



COMMONWEALTH of VIRGINIA

ALISON G. LAND, FACHE
COMMISSIONER

DEPARTMENT OF
BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

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February 17, 2020

The Honorable Janet D. Howell, Chair
Senate Finance Committee
The Honorable Luke Torian, Chair
House Appropriations Committee
900 East Main Street
Richmond, VA 23219

Dear Senator Howell and Delegate Torian:

§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 blue ink that reads "Alison Land".

Alison Land, FACHE
Commissioner

Cc:
The Honorable Daniel Carey, MD
Susan E. Massart
Mike Tweedy



Sexually Violent Predator Screening Protocol Report 2019 (Code of Virginia §37.2-903)

December 1, 2019

DBHDS Vision: A Life of Possibilities for All Virginians

Sexually Violent Predator Screening Protocol Report 2019

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 2019

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Executive Summary

Pursuant to the Code of Virginia §37.2-903, staff from the Department of Behavioral Health & Developmental Services (DBHDS) and the Virginia Department of Corrections (DOC) have collaborated to develop a report that reviews data related to the screening of Sexually Violent Predators (SVPs) in Virginia. This report includes data for calendar year 2019 and the six calendar years prior. The information included in this report is based on historical data 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 by the DOC to be SVP eligible, forwarded to the Commitment Review Committee (CRC) for further review and adjudicated as SVPs.

On July 1, 2018, an updated screening protocol went into effect to identify DOC offenders who may be found by the court to meet SVP criteria. This protocol, approved by both the Director and the Commissioner, uses the Static 99R actuarial assessment tool and individualized mitigating or aggravating characteristics identified in current research as relative to the risk of sexually violent re-offending.

Overall, the data suggests that the updated SVP screening protocol is more accurately identifying the high-risk sex offenders who are found by the court to meet SVP criteria than the previous screening protocol. This conclusion is supported by both a decrease in the percentage of DOC eligible offenders being referred for CRC evaluations and an increase in the percentage of evaluated offenders who are eventually found by the court to meet SVP criteria. It is important to note that the protocol is still a relatively new process and has been applied to screenings in the last year. It should also be noted that in 2019, there was a 9 percent smaller than average number of eligible offenders to be screened as compared to the previous six calendar years, which impacted the overall number of offenders ultimately adjudicated as SVP. This appears to be secondary to normal variations in offender populations rather than indicative of a longer standing trend and is not a result of the updated protocol. In addition, the majority of cases screened under the protocol have yet to reach their final court disposition at the time of this report.

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 approved protocol utilizes both the Static 99R evidence based actuarial instrument (Appendix B) and the application of mitigating and/or aggravating risk factors supported by research as being related to an offender's risk of re-offense.

SVP Screening Summary

The data contained in this report has been collected using the offender's release date to define the calendar year where each case and its related outcomes are counted. For example, in 2013, 108 of 506 offenders with release dates in 2013 that were screened for SVP were subsequently referred to the CRC for full evaluation. Of those same 108 offenders referred for full evaluation, 51 were eventually found to meet the criteria as a SVP.

Data regarding the SVP screening, assessment and adjudication rates for the past six calendar years is as follows:

Table 1: Annual SVP Screening Data Summary

Calendar Year	2013	2014	2015	2016	2017	2018*	2019*
# of Offenders Screened	506	524	484	477	507	495	445
# of offenders referred to CRC for full evaluation	108	116	111	103	90	80	33
% of those screened who were referred to CRC	21%	22%	23%	21%	17%	16%	7%
# of Offenders referred to the CRC who were Adjudicated SVP	51	59	58	52	41	(42+7) 49*	(4+18) 22*
% of Offenders Evaluated who were Adjudicated SVP	47%	50%	52%	50%	45%	61%*	66%*

** Data for these years includes estimates (#cases adjudicated + estimated # from those still in court) as not all cases have reached final disposition at the time of this writing. Result figures are estimates based on yearly averages for OAG filings and related adjudications.*

Discussion

The updated SVP protocol became law on July 1, 2018. Prior to the updated protocol going into effect, the DOC would begin the SVP screening process 7-9 months in advance of an offender's release date. Because of this, when the updated protocol went into effect, the VADOC was already screening cases with release dates of January 2019 and later. Therefore, the protocol was not used for the majority cases with release dates in 2018. In contrast, the protocol has been applied to the majority of cases with release dates in 2019.

The above data suggests that the protocol is reducing requests for low-risk evaluations and identifying more precisely the high risk individuals that may meet the criteria for SVP status. A review of the data in Table 1 shows a decrease in the percentage of offenders screened who were

referred to the CRC for evaluation (16 percent in 2018 to 7 percent in 2019). There was an increase in the percentage of offenders who were evaluated and then eventually adjudicated as SVPs (an estimated 61 percent in 2018 and 66 percent in 2019). Prior to the updated protocol, less than half of all offenders evaluated were ultimately adjudicated as Sexually Violent Predators. The early results of the updated protocol demonstrate that approximately two thirds of the offenders screened are found by the court to meet the criteria for SVP. This is an indication that the protocol has improved our ability to accurately identify high risk offenders who the court eventually found to meet SVP criteria.

There are a few points regarding this data that should be noted. In 2019, there was a 9 percent smaller than average number of eligible offenders as compared to the average for the previous six calendar years, to be screened, which impacted the overall number of offenders ultimately adjudicated as SVP. This appears to be secondary to normal variations in offender populations rather than indicative of a longer standing trend. It is not related to the new protocol. In addition, the majority of cases screened under the protocol have yet to reach their final court disposition at the time of this writing. The protocol is still a relatively new process and has been applied to just under a year's worth of screenings. It will take several years of application to fully realize its effectiveness.

DBHDS and VADOC anticipate that future data regarding the SVP protocol will continue to show that it is a more precise method of identifying high-risk offenders who are likely to meet the statutory definition of a SVP. DBHDS and VADOC will continue to collaborate to ensure Virginia is using the best practices and is identifying the offenders at highest risk for sexually reoffending in the most efficient manner possible. Further, 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 updated protocol and recommend adjustments to the Commissioner and Director as needed.

Appendices

Appendix A Copy of Signed SVP Screening Protocol



COMMONWEALTH of VIRGINIA

HAROLD W. CLARKE
DIRECTOR

Department of Corrections

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RICHMOND, VIRGINIA 23261
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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.

A handwritten signature in black ink, appearing to read "H. Clarke".

Harold Clarke
Director

Department of Corrections

A handwritten signature in black ink, appearing to read "S. Hughes Melton".

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

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SEXUALLY VIOLENT PRELATOR SCREENING PROTOCOL

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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.