

**Sexually Violent Predator
Referrals, Commitments, and Bed Utilization
Forecast for FY2014 – FY2019**



**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**

April 1, 2014

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I. Executive Summary

This report is submitted in accordance with Item 282 C.1-3. of the 2013 *Appropriation Act*, which directs that:

C.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.

Fiscal Year 2014 began with a Virginia Center for Behavioral Rehabilitation (VCBR) on-books census of 327. This year's forecast estimates that approximately 62 individuals will be admitted to VCBR during the current Fiscal Year, ending on June 30, 2014. This year's forecast estimates that approximately 25 individuals will be discharged from VCBR for all reasons (unconditional release by the court, conditional release, and death). Based on this, the forecast predicts that maximum census of 450 will be reached in mid 2016.

One of the primary goals of the forecast is to identify the month and year in which VCBR will reach maximum capacity. In support of this goal, this forecast proceeds on a number of assumptions.

a) Net Admissions Rate: ~3.38 per month.¹

This represents programmatic knowledge coupled with data for the current fiscal year.

b) Admissions that can be double-bunked with no restrictions: 70.77%.

Based on census as of February 2014, this percentage of the population may be double-bunked with no restrictions. There are a portion of individuals that may be double-bunked, but have restrictions (i.e. can only sleep on lower bunk); however, because this portion does not exceed 50% of those that may be double-bunked, the Department of Behavioral Health and Developmental Services (DBHDS, or 'the department') concluded that this will have no impact on the forecast.

c) Admissions that must be placed in a single room: 29.23%.

Based on census as of February 2014, this percentage of the population must live in a single room for one of the following reasons:

- Medical needs (i.e., contagious disease);

¹ "Net" admission rate is calculated by taking the total number admitted per fiscal, subtracting the number discharged, and dividing by 12 months.

- Dorm must be specialized for intellectual disability or special needs;
 - Dorm must be specialized for medical needs; or,
 - Past demonstration of behavioral issues.
- d) When out of single rooms, there becomes a need to use rooms converted for double occupancy for singles.
- e) Current “on books” census as of February 28, 2014 is 348.

Findings/Results:

Using the above assumptions, DBHDS concludes that VCBR will reach maximum capacity at the end of mid 2016. Single rooms will be depleted a couple of months prior to this date; however, as stated in the assumptions above, when out of single rooms, double rooms will be used to serve those who need a single room.

DBHDS finds that the net admission rate assumption is the most fluid. As a result, in efforts to gain increased understanding of the relationship between this variable and the outcome, an analysis was generated that shows a sensitivity of ± 4 months. This sensitivity should be strongly considered when generating capital plans. Based on these findings, capital should be planned as if maximum census will be reached in March 2016.

Census at VCBR is dynamic, and is best understood as consisting of two measures: on-books and in-house. The “on-books” census is a count of all individuals civilly committed to the department to date. The “in-house” census is the actual number of individuals in residence at VCBR on a given day. The in-house census is extremely fluid and will always be less than the on-books census because, on any given day, a number of individual are temporarily “on-leave” from the facility and housed in local jails for hearings, held in hospitals for medical treatment, and held in jail or the Department of Corrections (DOC) while serving a sentence for convictions on new crimes. It is important to recognize that DBHDS is always responsible for providing secure housing and care for the on-books census. As such, future planning should be based not on the number residing in VCBR on a given day, but on the total count of those civilly committed to the department.

II. Forecast

This year’s forecast documents a continuation of the slow decline of referrals and admissions to the sexually violent predator (SVP) system and VCBR that started in FY 2010. While it is not known if this decline will continue, the DOC SVP-eligible forecast for FY 2014 to FY 2019 suggests that the number of SVP-eligible inmates to be released will remain stable, varying between a low of 615 (2014) and a high of 639 (2019). However, year to year, the DOC forecast shows significant variability. For example, in 2009 the DOC predicted that 981 SVP qualifying inmates would be released in 2014. The 2013 DOC forecast predicts that 615 SVP qualifying inmates will be released. As the DOC forecast is the basis for the DBHDS SVP census growth forecast, changes in the DOC calculations impact the DBHDS forecast.

This year’s forecast predicts maximum census at VCBR will be reached in mid 2016.

Table 1: Census Forecast Statistics for VCBR, Showing Calculations for FY 2014 to 2019.²

	Census Forecast Statistics for VCBR⁽¹⁾	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
1	Projected VCBR census (beginning of FY)	327	366	406	446	488	529
2	SVP-eligible inmates reviewed for SVP civil commitment, by year	615	617	622	638	632	639
3	Evaluated for CRC	135	136	137	140	139	141
4	Found SVP and civilly committed to VCBR	62	63	63	65	64	65
5	Projected yearly releases from VCBR ⁽²⁾	-25	-25	-25	-25	-25	-25
6	Projected SVP conditional releases revoked and detainees admitted to VCBR	2	2	2	2	2	2
7	Projected net admissions to VCBR	39	40	40	42	41	42
8	Projected VCBR census (end of FY; row 1 + row 7)	366	406	446	488	529	571
9	<i>Average monthly admissions (adjusted for releases)</i>	<i>3.28</i>	<i>3.30</i>	<i>3.34</i>	<i>3.48</i>	<i>3.42</i>	<i>3.48</i>

III. Conclusion

Given the current rate of census growth, we project reaching maximum census sometime in mid 2016. As previously noted, admission and discharge rates are most fluid. Analysis shows a forecast sensitivity of +/- 4 months, meaning that maximum census might be reached as early as March 2016. A month projection of census growth for FY 2016 and FY 2017 is shown below.

Table 2: Month Projection of Census Growth

	Fiscal Year 2016											
Calendar Year	2015						2016					
End of Month	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Census	409	413	416	419	423	426	429	433	436	439	443	446

	Fiscal Year 2017											
Calendar Year	2016						2017					
End of Month	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
Census	450	453	456	460	463	467	470	474	477	481	484	488

² Calculations were made using Excel software. Due to rounding conventions in calculators, re-estimations from this data may produce slight variance. This is due to how the instrument used conduct "rounding" operations.

Appendix A: Definitions

Each year, in cooperation and consultation with the Department of Corrections (DOC) and the Office of the Attorney General (OAG), the Department of Behavioral Health and Developmental Services (DBHDS) prepares a forecast of the number of SVP admissions that can be expected to the VCBR. The elements of this process and the findings are described below and illustrated in Table 1 in the forecast section in the report. For the purposes of this forecast, the Table 1 lines and terms used in its preparation are defined as follows:

Line 1: SVP-eligible DOC inmates reviewed for SVP civil commitment, by year. As required by the *Code of Virginia* §37.2-903, the DOC identifies all inmates currently serving a sentence on conviction for a SVP predicate crime who will become eligible for release during each of the next six fiscal years. This figure is provided by DOC to DBHDS. It is the basis for developing the six year forecast.

Line 2: Evaluated for CRC (22%). As part of the screening process, the DOC Sex Offender Screening and Assessment Unit (SOSA) completes an actuarial risk for sexual recidivism instrument on each SVP-eligible inmate. Currently, the instrument used is the Static-99. Inmates scoring at or above the *Code*-mandated threshold are referred to the DBHDS Office of Sexually Violent Predator Services for SVP evaluation. Reports of these SVP evaluations are sent to the DOC Commitment Review Committee (CRC). Per *Code of Virginia* §37.2-902, the CRC reviews the reports and other pertinent data relating to the inmate and makes recommendations to the OAG SVP Unit for either SVP civil commitment, SVP conditional release, or full release. These recommendations are non-binding on the OAG.

Line 3: Found SVP and Civilly Committed to VCBR (44%). In those cases where the OAG petitions the court for SVP civil commitment, forty-four percent are found SVP and committed to VCBR for secure confinement and treatment.

Line 4: Projected VCBR GROSS Census on 1 July. The gross census consists of all individuals found SVP and civilly committed to VCBR, who have been physically admitted to the facility.

Line 5: Projected Yearly Releases from VCBR. It is expected that a certain number of VCBR residents will be released to the community. This will include:

- Conditional release of residents by the court to intensive community supervision;
- Unconditional released by the court to the community without supervision;
- Medically released to the community with or without supervision; and
- Deaths.

During the present forecast period, it is estimated that this number will be about 22 each year.

Line 6: Projected conditionally releases revoked and detainees admitted to VCBR. On an annual basis, about two individuals are either revoked from conditional release and returned to VCBR, or are those found Unrestorably Incompetent to Stand Trial (URIST) who were also found to be SVP and admitted to VCBR.

Line 7: Projected Net admissions to VCBR. The number of total admissions to VCBR minus the number of discharges to VCBR.

Line 8: Projected Net census at VCBR on 1 July each year. This number subtracts all individuals forecast to be discharged from VCBR during the fiscal year. It reflects the actual number of residents forecasted to be residing in VCBR on the first day of the next fiscal year.

Line 9: Average monthly Gross admissions to VCBR. The average unreduced number of admissions expected to arrive at VCBR each month, calculated by divided by the total projected admissions by 12 months.

Line 10: Average monthly net admissions to VCBR. The number of admissions to VCBR expected to arrive at VCBR (see Line 9), less the total projected number of discharges, divided by 12 months.

Commitment Review Committee (CRC). Section 37.2-902 of the *Code of Virginia* establishes the CRC for the purpose of screening, evaluating, and making recommendations regarding inmates and defendants declared URIST relating to SVP civil commitment. The CRC is managed by the DOC with members drawn from three agencies: DOC, OAG, and DBHDS.

Commissioner-Appointed SVP Evaluator. These evaluators are either licensed clinical psychologists or psychiatrists (as described in *Code of Virginia* §37.2-904. B.) who are designated by the Commissioner of DBHDS, skilled in the diagnosis and risk assessment of sex offenders, knowledgeable about the treatment of sex offenders, and are not members of the CRC.

Maximum VCBR Census. The total number of beds available in the present VCBR. At this time, maximum census is 450 beds.

SVP Conditional Release: Section 37.2-912. A-B. of the *Code*, allows for some individuals to be placed in the community under intensive supervision. Individuals considered for conditional release must have a viable and acceptable home plan before release. These plans are reviewed by the DOC Office of Community Corrections/Probation and Parole against criteria established between DOC, OAG and DBHDS. Supervision follows a model of Community Containment used nationally with this and other sex offender populations. This approach uses routine polygraph examinations and close cooperation between community sex offender treatment providers and the probation officer. Regular progress and incident reports are provided to OAG, DBHDS, and the courts.

Secretary of Public Safety State Responsible Forecast Model. Virginia's public safety annual forecasts are produced by three committees using a consensus method. A technical committee employs quantitative methods to make projections based upon past trends and patterns. (For more information: <http://www.vadoc.virginia.gov/about/facts/research/state.shtm>.)

URIST. Unrestorably Incompetent to Stand Trial, as defined by *Code of Virginia* §§19.2-169.1 and 19.2-169.3.

VCBR. The DBHDS Virginia Center for Behavioral Rehabilitation facility in Nottoway County.

Appendix B: Methodology

The commitment of individuals as SVP involves the courts and three other state agencies: DOC, OAG, and DBHDS.

Persons found SVP and civilly committed to the VCBR come from two sources:

- Inmates serving a sentence upon conviction for an SVP predicate crime, and
- Defendants found URIST who have are charged with an SVP predicate crime.

Persons civilly committed as SVPs are housed at VCBR on the grounds of the Piedmont Geriatric Hospital (PGH) in Nottoway County.

Deconstructing the SVP civil commitment process reveals the factors controlling census growth at VCBR. Among them:

1. The number of SVP-eligible inmates being released from DOC during any year;
2. The number of these inmates, and URIST defendants, meeting the SVP screening criteria and referred to the DBHDS for SVP evaluation;
3. The number of evaluated SVP cases that are recommended for SVP civil commitment by the Commitment Review Committee (CRC) and taken forward for commitment by the OAG;
4. The number of cases found SVP by the courts and committed on court order to VCBR;
5. The number of cases ordered to VCBR that are delayed by appeal and other legal procedures; and,
6. The number of persons discharged for all reasons from VCBR during any year.

These factors are explained in detail below:

- 1. The total number of SVP-eligible inmates being released from the Department of Corrections (DOC) during any year has decreased.** This number is developed by the research office at the DOC and is the basis for calculating the DBHDS SVP forecast.

Table 3: DOC projections of inmates becoming SVP-eligible for each year from 2014 to 2019

SVP Forecast Report ³ for:	2014	2015	2016	2017	2018	2019
	615	617	622	638	632	639

- 2. The total number of these inmates also meeting the SVP screening criteria and referred for SVP evaluation has decreased.** While the number of SVP-eligible cases being released each year has stabilized, we are seeing a decline in the number of cases meeting criteria and being referred forward for SVP evaluations; from 163 in FY 2010 to 108 in FY 2013.
- 3. The total number of evaluated SVP cases that are recommended for SVP civil commitment by the Commitment Review Committee (CRC) and brought forward for commitment by the Office of the Attorney General (OAG) is declining.** Since 2009, the ratio of cases recommended

³ These numbers are provided to the DBHDS from the DOC annual inmate forecast.

for SVP civil commitment and full release has changed. In 2008, 97 cases were recommended for SVP civil commitment and 61 for full release. By FY 2012, 37 cases were recommended for SVP civil commitment and 44 for full release; 7 cases were recommended for SVP conditional release; and, 20 cases from FY 2012 remain in the SVP commitment process (a total of 108 cases).

4. **The total number of cases found SVP by the courts and committed on court order to VCBR has declined.** While the percentage of cases found SVP has remained relatively constant, the raw number committed follows the downward trend seen in the numbers SVP-eligible inmates also eligible for release from DOC and recommended for SVP civil commitment. The highest level was reached in FY 2010 when 74 persons were court ordered to SVP civil commitment at VCBR. In FY 2013, only 33 persons were civilly committed to VCBR.
5. **The number of cases ordered to VCBR that are delayed by appeal and other legal procedures remains the same.** At any given time, approximately 11 cases are between commitment and admission to VCBR. The lag time between commitment and admission ranges from a few days to several years. The majority of cases are admitted within a month of commitment. While the overall number of such cases has remained relatively constant, they contribute to the reduction of cases being admitted to VCBR.
6. **The total number of persons admitted to VCBR who are technically “on-leave” from the facility due to placement in regional jails, DOC, or in hospital remains constant at about 7% of Gross census.** At any given time, on average over the course of a year, between 20 and 25 individuals are technically “on-leave” from VCBR. The duration of this leave can range from a few days (taken to court for their annual review hearing), to a month (hospitalization or serving a short jail sentence), to several years (resentenced to DOC for a probation revocation or conviction on a new crime). A few additional cases are being held, after SVP civil commitment on federal detainers and are serving sentence in a federal correctional facility. We expect that they will be admitted to VCBR upon their release from federal custody.
7. **The total number of persons discharged for all reasons from VCBR during any year has increased.** Discharges from VCBR occur because some individuals are discharged:
 - On technical/legal grounds;
 - Due to death;
 - For immigration deportation; and
 - To SVP conditional release in the community.

The majority of discharges are to SVP conditional release.

The number of discharges has increased significantly since FY 2009. Between 2003, when the facility opened, and 1 July 2008, three individuals were discharged for all reasons from VCBR. In FY 2013, 31 individuals were discharged from VCBR.