



COMMONWEALTH of VIRGINIA

S. HUGHES MELTON, MD, MBA
FAAFP, FABAM
COMMISSIONER

DEPARTMENT OF
BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

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December 14, 2018

The Honorable Thomas K. Norment, Jr., Co-chair
The Honorable Emmett W. Hanger, Jr., Co-chair
Senate Finance Committee
14th Floor, Pocahontas Building,
900 East Main Street,
Richmond, VA 23219

Dear Senator Norment and Senator Hanger:

§37.2-903 of the Code of Virginia requires that “*the Commissioner shall report annually by December 1 to the Chairmen of the House Committees on Appropriations and Courts of Justice, the Senate Committees on Courts of Justice and Finance, and the Crime Commission on (i) the assessment protocol approved by the Director and Commissioner to identify prisoners and defendants who appear to meet the definition of a sexually violent predator*” and “*the number of prisoners screened*”. It also requires “*such report shall also include a comparison of the number of defendants identified as appearing to meet the definition of a sexually violent predator and referred to the CRC*”.

Please find enclosed the report in accordance with §37.2-903. Staff at the department are available should you wish to discuss this request.

Sincerely,

A handwritten signature in cursive script that reads "S. Hughes Melton" with a small mark at the end.

S. Hughes Melton, MD, MBA

Enc.

Cc: Hon. Janet D. Howell
Hon. Daniel Carey., M.D.
Marvin Figueroa
Susan Massart
Mike Tweedy



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The Honorable S. Chris Jones, Chair
House Appropriations Committee
900 East Main Street
Pocahontas Building, 13th Floor
Richmond, Virginia 23219

Dear Delegate Jones:

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December 14, 2018

The Honorable Robert B. Bell
Pocahontas Building, Room E311
900 East Main Street
Richmond, Virginia 23219

Dear Delegate Bell:

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December 14, 2018

The Honorable Mark D. Obenshain
Pocahontas Building, Room E502
900 East Main Street
Richmond, Virginia 23219

Dear Senator Obenshain:

§37.2-903 of the Code of Virginia requires that *“the Commissioner shall report annually by December 1 to the Chairmen of the House Committees on Appropriations and Courts of Justice, the Senate Committees on Courts of Justice and Finance, and the Crime Commission on (i) the assessment protocol approved by the Director and Commissioner to identify prisoners and defendants who appear to meet the definition of a sexually violent predator” and “the number of prisoners screened”*. It also requires *“such report shall also include a comparison of the number of defendants identified as appearing to meet the definition of a sexually violent predator and referred to the CRC “*.

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S. Hughes Melton, MD, MBA

Enc.

Cc: Hon. Janet D. Howell
Hon. Daniel Carey., M.D.
Marvin Figueroa
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Sexually Violent Predator Screening Protocol Report 2018 (Code of Virginia §37.2-903)

December 1, 2018

DBHDS Vision: A Life of Possibilities for All Virginians

Sexually Violent Predator Screening Protocol Report 2018

Preface

Code of Virginia §37.2-903, section E requires the Department (DBHDS) to submit an annual report to the Chairmen of the House Committees on Appropriations and Courts of Justice, the Senate Committees on Courts of Justice and Finance, and the Crime Commission.

The Commissioner shall report annually by December 1 to the Chairmen of the House Committees on Appropriations and Courts of Justice, the Senate Committees on Courts of Justice and Finance, and the Crime Commission on (i) the assessment protocol approved by the Director and Commissioner to identify prisoners and defendants who appear to meet the definition of a sexually violent predator pursuant to subsections B and C, including the specific screening instrument adopted and the criteria used to determine whether a prisoner or defendant meets the definition of a sexually violent predator and (ii) the number of prisoners screened pursuant to subsection B and the number of prisoners identified as meeting the definition of a sexually violent predator and referred to the CRC for assessment pursuant to subsection D. Such report shall also include a comparison of the number of defendants identified as appearing to meet the definition of a sexually violent predator and referred to the CRC pursuant to subsection C in the previous year and five years immediately prior thereto.

Sexually Violent Predator Screening Report 2018

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Executive Summary

The information included in this report is based on historical data related to the screening of individuals as Sexually Violent Predators (SVPs). The data has been collected by the Department of Corrections (DOC) Sex Offender Screening and Assessment (SOSA) Unit and reflects the number of offenders screened by the SOSA Unit, determined to be SVP eligible offenders and forwarded to the Commitment Review Committee (CRC) for further review.

Protocol

The screening protocol selected and approved by both the Commissioner of the DBHDS and the Director of the DOC (Appendix A) was developed to reflect current research in the field of sex offender risk and recidivism. The research used to support the development of the protocol is cited at the end of the document. The approved protocol utilizes both the Static 99R evidence based actuarial instrument (Appendix B) and the application of mitigating and aggravating risk factors supported by research to be related to an offender's risk of re-offense.

Offenders Screened by Year

The chart below lists the number of offenders screened by the SOSA Unit and the number of offenders referred to the CRC for a full evaluation. The DOC maintains this data using the offenders release dates. As such, the numbers below represent the total number of offenders with release dates in each given calendar year that were screened, met the statutory criteria, appeared to meet the definition of a SVP and referred for further evaluation.

Table 1: DOC Screening and CRC Referral Data

	2012	2013	2014	2015	2016	2017	2018
Screened by SOSA Unit	577	526	576	525	520	562	543
Referred to CRC	134	125	120	97	87	94	79
Percentage of Screened who were Referred to CRC	23.2%	23.8%	20.8%	18.5%	16.7%	16.7%	14.5%

A closer review of the data from 2018 yields the following information. It is important to note that the revisions to the SVP legislation outlining the new SVP screening protocol were enacted on July 1, 2018 and that the SOSA Unit screens offenders approximately eight months prior to their release date. Although an individual may have been released in 2018 after the new protocol went into effect on July 1, 2018, they were likely screened eight months prior to their actual release date when the old protocol was still in use. As such, the data from 2018 reflects a vast

majority of offenders screened under the previous screening process and a smaller number of offenders (the SOSA Unit estimates no more than 20) screened under the new protocol.

Table 2: SVP Screening and CRC Referrals for Offenders with 2018 Release Dates

	Total Screened by SOSA	Total Referred to CRC	Percentage
Release Date from Jan 1st to June 30th	261	39	15%
Release Date from July 1 st to Dec 31st	282	40	14%
Year Total	543	79	14.5%

Table 3 below shows the number of individuals adjudicated to be a Sexually Violent Predator by the Court(s) in each calendar year. The chart also shows how this number compares with the number of individuals screened. This provides some baseline estimates of the likely percentage of screened individuals who will go on to be found an SVP. It should be noted that not all these individuals were committed to the custody of the Commissioner rather this number just reflects the number who were found by the courts to meet the statutory criteria of an SVP.

Table 3: Number of Individuals Adjudicated SVP by Year

	2012	2013	2014	2015	2016	2017	2018
# of Offenders Screened	577	526	576	525	520	562	543
# of Offenders Adjudicated SVP	55	50	64	63	59	41	45**
% of Offenders Screened who are Adjudicated SVP	9.5%	9.5%	11.1%	12%	11.3%	7.3%	8.3%

** Year to date (as of 10/26/18) there have been 37 individuals adjudicated SVP. Based on averages we estimate a total of 45 individuals will be adjudicated SVP by the end of the calendar year.

Discussion

Although a slight decrease in the percentage of SOSA screened offenders who were referred to the CRC can be seen (Table 2) when comparing the second part of 2018 (when the new protocol went into effect) to the first part of 2018 (when the old screening process was still in use), the information should not be considered as an outcome measure for the new SVP screening

protocol. The changes to the SVP Legislation and the new screening protocol did not go into effect until July 1, 2018 and the 2018 data provided by the DOC represents offenders screened primarily under the old protocol. As such, the DOC and DBHDS are in agreement that the 2018 data does not reflect the impact of the new protocol. Both agencies anticipate that next year's 2019 report will be a better indication of any changes that can be expected in regard to the new SVP screening process.

It is important to understand the impact of the new screening protocol on the SVP process. DBHDS and VADOC estimate that the most likely outcome of the new SVP protocol will be an overall small decrease in the number of individuals who are referred to the Commitment Review Committee (CRC). The new protocol allows for consideration of both aggravating and mitigating factors when determining whether an individual should be referred to the CRC. Previously the Code provided less flexibility with regard to consideration of mitigating factors, allowing for exclusion of referral only for those individuals who were so medically compromised that sexual re-offending was unlikely. The Code, however, did not allow flexibility for other which would suggest the individual would not meet the criteria of SVP. An example of this would be an individual who is not found SVP by the court, is released to the community and has his supervision revoked for non-sexual criminal behavior. This individual did not engage in any new sexual behaviors, nor is there any new information to suggest that his SVP status may have changed. However, once this individual completes his sentence, he may be required to go through the SVP screening process again. Under the new protocol such an individual could be excluded from further review. The new protocol does allow individuals who score below the threshold score on the STATIC-99R to be referred for review (if there are other concerning factors). However, we anticipate there will be fewer of these types of cases than there will be decisions not to refer individuals for further evaluation. Thus, there should be a small net decrease in the number of referrals for CRC evaluation. It should be noted that neither VADOC nor DBHDS anticipate the new protocol having any effect on the number of individuals adjudicated SVP by the courts. The new protocol will simply allow some individuals who ultimately were very unlikely to be found SVP to not be referred for further evaluation by the CRC.

With regard to adjudication as an SVP, Table 3 shows the relative percentage of individuals adjudicated each year. The percentage has ranged from a low of 7.3% to a high of 12%. Again, the new protocol should not affect the percentage of individuals adjudicated SVP. DBHDS, VADOC, and the Office of the Attorney General routinely meet to discuss the SVP process and review SVP data. That team will continue to monitor the impact of the new protocol and make any adjustments in the protocol as needed. DBHDS and VADOC will continue to collaborate to ensure Virginia is using the most state-of-the-art protocol to ensure we are capturing the highest risk offenders in the most efficient manner possible. DBHDS and VADOC will continue to report on this process in subsequent annual reports to the General Assembly.

Appendices

Appendix A Copy of Signed SVP Screening Protocol



COMMONWEALTH of VIRGINIA

HAROLD W. CLARKE
DIRECTOR

Department of Corrections.

P. O. BOX 26963
RICHMOND, VIRGINIA 23261
(804) 674-3000

June 29, 2018

In accordance with the *Code of Virginia 37.2-903(B)* of the Sexually Violent Predators Act, the following screening protocol is hereby agreed to between the Director of Virginia Department of Corrections and the Commissioner of Virginia Department of Behavioral Health and Developmental Service to be implemented on July 1, 2018.

Handwritten signature of Harold Clarke in cursive script.

Harold Clarke
Director
Department of Corrections

Handwritten signature of S. Hughes Melton, MD in cursive script.

S. Hughes Melton, MD
Commissioner
Department of Behavioral Health & Developmental Services

SEXUALLY VIOLENT PREDATOR SCREENING PROTOCOL

The Director shall collect all available information on the offender or defendant and calculate the offender/defendant's score on an actuarial measure agreed to by Director and Commissioner. The Director and Commissioner have agreed to use the Statc-99R actuarial instrument and the corresponding reference score of six as the foundation for the initial screening.

The Director shall forward cases scoring six and above directly to the Commitment Review Committee (CRC) unless the Director determines that mitigating factors warrant their referral to the Sex Offender Screening panel, in which case all available information on the offender shall be forwarded to the panel for review. The Director shall not forward cases scoring five and below unless the Director determines that aggravating factors warrant their referral to the Sex Offender Screening Panel, in which case all available information on the offender shall be forwarded to the panel for review.

Regarding whether to exclude or request a full Sexually Violent Predator evaluation of the case, the three-person Sex Offender Screening Panel shall consider the actuarial score along with evidenced based risk factors pertaining to sex offender recidivism before making their recommendation, by majority vote, to the Director.

The Sex Offender Screening Panel shall be comprised of three Virginia Department of Corrections staff who are skilled in the diagnosis and risk assessment of sex offenders and are knowledgeable about their treatment. The panel shall elect a chairperson from within its membership.

The three person sex offender screening panel will review cases referred to them in accordance with this protocol. They will make a recommendation to the Director to exclude or request a full Sexually Violent Predator evaluation by majority vote.

If the Director and the Commissioner agree that no specific scientifically validated actuarial instrument exists or can be completed due to insufficient available information, the offender/defendant may instead be screened by a licensed psychiatrist, licensed clinical psychologist, or a licensed mental health professional certified by the Board of Psychology as a sex offender treatment provider pursuant to § 54.1-3600 for an initial determination of whether or not the offender/defendant may meet the definition of a sexually violent predator. Upon any such determination, the offender/defendant shall be referred to the CRC for a full evaluation.

SEXUALLY VIOLENT PERPETRATOR SCREENING PROTOCOL

Aggravating Characteristics:

- Offense-supportive attitudes including self-report or evidence of intention to re-offend sexually
- Deviant sexual interests or sexual preoccupation
- Lifestyle impulsivity and/or general self-regulation problems
- Resistance to rules and supervision
- Institutional charges with violent or sexual component
- Self-report of past uncharged sex offenses
- Deficits in interpersonal functioning

Mitigating Characteristics:

- Health issues that limit the ability/risk to commit new sex offense
- Ten or more years in the community without a new sex offense or violation related to sex offense patterns
- History of continuous compliance with community supervision
- Prior review under Chapter 9 of Title 37.2 which did not result in identifying individual as an SVP nor introduction of any new risk factors
- Offender current age relative to age at time of last sex offense
- Sex offender treatment completion

References

- Barbaree, H. E., & Blanchard, R. (2008). Sexual deviance over the lifespan: Reduction in deviant sexual behavior in the aging sex offender. In D. R. Laws & W. T. O'Donohue, *Sexual deviance: Theory, assessment, and treatment* (pp. 37- 60). New York: Guilford Press.
- Hanson, R. K., Babchishin, K.M., Helmus, L. M., Thornton, D., & Phenix, A. (2016, September 12). Communicating the Results of Criterion Referenced Prediction Measures: Risk Categories for the Static-99R and Static-2002R Sexual Offender Risk Assessment Tools. *Psychological Assessment*. Advance online publication. <http://dx.doi.org/10.1037/pas0000371>
- Hanson, R. K., Harris, A., Helmus, L. M., & Thornton, D. (2014). High-risk sex offenders may not be high risk forever. *Journal of Interpersonal Violence*, 29(15), 2792-2813.
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- Hanson, R. K., Harris, A. J. R., Scott, T., & Helmus, L. (2007). Assessing the risk of sexual offenders on community supervision: The Dynamic Supervision Project (Corrections Research User Report No. 2007-05). Ottawa, Ontario: Public Safety Canada.
- Hanson, R. K., Helmus, L. M., & Harris, A. J. R. (2015). Assessing the risk and needs of supervised sexual offenders: A prospective study using STABLE-2007, Static-99R, and Static-2002R. *Criminal Justice and Behavior*, 42, 1205–1224.

SEXUALLY VIOLENT PRELATOR SCREENING PROTOCOL

- Schmucker, M. & Losel, F. (2015). The effects of sexual offender treatment on recidivism: An international meta-analysis of sound quality evaluations. *Journal of Experimental Criminology*, 11, 597-630.
- Singh, J. P., Fazel, S., Gueorguieva, R., & Buchanan, A. (2013). Rates of sexual recidivism in high risk sex offenders: A meta-analysis of 10,422 participants. *Sexual Offender Treatment*, 7, 44 –57.
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- Vries Robbe, M., Mann, R. E., Maruna, S., & Thornton, D. (2015). An Exploration of Protective Factors Supporting Desistance From Sexual Offending. *Sexual Abuse: A Journal of Research and Treatment*, 27(1), 16-33.

Appendix B Static99R Screening Form

Static-99R – TALLY SHEET

Assessment date: _____ Date of release from index sex offence: _____

Item #	Risk Factor	Codes		Score
1	Age at release from index sex offence	Aged 18 to 34.9 Aged 35 to 39.9 Aged 40 to 59.9 Aged 60 or older		1 0 -1 -3
2	Ever lived with a lover	Ever lived with lover for at least two years? Yes No		0 1
3	Index non-sexual violence - Any convictions	No Yes		0 1
4	Prior non-sexual violence - Any convictions	No Yes		0 1
5	Prior sex offences	<u>Charges</u> 0 1,2 3-5 6+	<u>Convictions</u> 0 1 2,3 4+	0 1 2 3
6	Four or more prior sentencing dates (excluding index)	3 or less 4 or more		0 1
7	Any convictions for non-contact sex offences	No Yes		0 1
8	Any unrelated victims	No Yes		0 1
9	Any stranger victims	No Yes		0 1
10	Any male victims	No Yes		0 1
	Total Score	Add up scores from individual risk factors		

Nominal Risk Levels (2016 version)	<u>Total</u>	<u>Risk Level</u>
	-3, -2,	I - Very Low Risk
	-1, 0,	II - Below Average Risk
	1, 2, 3	III - Average Risk
	4, 5	IVa - Above Average Risk
	6 and higher	IVb - Well Above Average Risk

There [was, was not] sufficient information available to complete the Static-99R score following the coding manual (2016 version). I believe that this score [fairly represents, does not fairly represent] the risk presented by Mr. XXXX at this time. Comments/Explanation: _____

(Evaluator name)

(Evaluator signature)

(Date)

Appendix C Terminology

Commitment Review Committee (CRC). The Code established the CRC in §37.2-902 for the purpose of evaluating and making recommendations regarding inmates and defendants (URIST) relating to SVP civil commitment. The CRC is chaired by the DOC with members drawn from the DOC, OAG and DBHDS.

SVP-eligible offender: An individual who is presently serving a sentence in DOC on conviction for one of the SVP qualifying crimes listed in COV at §37.2-900, who is approaching his or her release date or being considered for parole.

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