospital. Seven months ago during a 59 day stretch there were 4 deaths in custody at VCBR. Two were preventable suicides and two were medical malfeasance. Three weeks later there was a 5<sup>th</sup> death-in-custody, another medical malfeasance. Documentation is available. When JFP checked for protocols and directives governing Covid-19 preparedness two weeks ago we found none, which we can document. Accountability was not assigned beyond the walls of VCBR and Jason Wilson, Facility Director, according to Pamela Beckner, Senior Assistant Attorney General for DBHDS. This is an overcrowded congregate living facility. VCBR does not even meet the staffing requirements of a nursing home or a prison as there is no 'medical ward' and scant actual nursing staff.

As a category, people labeled sex offenders reoffend at a lower rate than any other category of crime equal to murder. Bureau of Justice statistics says that the re-arrest rate of over 3 years is 5.3 %. JFP has a table with the 5 studies of recidivism for people being considered as [showing recidivism rates](#) between 3.2 and 10.5%

The people imprisoned at VCBR were not sentenced to life. There has been one positive case of the Covid-19 virus confirmed to JFP by the Facility Director Jason Wilson on Friday, April 10, 2020, two weeks after the man became ill and had been allowed in the general population unquarantined. As we write this letter it is being reported to JFP that there are more positive cases among prisoners and several staff, and one nurse has been "confirmed" to the men as having the Covid-19 virus. There are many medically compromised people at this facility. Many people of color and many older people are being detained behind these walls. Many of these people are in their 50s, 60s, 70s and some 80s, ages in which recidivism rates drop even farther. They are all in imminent danger. This is a crisis that bears immediate further discussion. The Covid-19 virus is striking people down indiscriminately. Everyone there is at risk.

The [American Psychiatric Association](#) has stated since 1998 that the psychology behind the SVP laws is completely illegitimate and undermines sound psychiatric practices. [Mental Health of America](#) agrees that these laws should not exist. Virginia is locking people up twice for the same crime; once as a determinate sentence and then again for an indeterminate amount of time. The [National Association of State Mental Health Program Directors](#) also has a statement discrediting this legal abuse of psychiatric practices.

Just Future Project has extensive documentation that “treatment” is being used as punishment and as a control mechanism. Furthermore, punishment has crossed the boundaries of a citizen’s constitutional rights. JFP facilitated a [lawsuit](#) against DBHDS last fall around this issue. VCBR’s own clinical psychologist, Dr. Daniel Montaldi, has publicly published a [study](#) that clearly states that community treatment is more effective and much less costly to taxpayers.

Virginia can no longer afford to support a punitive and ineffective program when the need for true mental health care is so great. This facility could be transformed into much needed mental health beds in the community. The cost of this scheme continues to grow exponentially. There are more cost effective ways to integrate people back into the community so as to be productive citizens.

Just Future Project are people from diverse backgrounds, professions, and regions of Virginia who are united by a passion for abolishing these deeply unjust and un-American laws. We do not discriminate against anyone including discrimination based on historical convictions. We believe everyone is actually innocent of imaginary future crimes.

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