



## Review of the Civil Commitment of Sexually Violent Predators

COMMISSION BRIEFING

November 14, 2011

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## Item 30 of the 2011 Appropriation Act

“undertake a comprehensive review of the civil commitment of sexually violent predators at the Virginia Center for Behavioral Rehabilitation (VCBR) ...”

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## In Brief

Virginia's risk assessment process is flawed, and does not provide enough flexibility or sufficiently use consensus to determine whether to proceed with civil commitment.

Virginia's program will continue to grow over time; however, the rate of growth can be reduced if program changes are made.

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# In This Presentation

Background

Actuarial Risk Assessment Instrument

Risk Assessment Process

Treatment

VCBR's Costs

VCBR Census and Capacity

Civil Commitment Decisions

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## Civil Commitment Confines and Treats Sexually Violent Predators After Release From Prison

- “For civil commitment to be effective, practitioners must be able to identify sex offenders who pose a high risk of reoffending.
- Although the ability of practitioners to identify offenders has improved, there is still the possibility that an offender who would not re-offend might be committed.
- Moreover, determining when it is safe to release a sex offender from custody is still difficult for practitioners.”

*-Congressional Research Service*

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# U.S. Supreme Court Ruled That Civil Commitment for SVPs Is Constitutional

- Kansas v. Hendricks, 1997
- Does not violate double jeopardy guarantees since it establishes civil rather than criminal proceedings
- Is not punishment, as long as treatment is the primary goal

SVP = sexually violent predator

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## Virginia Established Civil Commitment Program in 1999

- Civilly committed first SVP in 2003
- Changed program in 2006
  - Increased SVP predicate crimes from 4 to 28
  - Switched to use of the Static-99 actuarial risk assessment instrument and threshold score of “5”
- 270 SVPs at VCBR in fall 2011
- VCBR spent \$24.5 million in FY 2011

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# Example VCBR Living Unit and Resident Room

*Living Unit*



*Resident Room*



# Civil Commitment Process Has Three Phases

I. Risk Assessment			II. Legal Judgment	
<i>Actuarial</i> - screening of all offenders convicted of SVP predicate crime and 10 months from release	<i>Clinical / Actuarial</i> – SVP evaluator conducts in-person evaluation of offenders scoring above 4/5 score on Static-99	<i>Commitment Review Committee</i> – Reviews file and votes for civil commitment, conditional release, or release	<i>Petition</i> - Office of the Attorney General decides whether to petition circuit court to find offender to be an SVP	<i>Court Proceedings</i> – Circuit court determines whether offender is an SVP, then decides civil commitment at VCBR or conditional release
III. Civil Commitment at VCBR				
<i>Treatment</i> – SVP confined at VCBR and has access to three-phase treatment program	<i>VCBR Review</i> – SVP progress through treatment reviewed quarterly, annually recommends whether court should continue civil commitment	<i>Court Review</i> – Circuit court determines whether SVP should continue under civil commitment or be placed on conditional release		

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## About 7% of Offenders Convicted of SVP Predicate Crimes and Released from DOC Have Been Civilly Committed

	#	% of Total
Total offenders convicted of predicate crime released from DOC (2003 – 2010)	4,034	-
Offenders meeting threshold on actuarial risk assessment instrument	703	17%
Offenders civilly committed as SVPs (projected)	303	7%

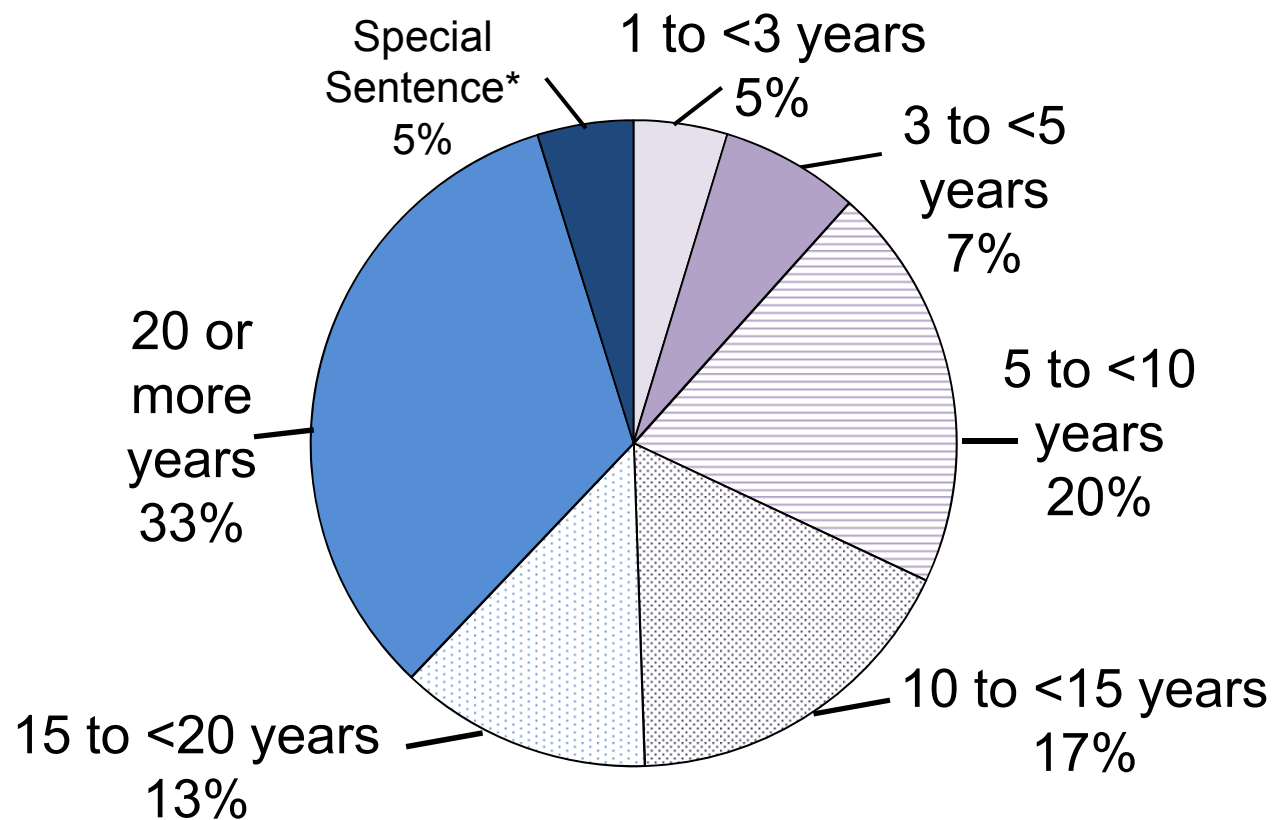
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## **DOC Releases About 600 Inmates Each Year Convicted of an SVP Predicate Crime**

- About three-quarters of SVP convictions at VCBR for
  - Aggravated sexual battery
  - Rape
  - Forcible sodomy

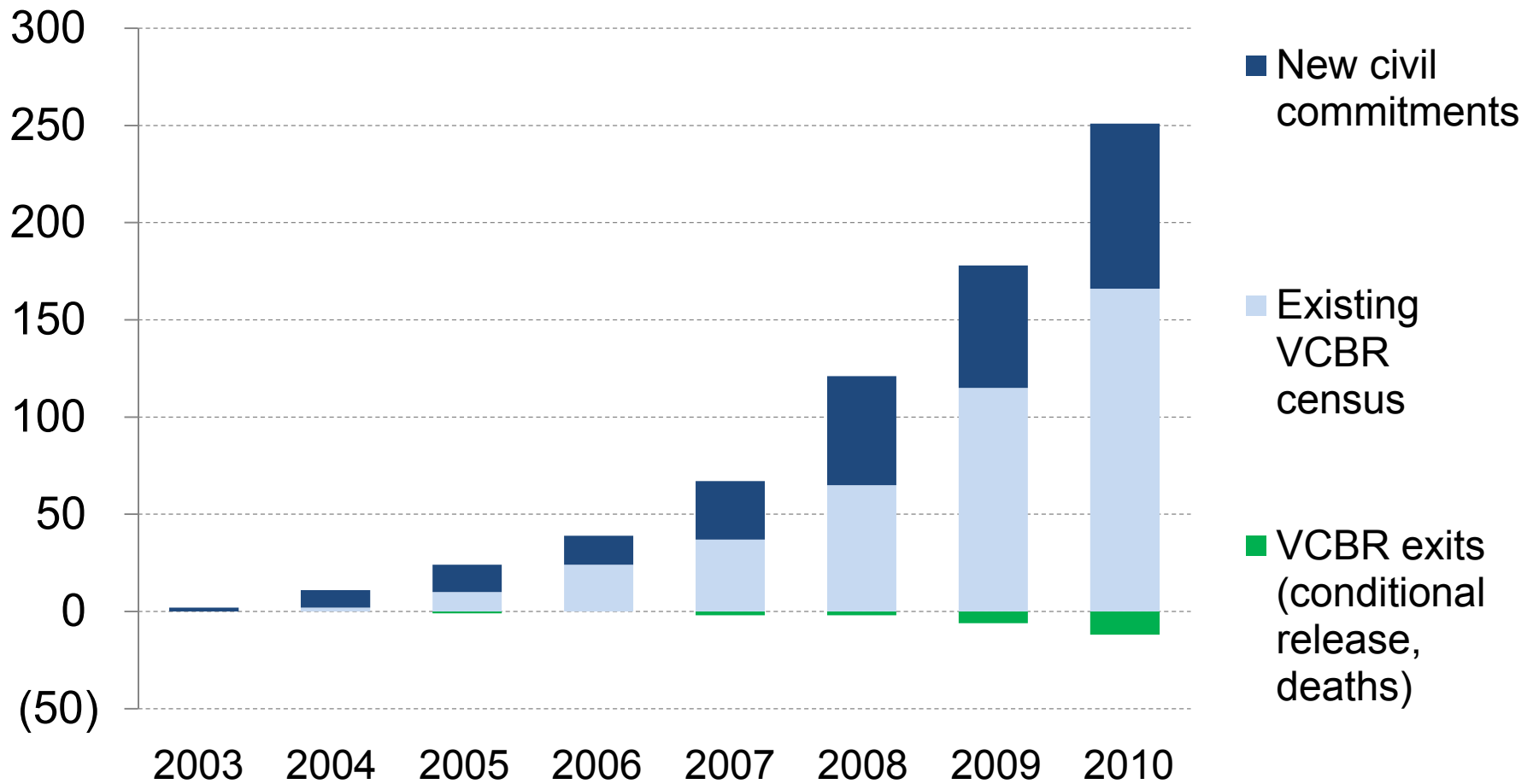
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# Offenders Convicted of SVP Predicate Crimes Serve Widely Varying Sentences

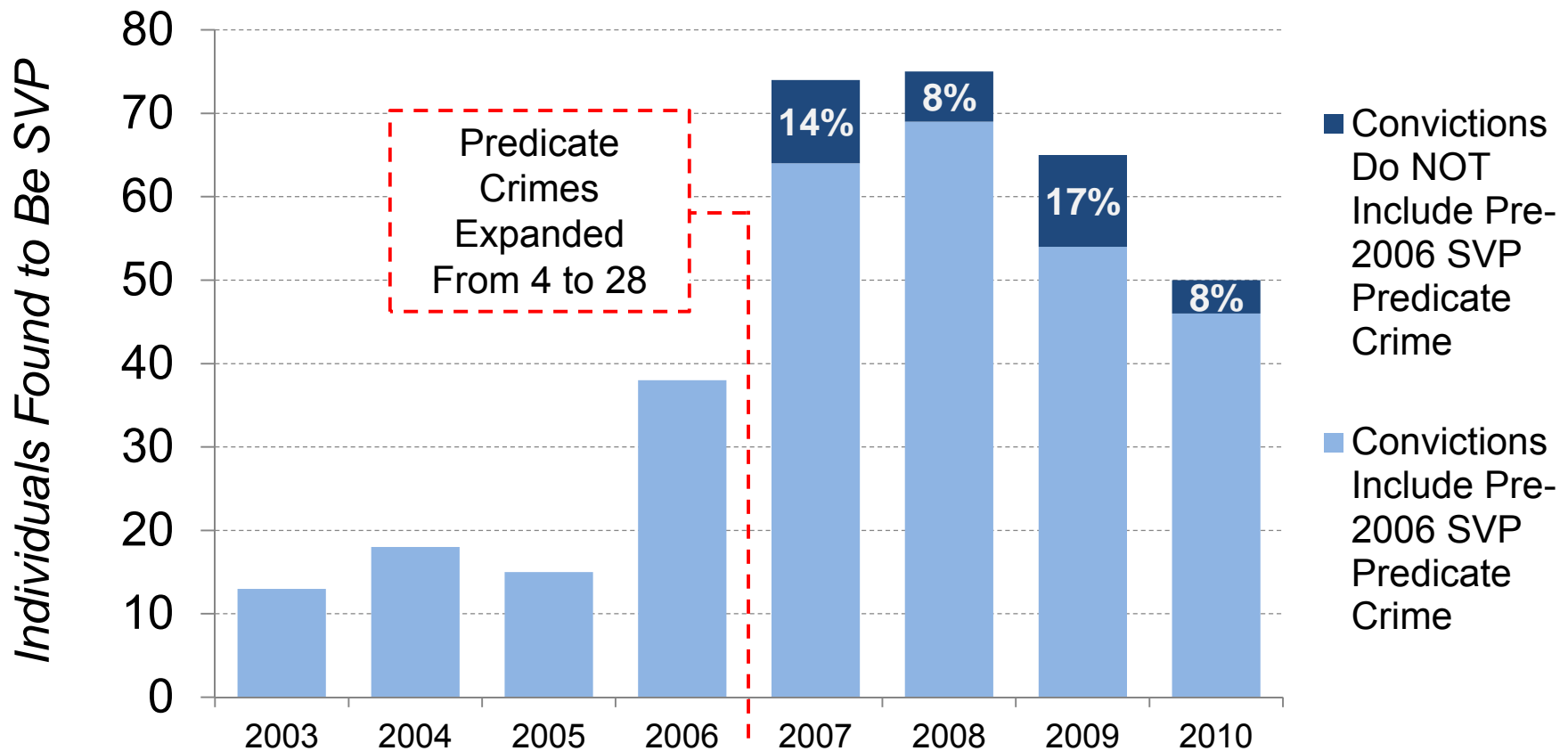


*\*Special sentences include single or multiple life sentences and three time loser sentences.*

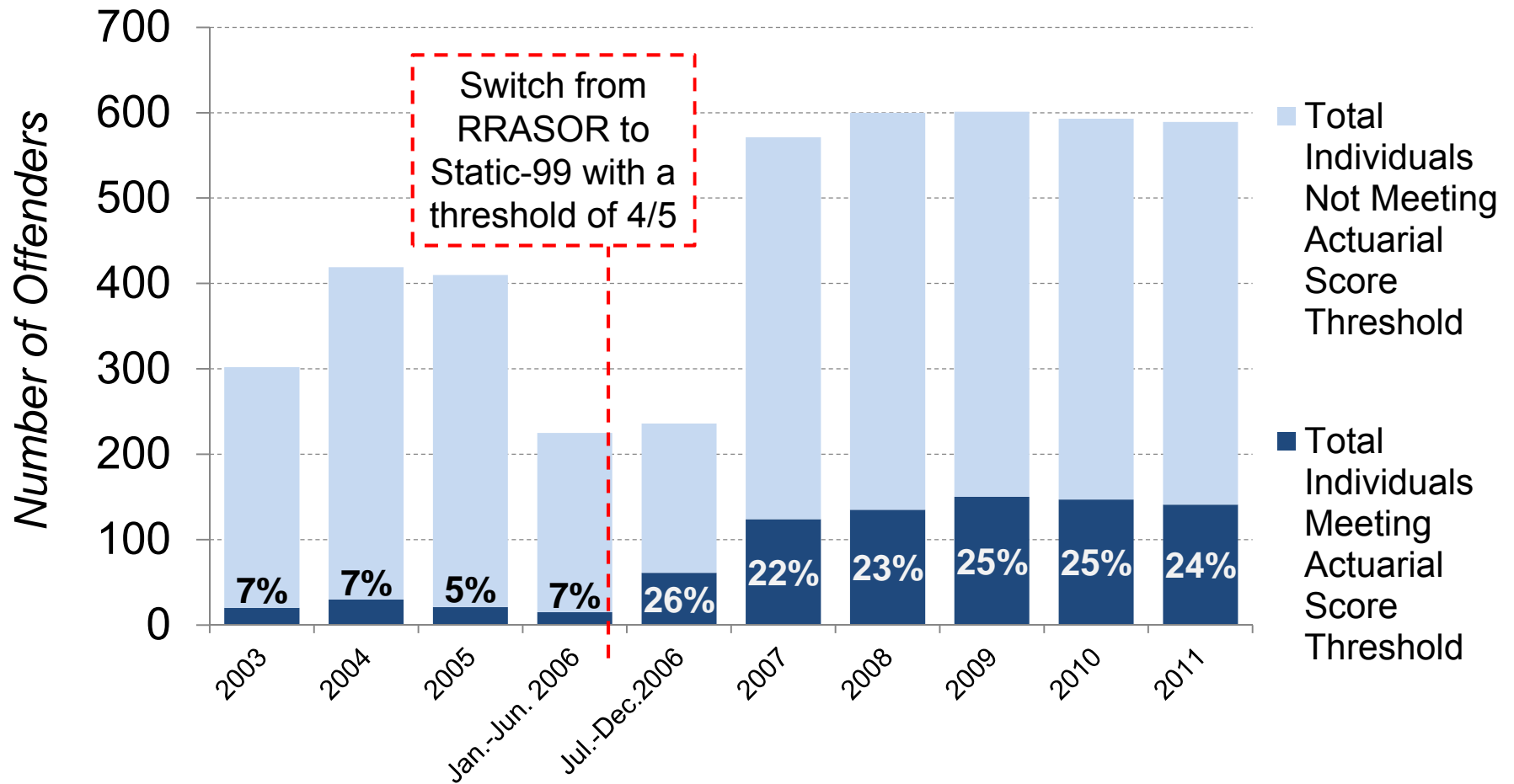
# Number of Civil Commitments and VCBR Census Have Substantially Increased



# Expansion of SVP Predicate Crimes Led to Moderate Portion of Overall Increase



# Switch to Static-99 Led to 450% Increase



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## Program Growth Led to Administration Proposals and JLARC Study

- December 2010 requests to
  - Re-open a 48-bed SVP facility in Petersburg
  - Obtain \$43.5 million in bond authority to build a second 300-bed SVP facility
- Requests were denied
- VCBR has retrofitted 150 rooms so that SVPs can be “doubled-bunked” to increase capacity to 450

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## Risk Assessment Step 1: DOC Screens Offenders With Static-99

- Static-99 is an actuarial risk assessment instrument, which predicts risk of re-offense based on previously-observed re-offense rates
  - 10 questions address risk factors, e.g., prior convictions and sex offenses
  - DOC completes Static-99 by reviewing the files of violent sex offenders within 10 months of release

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## About One Quarter of Offenders Have Scored Above Static-99 Threshold

- 3,140 offenders assessed between July 1, 2006 and mid-year 2011
  - 76% scored below and could not be reviewed further
  - 24% scored above and were reviewed further
- 40% of the offenders who met the threshold were found to be SVPs by a circuit court

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## Finding

Actuarial risk assessment instruments have some predictive value, but cannot precisely predict an individual offender's risk of future re-offense.

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## Actuarial Risk Assessments Have a Low Degree of Confidence for a Given Individual

- Static-99 is moderately predictive for a group, but far less predictive for an individual
- Risk of re-offense associated with score of “5”
  - Group range = 31% to 50%
  - Individual range = 4% to 92%
- Similar concept for life insurance actuarial tables
  - Average male life span = 76
  - Some males live until age 40, others until age 97

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## Individuals With Different Actuarial Risk Scores May Have Negligible Difference in Risk

- Limited usefulness trying to distinguish between individuals based on actuarial risk score
- Risk of re-offense associated with score of
  - 5, ranges from 4% to 92%
  - 4, ranges from 3% to 91%
- Similar concept for monthly average and daily temperatures
  - July average = 82°, ranges from 62° to 103°
  - August average = 79°, ranges from 60° to 99°

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# Finding

The risk assessment process limits the ability to further assess some high-risk violent sex offenders.

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## **Code Only Permits Further Review of Certain Offenders**

- Offender can be forwarded for further review if
  - Released after serving time for conviction of SVP predicate crime
  - Score above the statutory threshold of a 4/5 on the Static-99

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## Case Study: Offender A

- *Convicted of SVP predicate crime against victim under age of 13*
- *While in prison, admitted to DOC counselor his continued attraction to children and inability to control his compulsion to have sex with children*
- *DOC counselor informed SOSA unit of Offender A's stated intent to re-offend if released*
- *When assessed by DOC SOSA, Offender A scored a "3" on the Static-99*
- *Despite stated intent to re-offend, Offender A could not be further reviewed and was released*

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## Finding

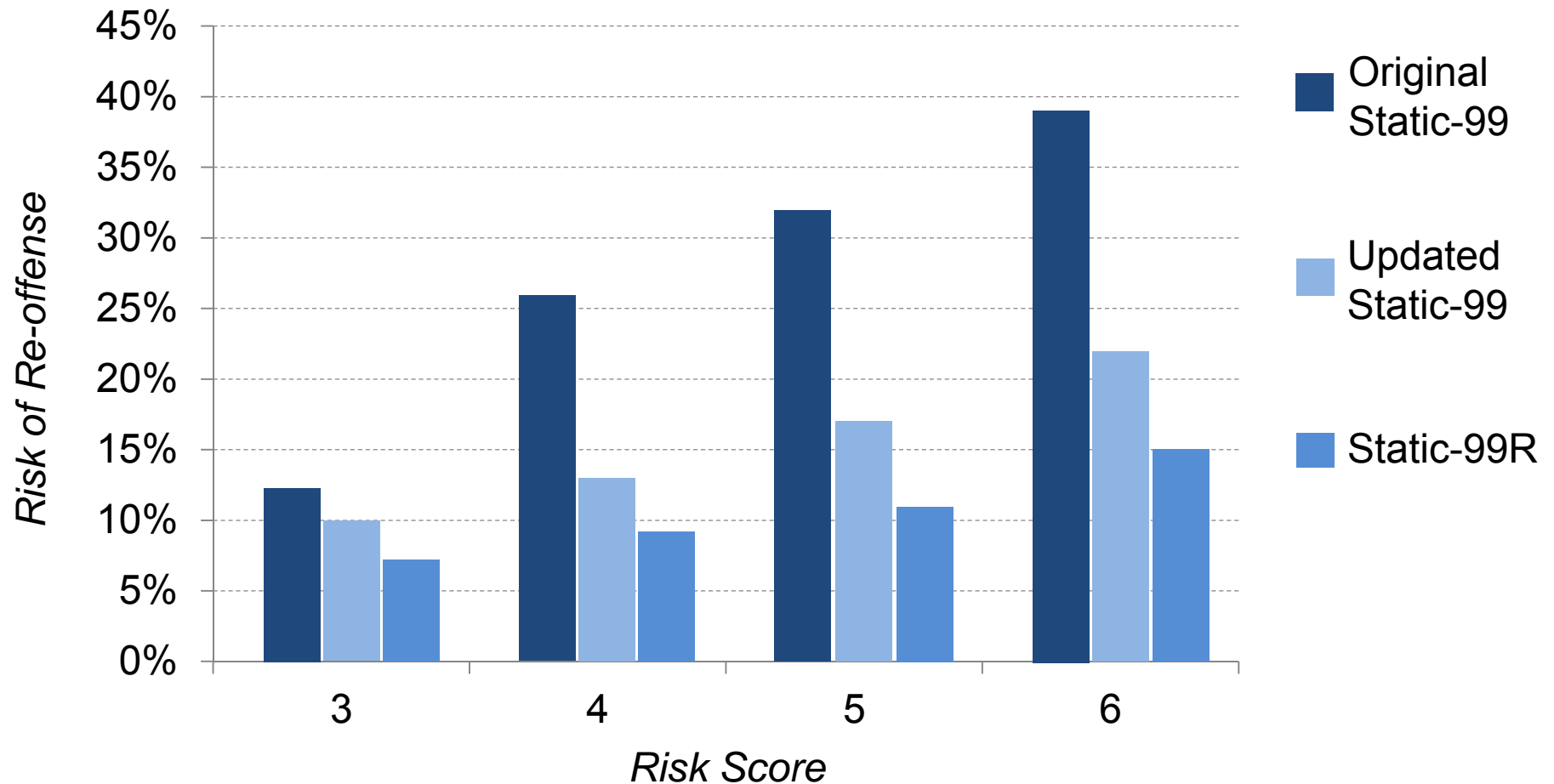
More recent versions of Static suggest that the original Static-99 still used in Virginia may overestimate the risk of future re-offense.

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## Static-99 Has Been Updated Twice

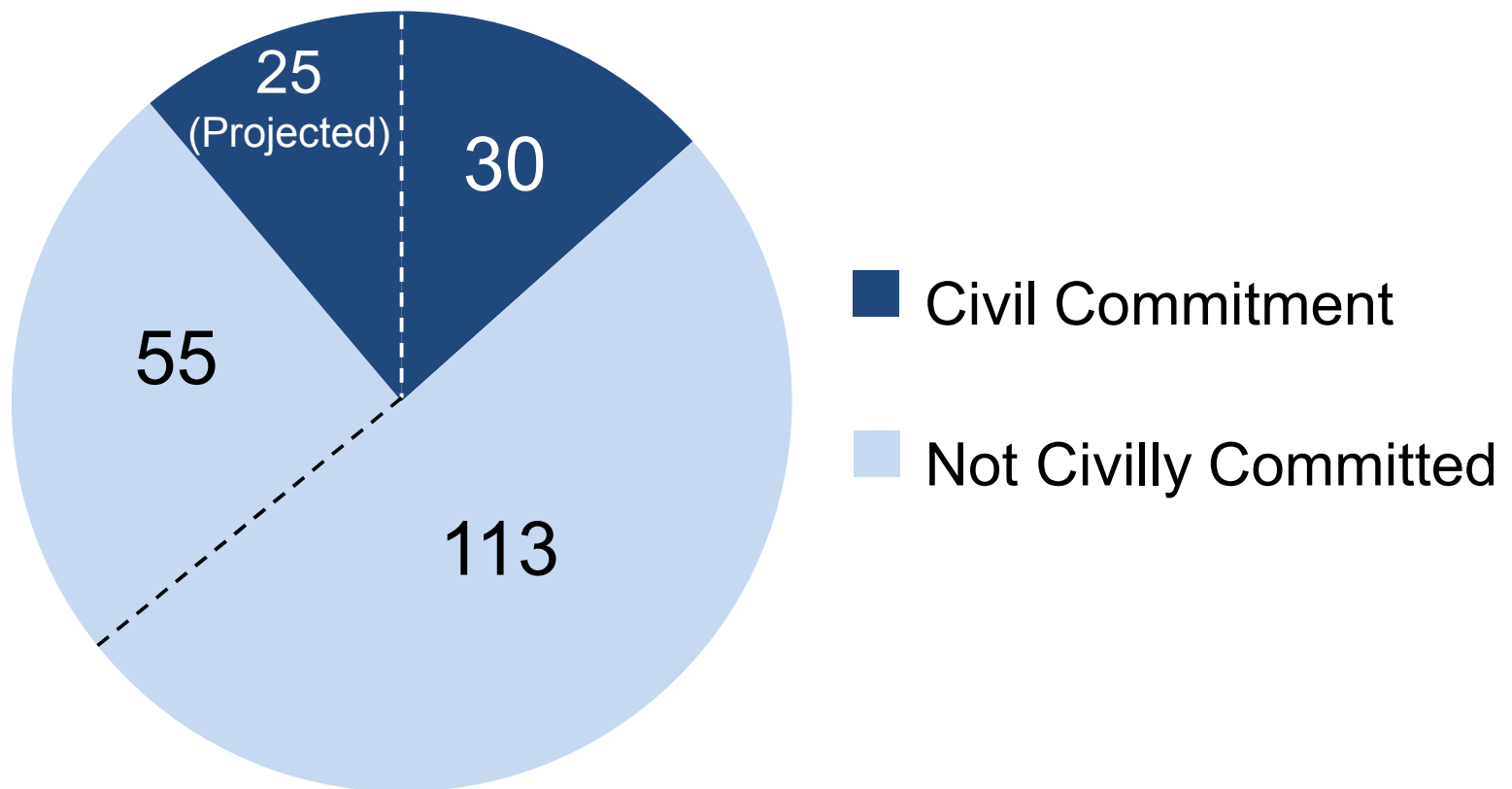
- Updated “norms” (or dataset) to accompany the Static-99
- Static-99R, which lowers risk of re-offense for older offenders
- Developers plan to release future updates

# Original Static-99 Overestimated Risk Compared to Updates



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## 30 Offenders Have Been Committed That Would Not Have Been Forwarded Using Updated Versions



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## **Virginia Is Only State That Designates an Actuarial Instrument and Score in Statute**

- Other states with civil commitment programs allow professionals more discretion to develop process to determine need for additional risk assessment
  - Still use actuarial risk assessments as part of process

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## Recommendations

General Assembly may wish to amend the *Code of Virginia* to remove the reference to “a score of five or more on the Static-99.”

General Assembly may wish to amend the *Code of Virginia* to direct DBHDS to choose a current and scientifically-validated actuarial risk assessment instrument.

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## Recommendation

DBHDS and DOC should identify a current and scientifically-validated actuarial risk assessment instrument ... and report to the House Health, Welfare, and Institutions; House Appropriations; Senate Rehabilitation and Social Services; and Senate Finance committees by June 30, 2012, and biennially thereafter.

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## Risk Assessment Step 2: SVP Evaluation

- Conducted by licensed psychiatrists and clinical psychologists contracted by DBHDS
- Evaluators conclude whether the offender has a “mental abnormality or personality disorder” that makes it difficult to control predatory behavior
  - Review the inmate’s file
  - Conduct an in-person interview and clinical assessment
  - Produce a written assessment

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## **SVP Evaluations Are Major Factor Cited by CRC, OAG, and Courts**

- CRC recommendation & OAG petition decision consistent with SVP evaluation 82% of the time
- Circuit court finding consistent with SVP evaluation 90% of the time

CRC = Commitment Review Committee

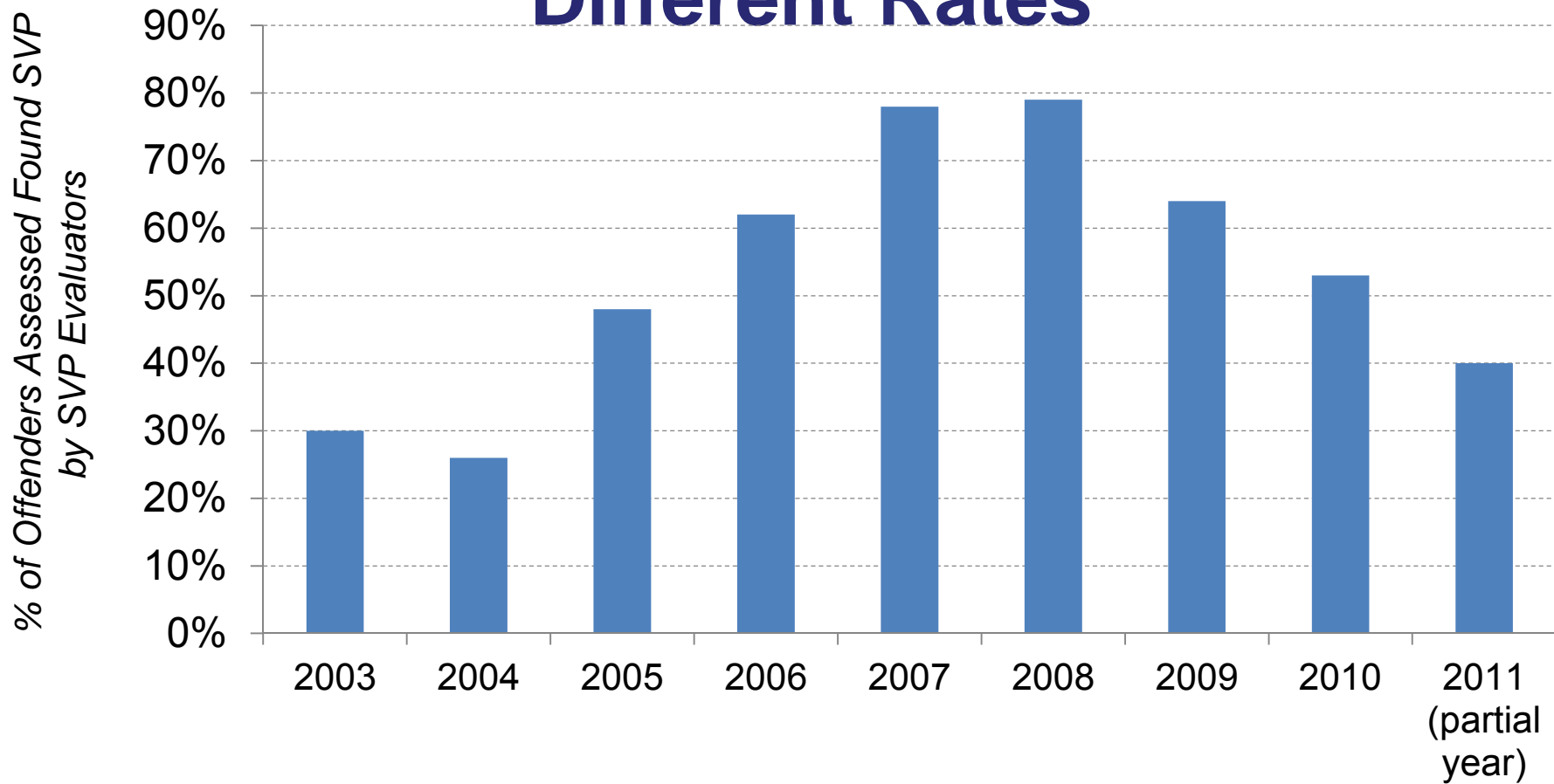
OAG = Office of the Attorney General

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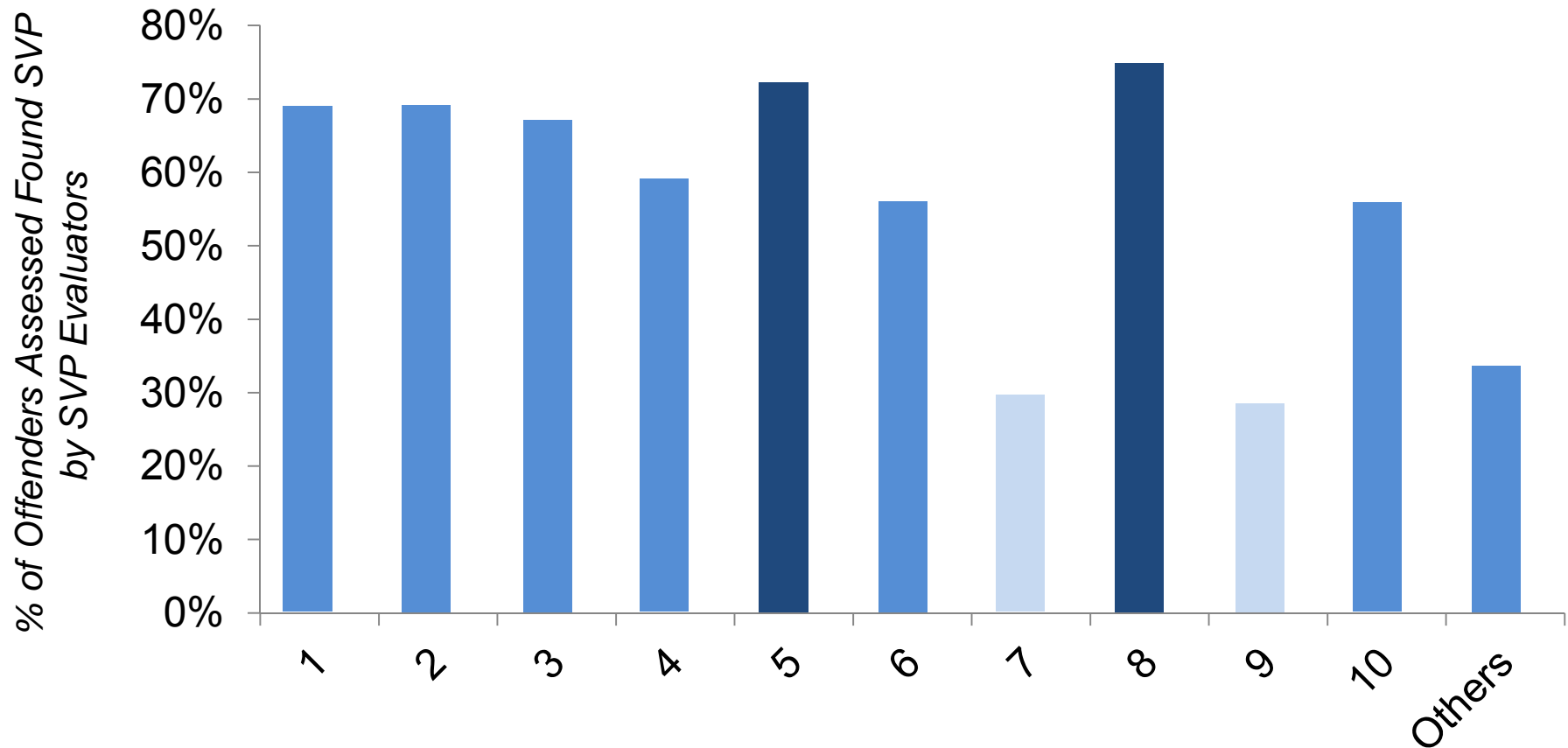
# Finding

There is variation in the rates at which SVP evaluators find offenders to be SVPs, over time and by evaluator.

# Over Time, SVP Evaluators Have Found Offenders to be SVPs at Different Rates



# SVP Evaluators Also Find Offenders to Be SVPs at Different Rates



*Note: Evaluators are shown in order of number of evaluations conducted.*

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## Recommendation

DBHDS should develop and implement a process to periodically compile and review the rates at which evaluators find offenders are SVPs.

For evaluators with unusually high or low rates of SVP findings, DBHDS should determine (1) whether evaluator is using different, unwarranted approaches or (2) if there are other factors that explain the variation. Results should be used to improve the evaluation process over time.

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## **Risk Assessment Step 3: Review by CRC**

- 7 members: 3 DOC, 3 DBHDS, 1 OAG staff
- CRC discusses inmate file, SVP evaluation, & vote for
  - Civil commitment
  - Conditional release
  - Full release

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## Finding

The SVP evaluation unnecessarily “centers” the CRC deliberations, when CRC could use its expertise to assess other factors.

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# Having CRC Review SVP Evaluation May “Center” CRC Around SVP

## Finding

- Interviews with CRC members indicate they rely heavily on SVP evaluation finding
- Since 2003, CRC vote has mirrored the SVP evaluation finding more than 80% of the time

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## **CRC Members Have Expertise to Assess Other Factors**

- Is there a demonstrated pattern of sexual violence?
- Has he shown willingness to manage sexually violent behavior?
- Can he be successfully managed on conditional release?
- Does his physical condition, health status, or age minimize risk if released?

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# Recommendation

DOC and DBHDS should develop new CRC procedures to define what factors will be used as the basis for deliberations and recommendations without using the SVP evaluation.

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## Finding

Commitment process lacks a systematic approach to request a second SVP evaluation when there is not consensus among the actuarial score, the CRC, and the SVP evaluation.

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## Second SVP Evaluations Are Requested in Certain Cases

- CRC periodically requests second SVP evaluation when it has questions about first evaluation
- Offenders can request their own SVP evaluation during court proceedings

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# Predictive and Complex Nature of Decision Necessitates Consensus

- Experts state inherent limitations in both actuarial and clinical judgment require checks in the system
- Varying rates at which SVP evaluators find offenders to be SVPs raise questions about relying on one evaluation
- Another state requires two evaluations before proceeding

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## Recommendation

DOC and DBHDS should develop guidance on the conditions under which a second SVP evaluation is necessary, at a minimum when there is not consensus on whether to proceed.

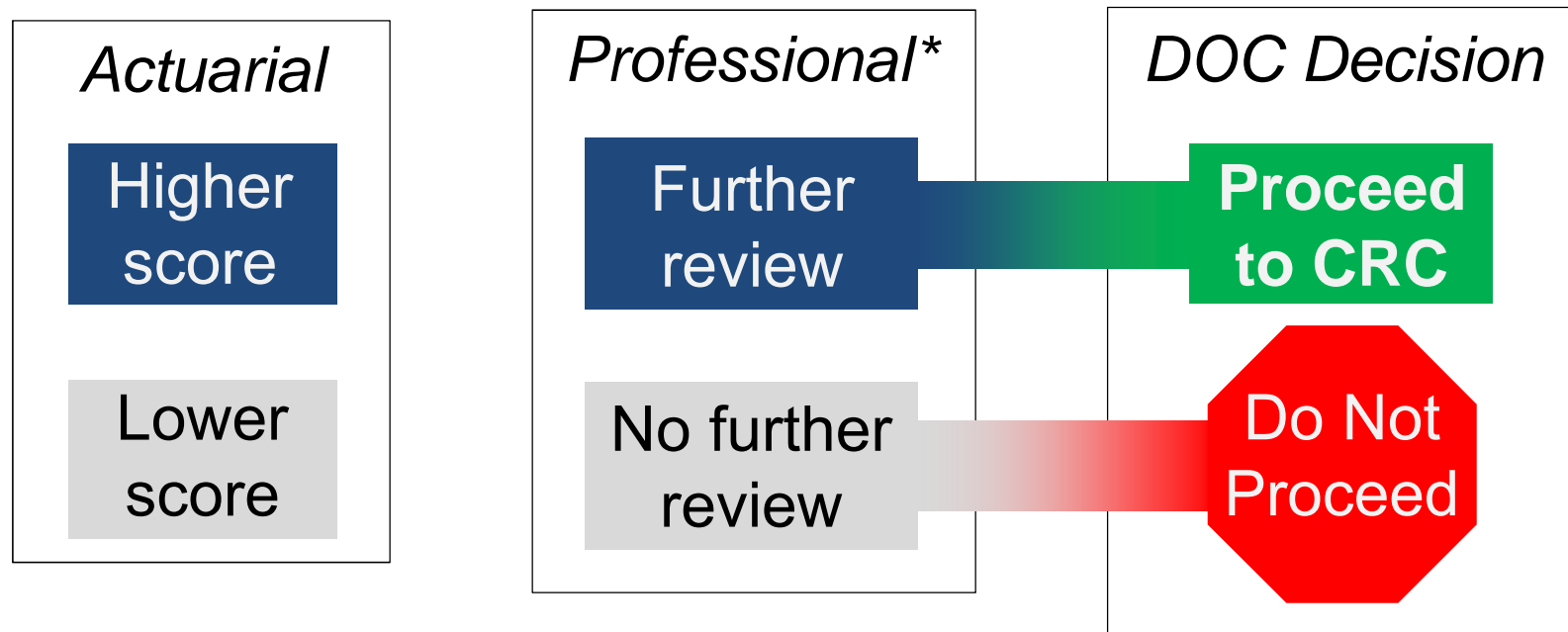
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# Finding

Virginia needs a more flexible and consensus-based risk assessment process.

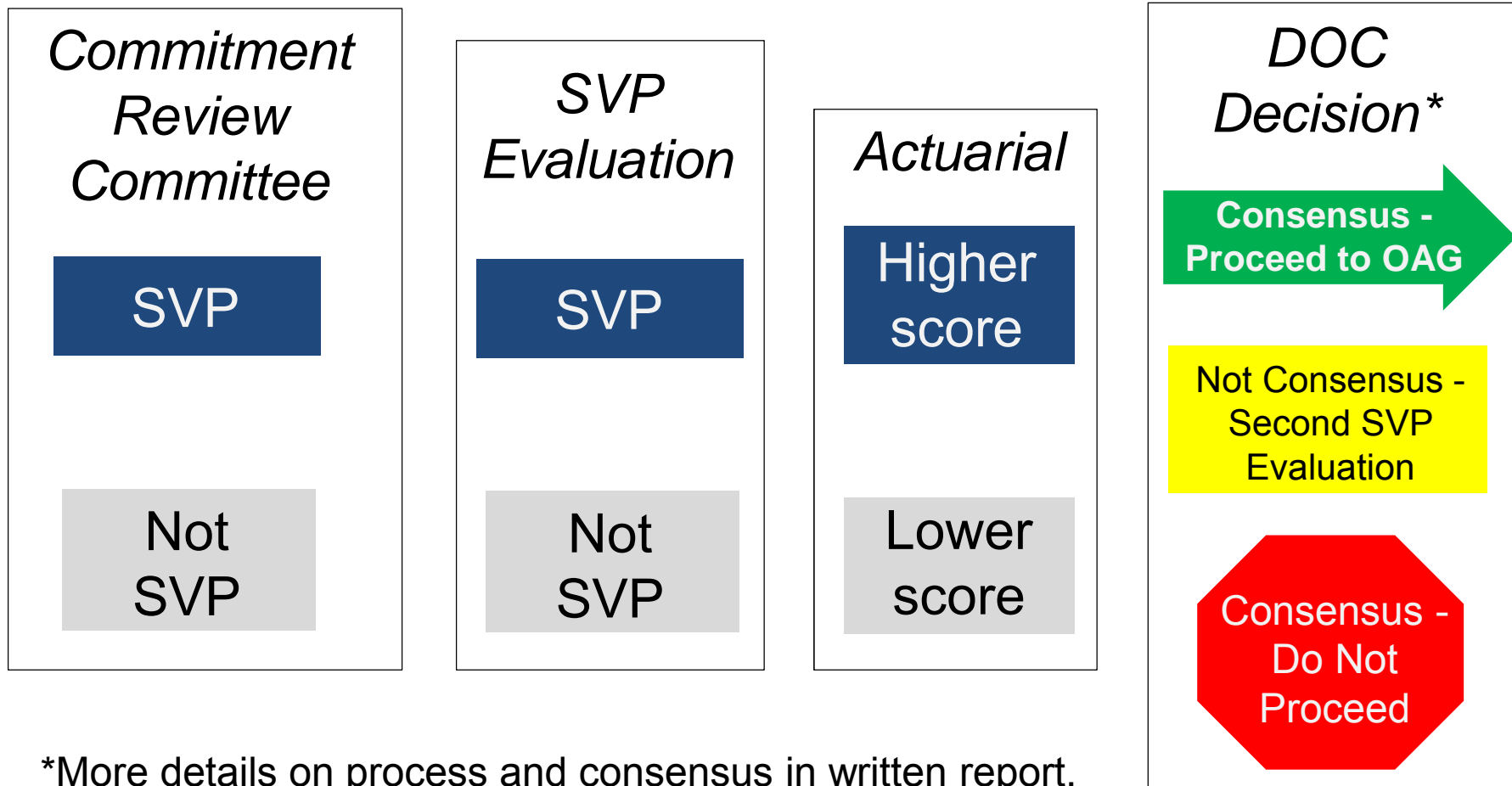
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# Recommended Process: Screening Phase



\*New step in recommended process.

# Recommended Process: Assessment Phase



\*More details on process and consensus in written report.

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## Finding

It is difficult to predict how long it will take SVPs to progress through VCBR treatment and be conditionally released. This makes it challenging to project future capacity needs.

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## Treatment at VCBR Is Designed to Reduce Risk of New Offenses

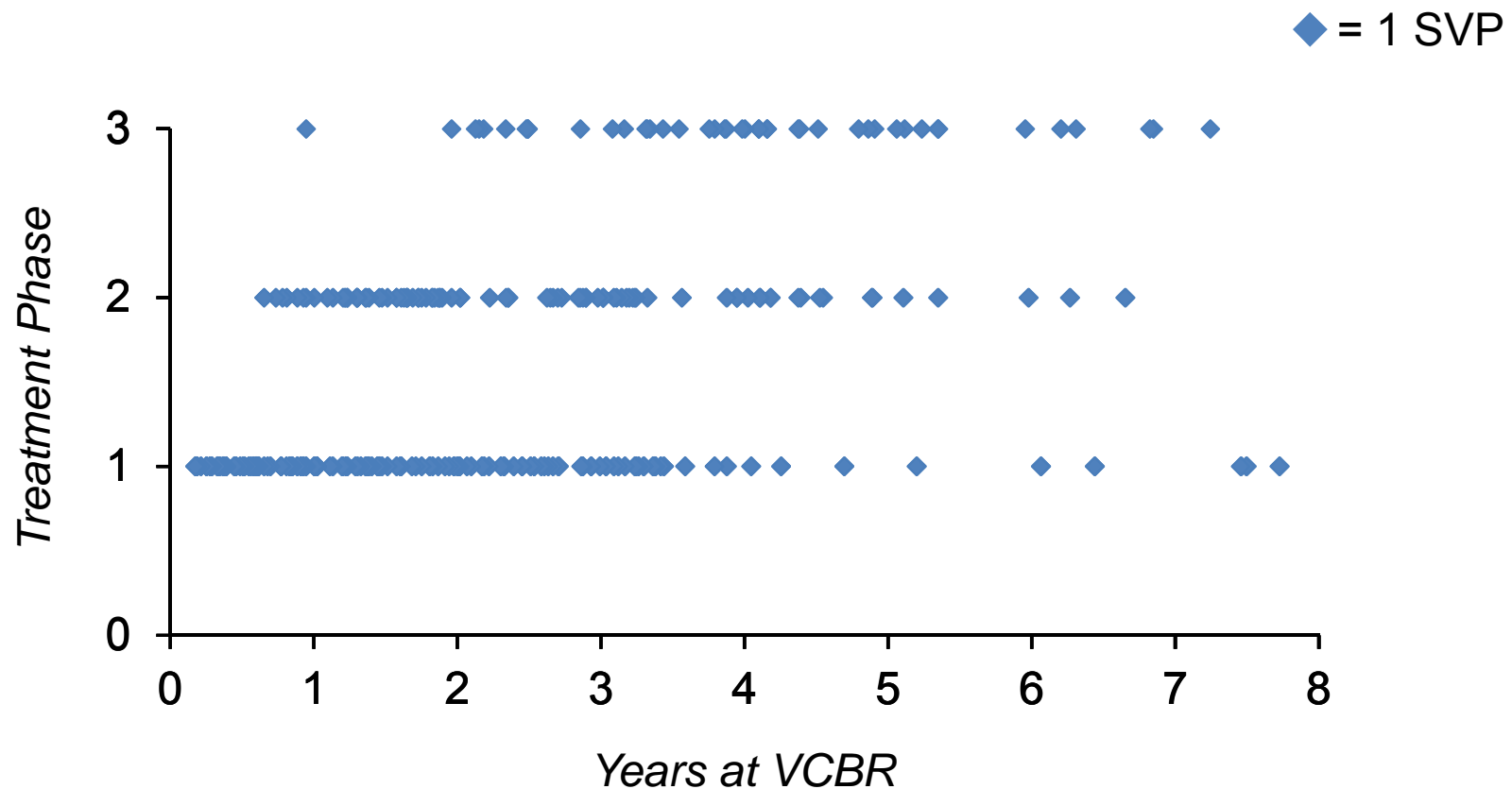
- Group psychotherapy is used to treat mental health & personality disorders
  - 3-phase program tailored to each SVP's issues
  - Process to measure progress & recommend release
- Treatment may reduce, but does not eliminate, risk of re-offense
  - Treatment is *associated* with reduced recidivism, but scientific opinion is “divided”

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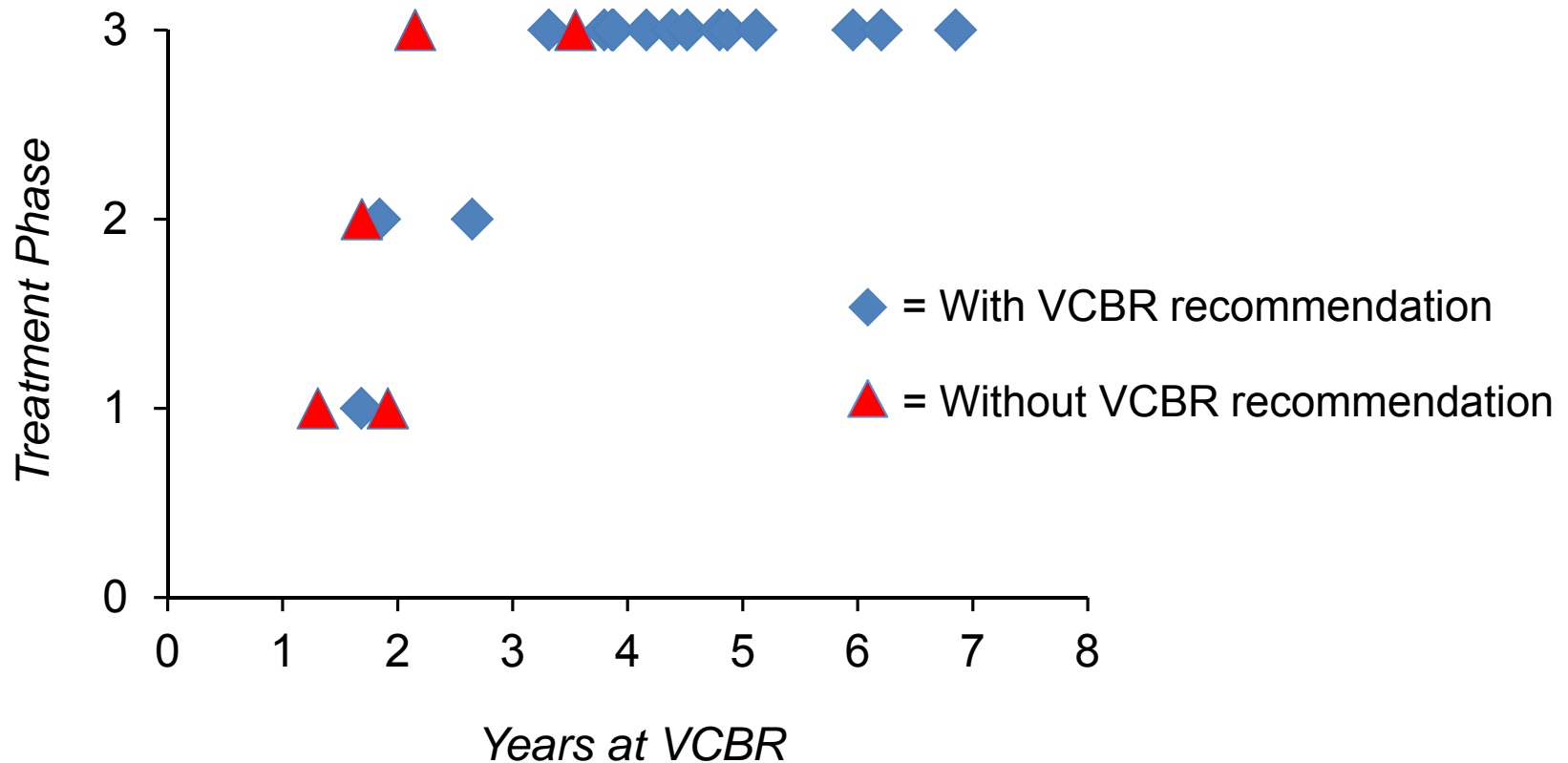
## **VCBR Treatment Program Has Improved, but Improvements Are At Risk**

- Treatment program has evolved with growth in VCBR census
- Addressed many concerns of DBHDS Inspector General
  - Increased treatment hours
  - Improved procedures to measure treatment progress
- Sustained improvement depends on census, budget, & staffing

# SVPs Progress Through VCBR Treatment at Different Rates



# Courts Have Approved 21 SVPs for Conditional Release From VCBR



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## **Varied Treatment Outcomes Complicate Predicting Releases & Future Capacity Needs**

- Treatment progress depends on SVP's motivation & clinical needs
  - Most SVPs have multiple violent sex convictions & mental health or personality disorders
- Past program deficiencies may have delayed treatment progress for SVPs with developmental disabilities

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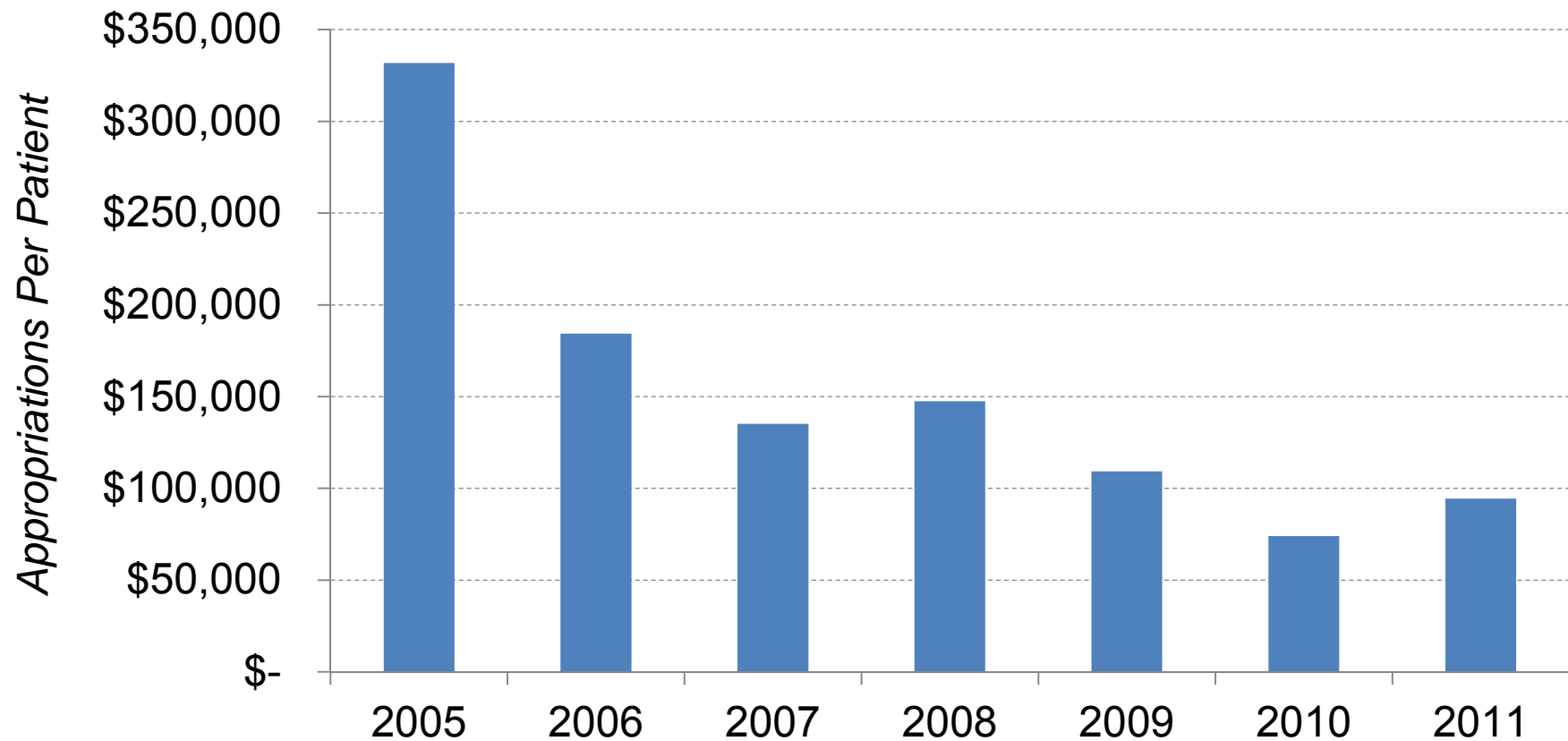
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## **VCBR Census Increased at Faster Rate Than Appropriations (2006-2011)**

- Census grew 1,374% to 270 SVPs
- Appropriations grew 320% to \$24.4 million

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## VCBR's Cost Per Patient Has Been Declining, But Can Be Volatile for New Programs

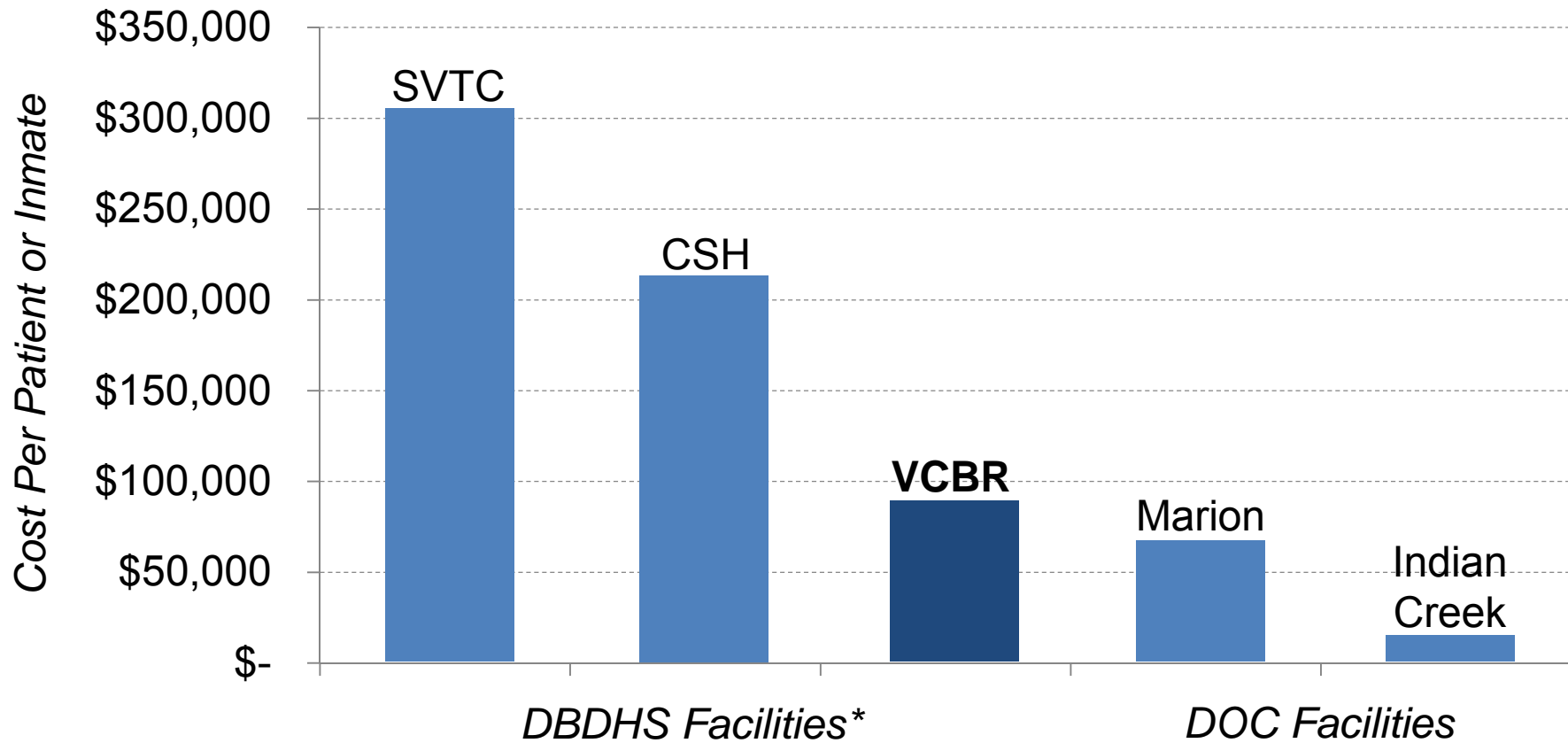


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# Findings

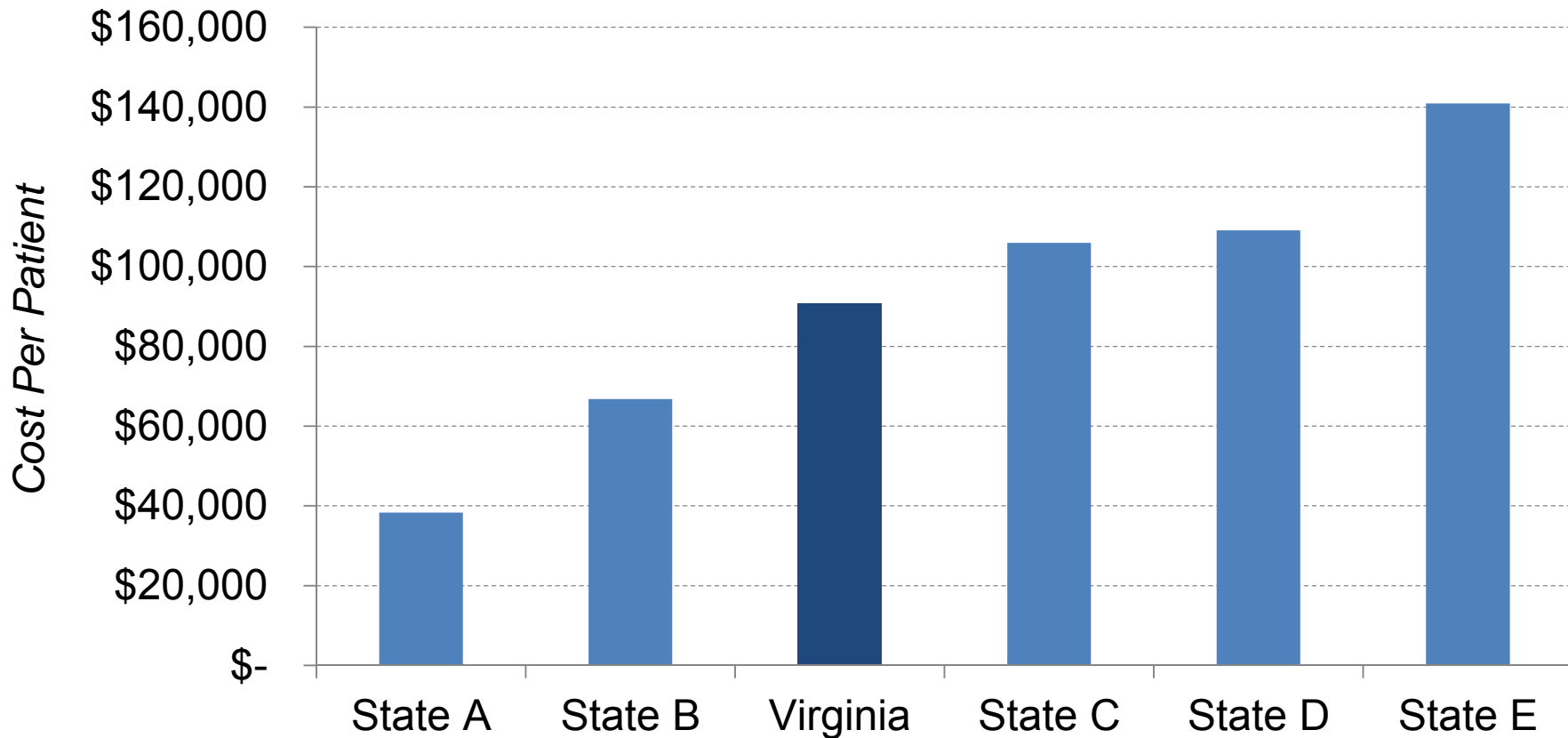
- VCBR's cost per patient is lower than peer DBHDS facilities, but higher than peer DOC facilities.
- VCBR's cost is within a range of selected other state SVP facilities.

## DBDHS and DOC Facility Costs Vary Widely



*\*Facilities shown have various administrative and security service sharing arrangements.*

# Other State SVP Facility Cost Per Patient Varies Widely



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# Finding

Privatization could lower costs, but advisability depends on the specific privatization arrangement.

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## **Two Vendors Submitted PPEA Proposals to Privatize VCBR**

- DBDHS decided to wait until JLARC review was released to decide whether to proceed

PPEA= Public Private Education Facilities and Infrastructure Act

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## Florida's Privatized SVP Program Costs Less Than Virginia's

	Virginia	Florida (Privatized)
Budget (2011)	\$24.5 million	\$26 million
Census (2011)	270	676
<i>Cost Per Patient</i>	\$90,898	\$38,500

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## Staffing Per Patient at Florida's Privatized Facility Is About 1/3 of Staffing at VCBR

	VCBR	Florida (Privatized)
Treatment	0.14	0.07
Security	0.38	0.15
Resident Services Assistants	0.45	0.12
Administrative	0.25	0.07
<b><i>Total Staff / Patient</i></b>	<b>1.23</b>	<b>0.42</b>

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## **Florida's Privatized Facility Was Designed to Minimize Security Staffing and Costs**

- Physical layout and use of cameras help minimize security staffing needs
- May not be feasible to privatize VCBR and achieve the same costs as Florida
  - Layout of VCBR likely requires more security staffing

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# Florida's Experience With Privatization Highlights Lessons

- Early years of Florida's privatization were challenging
  - Program design
  - Different expectations between state and company
- Rate of census increase assumed by current company was too high
  - Company has requested more compensation per SVP
  - Florida is subsidizing a portion of the company's costs by paying directly for certain staff
- Loss of control over daily operations

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## **Privatizing VCBR Should Be Considered in Context of Lessons and Use Effective Contract**

- Clearly define State and private company responsibilities as census and costs change
- Clearly define service levels and staffing ratios
- Stipulate standards for treatment and release
- Allow active State oversight
  - Include incentives and penalties based on service levels and standards

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## Recommendation

DBDHS should consult with Florida if it decides to proceed with considering privatizing VCBR or a future facility.

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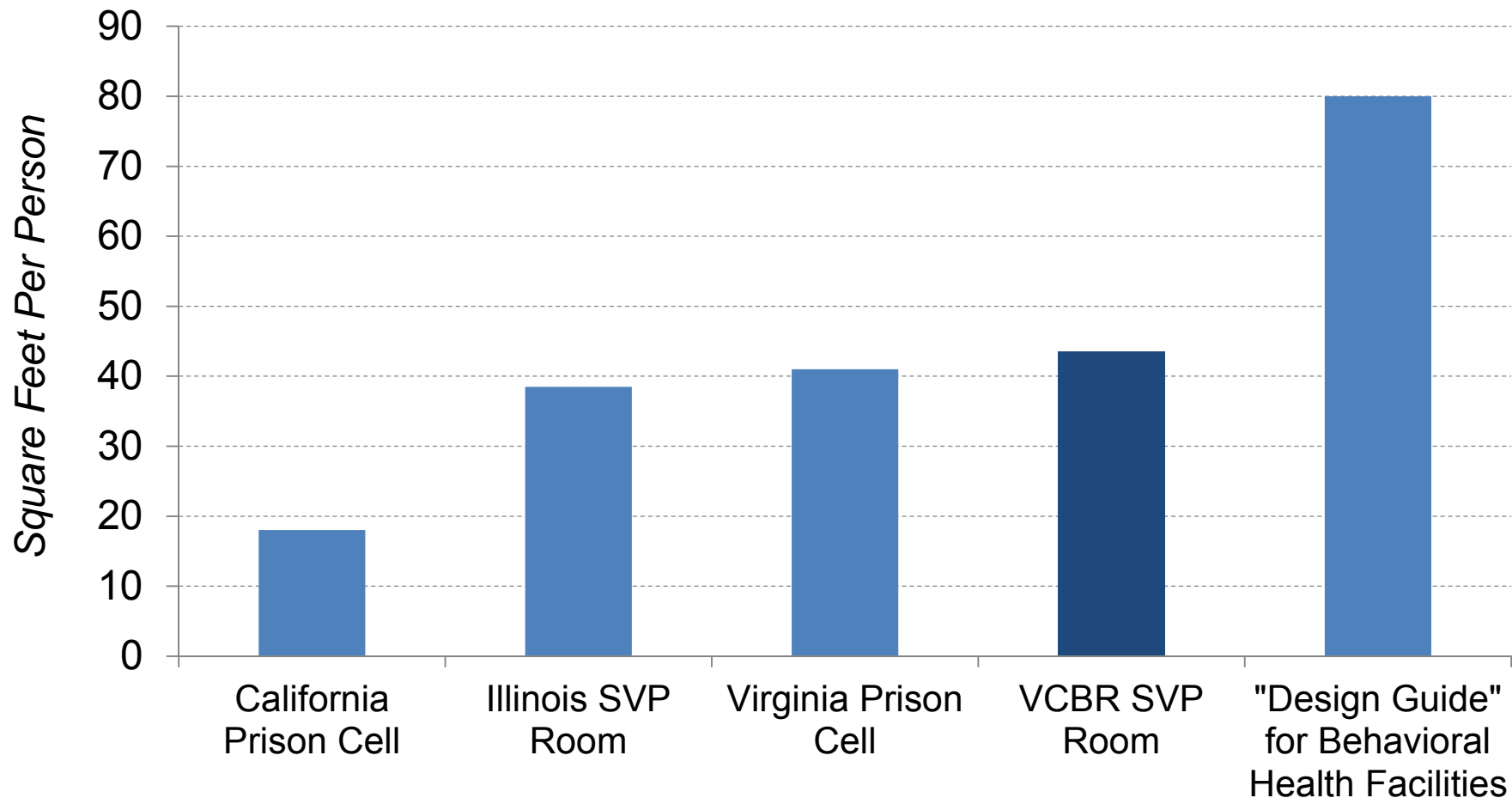
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## **Double-Bunking Will Increase VCBR Capacity to 450**

- VCBR is adding a second bed to 150 resident rooms
- Reduces square footage per SVP from 87 to 43.5 sq ft
- Committee will use criteria to select residents for double-bunked rooms

## VCBR's Double Bunk Rooms Have More Square Feet Per Person Than Double Bunk Prison Cells and Other State Double Bunk SVP Rooms, But Less Than "Design Guide"



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## VCBR Staff Concerned About Double Bunking

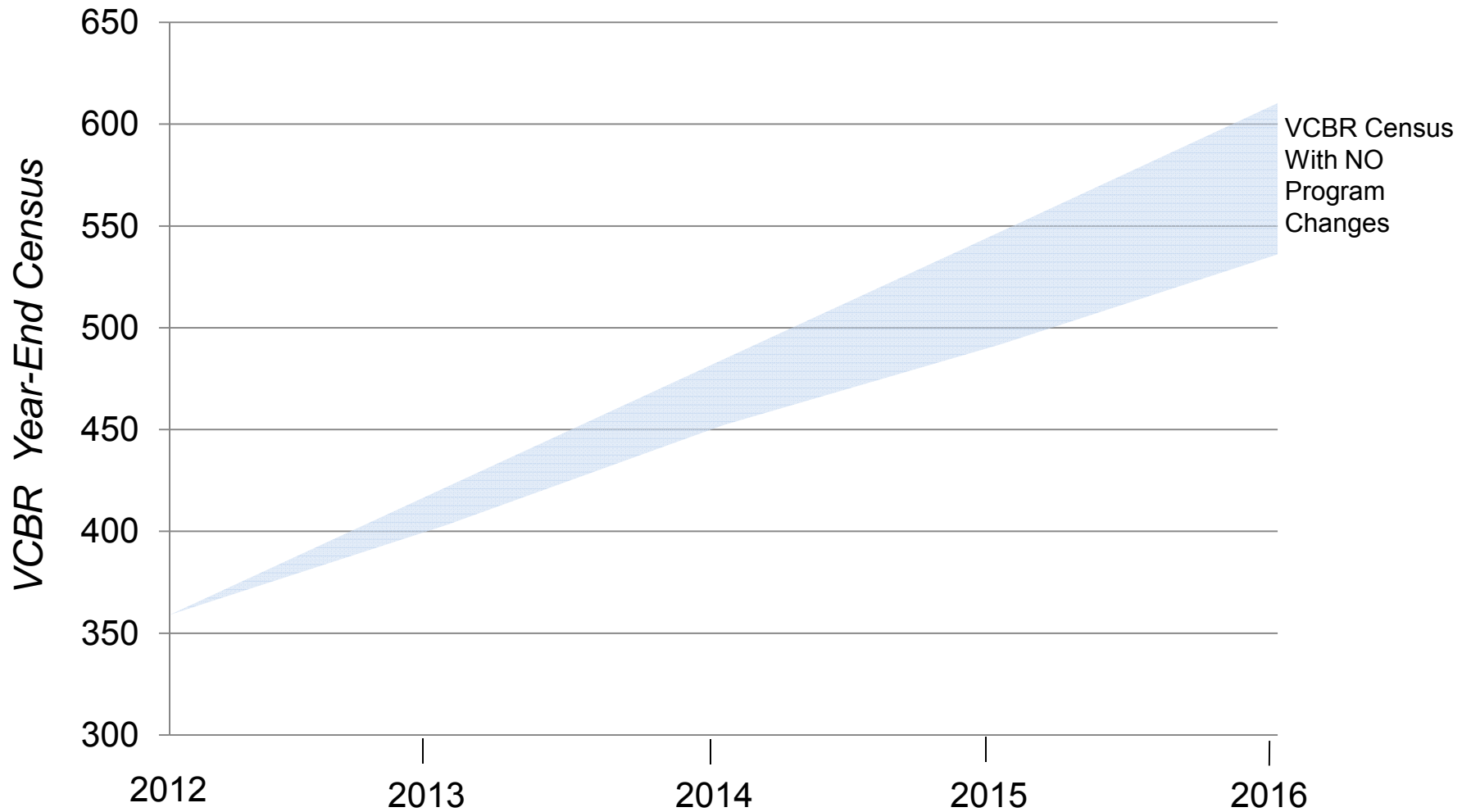
- May increase incidents between SVPs & towards staff
  - May require additional security staff
- More incidents & stress may disrupt treatment
- May slow SVP's progress through treatment, effectively reducing capacity

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## Finding

Implementing the JLARC report recommendations would likely slow the rate of growth at VCBR.

# If No Program Changes Are Made, There Could Be 536-610 SVPs by 2016

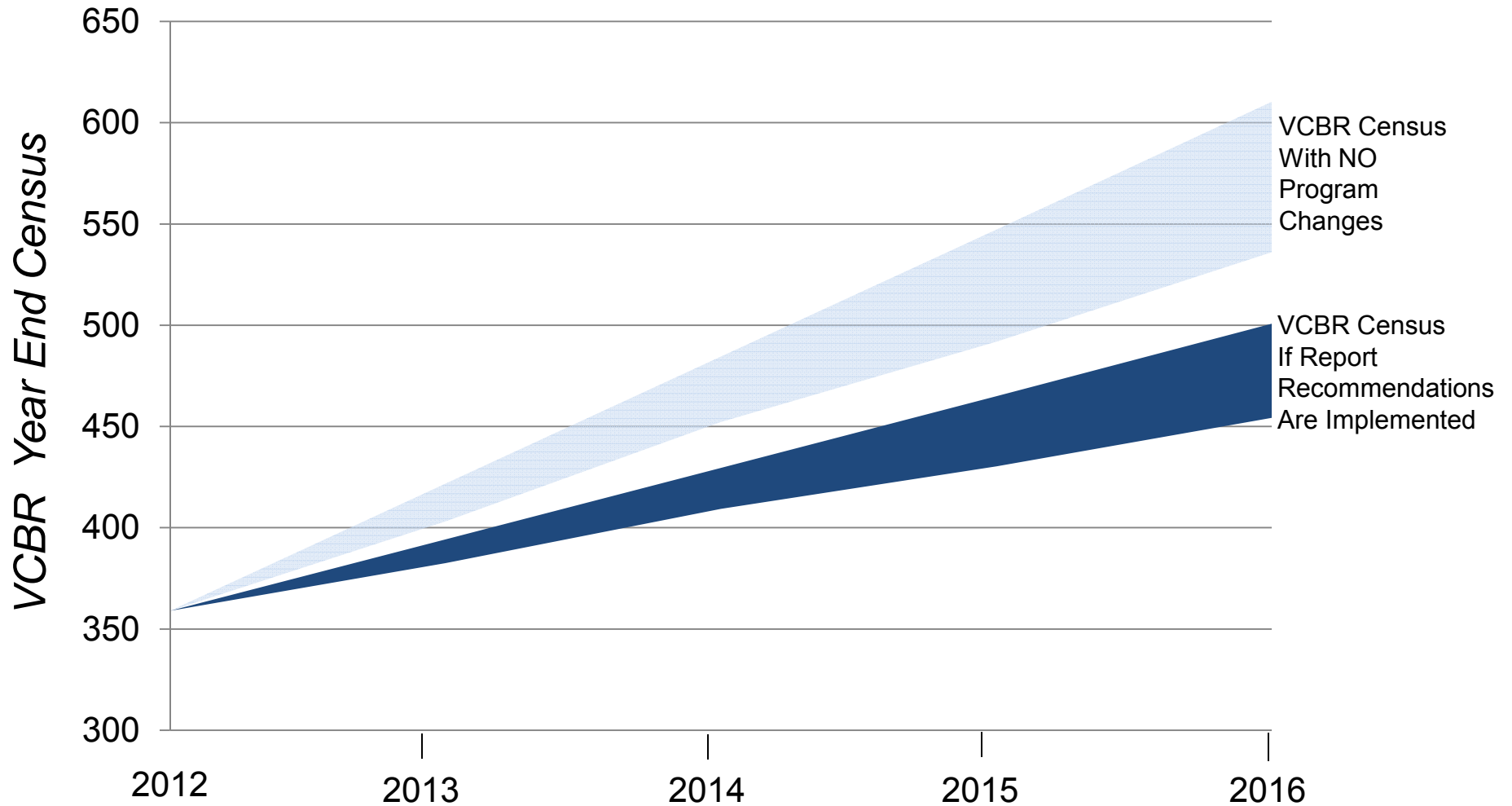


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# Referral Rate Is Significant Driver of VCBR Census Growth

- Referral rate is percentage of offenders each year forwarded for further review
- Virginia's 24% rate using the Static-99 and score of "5" is higher than other states
- To illustrate potential impact of recommendations on census growth, JLARC staff are assuming a 15% referral rate
  - Updated actuarial risk assessment instrument
  - Flexible and more consensus-based process

# If Report Recommendations Are Implemented, Likely to Be Only 454-501 SVPs by 2016

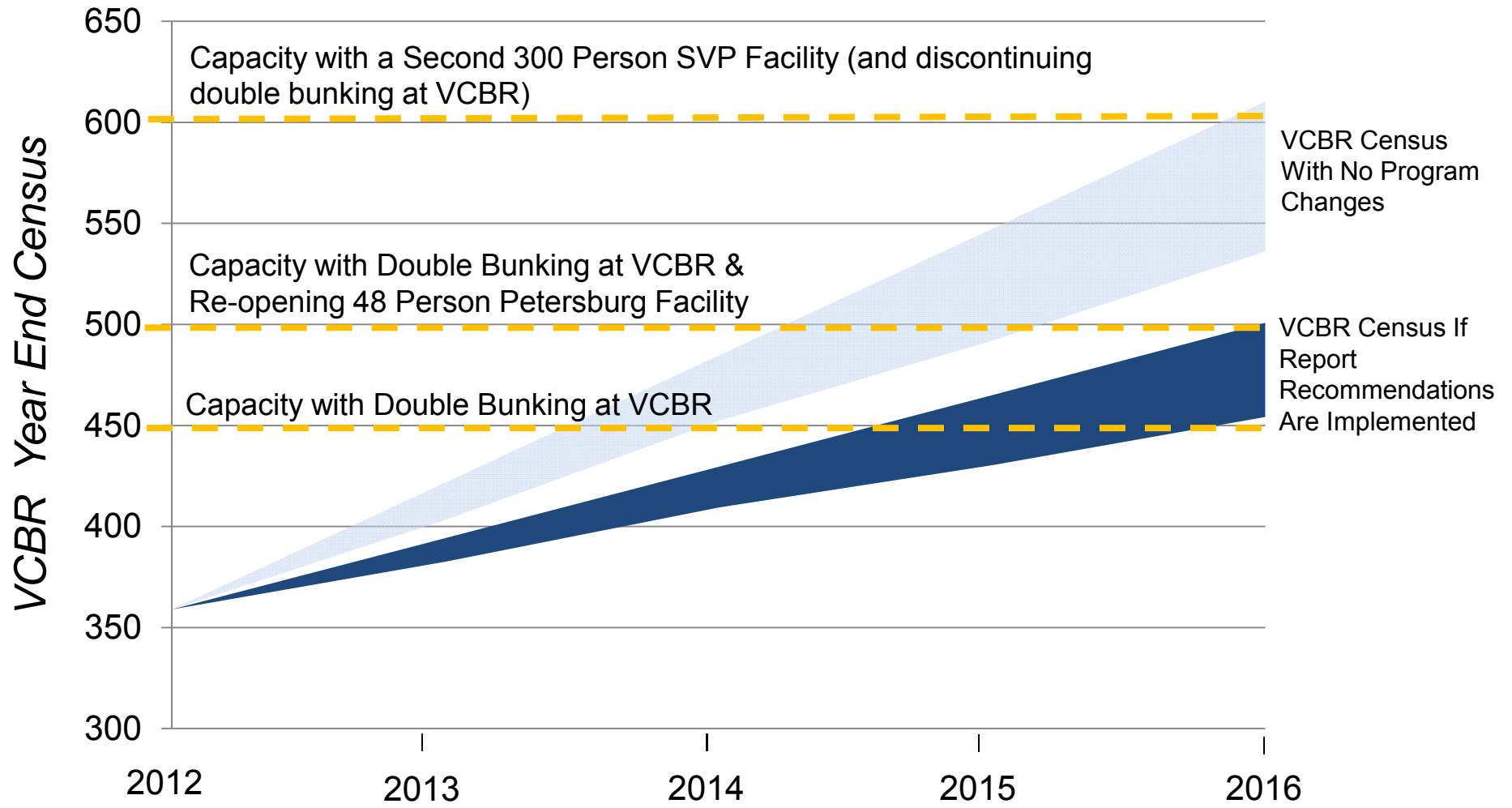


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## Finding

Implementation of JLARC report recommendations would likely result in less additional capacity being needed—and at a later date.

# Decision About (1) By How Much and (2) When to Expand Capacity Depends on Changes



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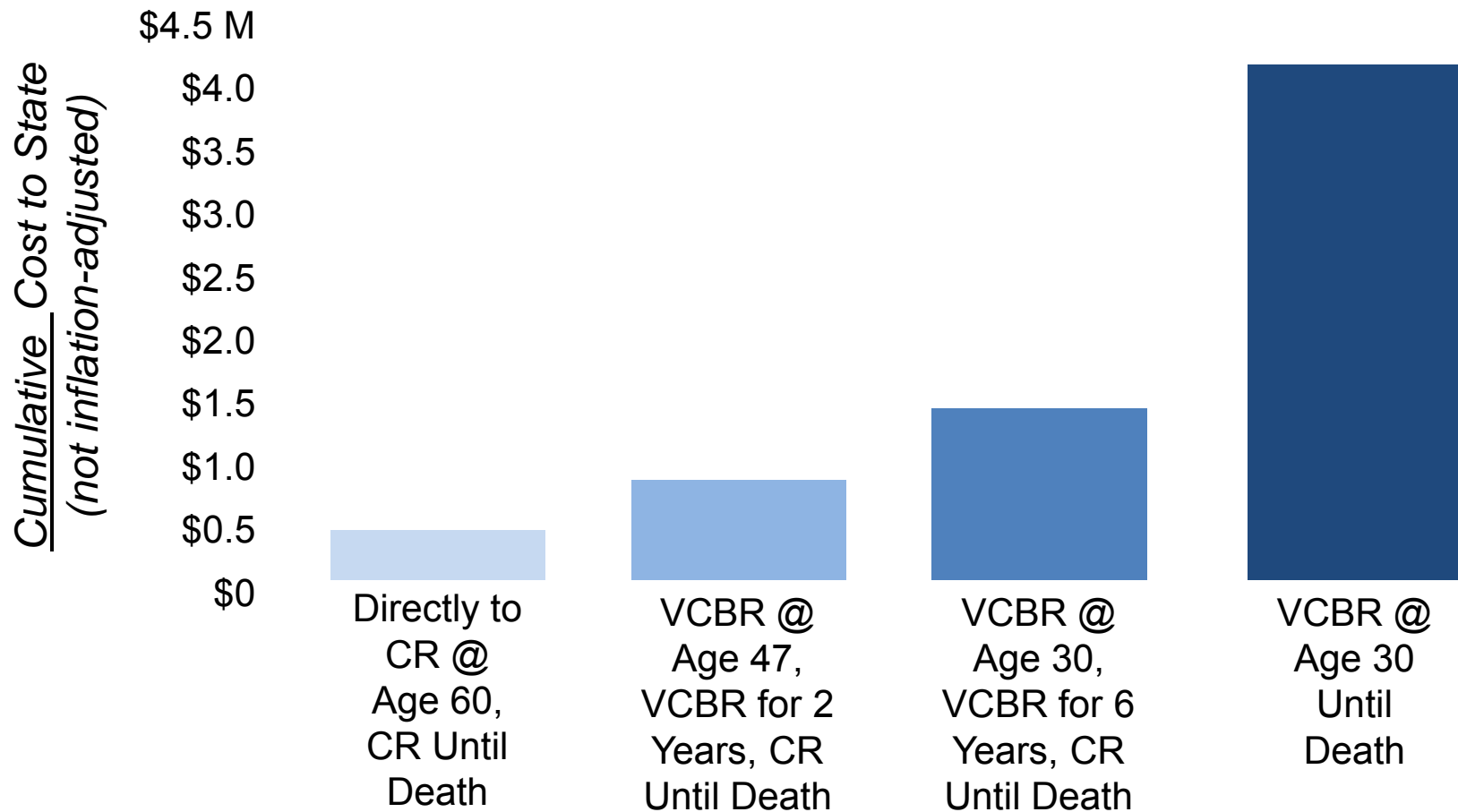
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## Civil Commitment Limits Civil Liberties Based on Potential of Reoffending in Future

Criminal Proceedings	SVP Civil Proceedings
Convict individuals for crimes already committed	Determine if an individual might offend again if released from prison

- Actuarial science and expert opinion have relatively low abilities to predict with precision whether a given individual will re-offend if released

# Court Finding an Offender SVP Results in Substantial Costs



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## Civil Commitment and Conditional Release Reduces Risk of Re-offense

- Virginia's SVP civil commitment program protects the public by virtually eliminating the risk of re-offense while at VCBR
- If not civilly committed, data suggests
  - 1 in 20 re-offend after 3 years
  - 1 in 5-10 re-offend beyond several years
- Data suggests those released after treatment re-offend at a slightly lower rate, but are still a risk

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## Civil Commitment Typically Weights Public Safety Over Individual Civil Liberties

- Recidivism data suggests re-offense rates for typical offender are below 50%
- However
  - Violent sex offenses tend to be under-reported
  - Re-offense rates increase the longer period of time used to measure recidivism

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## **Despite Speculative Nature, Civil Commitment Programs Serve a Purpose**

- There are offenders sufficiently dangerous to justify placing under civil commitment
- An effective civil commitment program uses valid means to prioritize resources to commit the most dangerous offenders

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# Key Findings

- Virginia's approach to using actuarial risk assessment instruments is flawed
- Risk assessment process lacks flexibility and does not rely on consensus
- VCBR's costs are within a range of other facilities, but higher than Florida's privatized facility
- Virginia's program will continue to grow, but rate of growth can be reduced if certain changes made

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