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William R. Byars, Jr.
SCDC Agency Director

January 3, 2013

To: The Honorable Hugh K. Leatherman, Sr., Chairman, Senate Finance Committee
The Honorable Harvey S. Peeler, Jr., Chairman, Senate Medical Affairs Committee
The Honorable Michael L. Fair, Chairman, Senate Corrections & Penology Committee
The Honorable W. Brian White, Chairman, House Ways & Means Committee
The Honorable F. Gregory Delleney, Jr., Chairman, House Judiciary Committee
The Honorable Leon Howard, Chairman, House Medical, Military, Public & Municipal Affairs Cmte.

Re: The South Carolina Sexually Violent Predatory Program
Report of the South Carolina Department of Mental Health & the
South Carolina Department of Corrections

Gentlemen:


Pursuant to the 2012-13 State Appropriations Act, the Department of Mental Health and the Department of Corrections were directed by Proviso 23.15 to prepare a report concerning South Carolina's Sexually Violent Predator Program.

A copy of the agencies' final report is enclosed. It contains information on the issues specified in the Proviso, including:

1. The feasibility of transferring the program to the Department of Corrections;
2. Program population and cost projections for the next five years;
3. Recommendations for meeting the space needs for the program; and
4. A discussion regarding opportunities to further expand the private sector's role in operating this program.

Should you have any questions or have need for any additional information, please let us know.

Sincerely,


John H. Magill, State Director
Department of Mental Health



William R. Byars, Jr., Agency Director
Department of Corrections

Enclosure

cc: The Honorable Nikki R. Haley – Governor of South Carolina
Senator Thomas Alexander
Senator John Scott
Representative G. Murrell Smith, Jr.
Representative Michael A. Pitts

bcc: ✓ Mr. Christian Soura
Mr. Tim Rogers
Ms. Angie Willis

SOUTH CAROLINA'S SEXUALLY VIOLENT PREDATOR PROGRAM

A report by the South Carolina Department of Mental Health
and the South Carolina Department of Corrections
January 3, 2012

Introduction

This report was prepared by the South Carolina Department of Mental Health and the South Carolina Department of Corrections pursuant to Proviso 23.15 of the 2012-2013 Appropriations Act. The Proviso is set forth below.

23.15. (DMH: Sexually Violent Predator Program) The Department of Mental Health and the Department of Corrections shall prepare a report evaluating the feasibility and desirability of transferring the Sexually Violent Predator Program to the Department of Corrections. This report must include population and cost projections for the next five years, and must also explore and make recommendations regarding opportunities to further expand the private sector's role in operating this program. An update on the status of this report shall be provided to the Chairman of the Senate Finance Committee, the Chairman of the Senate Medical Affairs Committee, the Chairman of the House Ways and Means Committee, the Chairman of the House Judiciary Committee, and the Chairman of the Medical, Military, Public, and Municipal Affairs Committee by January 8, 2013 and the final report shall be provided by May 1, 2013.

I. Background

- The South Carolina Sexually Violent Predator Act (SVPA) was passed by the General Assembly in June, 1998. It was modeled on a Kansas' law which had been upheld by the U.S. Supreme Court in *Kansas v. Hendricks*, decided in June of 1997.
- Then Governor Beasley, a supporter of the legislation, made space at the Department of Corrections (SCDC) available as the site of the program at no cost to the Department of Mental Health (DMH.) The Edisto Unit at the Broad River Correctional Institution (BRCI) was selected by SCDC.
- The first admission took place in February, 1999.

II. Statute

The Sexually Violent Predator Act (SVPA) is found at S.C. Code Ann. Section 44-48-10, *et seq.*
<http://www.scstatehouse.gov/code/t44c048.php>

Commitment Process

- DMH does not control admissions to the program.
- All persons convicted of a sexually violent offense go through a multi-stage screening process set out in the SVPA prior to release from confinement at SCDC. The Attorney

- General's office decides which of the cases which the screening process identifies as appearing to meet commitment criteria are screened in are taken to trial.
- A Circuit Court judge or jury makes the final determination whether a person is civilly committed to DMH under the SVPA.

Release Process

- DMH does not control whether or when a resident is released from the program.
- The decision about whether a committed resident is released is made by a Circuit Court judge or jury following a trial.
- The law does provide a process by which DMH can authorize a resident to petition for release, but the ultimate decision still remains with the Court.
- In addition, the resident is entitled by law to an annual review hearing, and the resident can seek a trial on the issue of release with or without DMH's authorization.

III. Transfer of the Program to the Department of Corrections

Which State agency – the Department of Mental Health or the Department of Corrections – has jurisdiction over the Program is a question for the General Assembly. Under prior decisions by the U.S. Supreme Court, the primary requirement is that States must provide or at least offer "treatment" to the committed residents of the program.

The U.S. Supreme Court has addressed the constitutionality of the civil commitment of sex offenders in three cases: *Allen v. Illinois*; *Kansas v. Hendricks*, and *Seling v. Young*. In those cases the Court stated that the Due Process Clause prohibits states from imposing "punishment" under the label of civil commitment. Therefore, in order for a State's sexually violent predator commitment law to meet constitutional requirements, states must provide those committed with adequate treatment. Without meaningful treatment providing a path to a committed individual's potential release, civil commitment in effect becomes incarceration.

As long as the State's Sexually Violent Predator program provides residents with adequate treatment, the State agency which oversees the operation of the program is of no constitutional import. For example, in Massachusetts, individuals found to meet commitment criteria under the State's Sexually Dangerous Offender law are civilly committed to the Treatment Center for Sexually Dangerous Persons at Bridgewater State Hospital, a facility under the operational jurisdiction of the Massachusetts Department of Corrections.

IV. Need for additional space

- It has always been anticipated that the program would outgrow the Edisto Unit at BRCL. The rate of growth in the resident census was initially projected to be 12 to 18 per year. It was anticipated that the census would exceed the capacity of the Edisto Unit by as early as 2003, but for the first several years the program grew more slowly than predicted.
- The Department of Mental Health and the Department of Corrections have had discussions as far back as 2000 about how to meet the need for additional space for this program.
- The report of the 2004 Legislative Committee appointed by the General Assembly to

review the Sexually Violent Predator program included the recommendation that work begin on a new building, or renovations be made to an existing building, for the increasing census of the program.

(Report of the Sexually Violent Predator Act Review Committee, dated January 12, 2005, can be accessed at

<http://www.scstatehouse.net/reports/sexualviolentpredatoractreport.pdf>

The Committee's recommendations are found on pages 119 and 120.)

- The cost of building a new building to house the Sexually Violent Predator Treatment Program is estimated to be in the tens of millions of dollars. For many years the DMH capital budget requests included a request for the estimated cost of a new 200 bed treatment facility, but such request was never funded.

DMH actions to address space needs

- DMH has installed second bunks in twenty (20) cells in the Edisto Unit above the existing bed, in order to "double bunk" residents, and DMH began double bunking residents in February, 2007 when the census surpassed 87.
- DMH increased the number of Public Safety staff in the Edisto Unit to maintain the safety and security of the program as the census increased;
- DMH previously issued a request for proposals (RFP) seeking proposals from private vendors to operate the treatment program in their own facility, which was subsequently withdrawn.

Columbia Regional Care Center

- Since 2008, as the census in the Edisto unit reached the maximum safe capacity, DMH has contracted with a private company which operates a secure correctional infirmary, known as the Columbia Regional Care Center (CRCC), on the campus of the former Crafts-Farrow State Hospital on Farrow Road in Northeast Columbia to begin housing SVPTP residents. DMH now operates a treatment program for SVPTPs within the CRCC, as well as within the Edisto unit.
- In 2012, DMH reached agreement with SCDC for use of a second unit at the Broad River Correctional Institution (BRCI) – the Congaree unit -- with the potential for up to an additional 90 beds. A number of modifications and improvements to the unit must first be made before the unit is ready for occupancy. The renovation process is expected to take until February, 2013.
- The Congaree unit will allow DMH to consolidate all but medically compromised SVPTP residents at BRCI.

V. Current Census and Projected Census

- The program census as of December 27, 2012 is 156.
- Of this number 101 are housed within the Edisto unit at the Broad River Correctional Institution (BRCI) and 55 are housed within the Columbia Regional Care Center.

Admissions/Releases

	<u>Commitments</u>	<u>Releases/deaths</u>
1999	13	0/0
2000	14	1/0
2001	17	0/0
2002	16	0/0
2003	14	3/2
2004	14	12/1
2005	10	13/0
2006	20	3/1
2007	19	9/2
2008	26	8/0
2009	22	15/0
2010	12	9/0
2011	26	4/1
2012	18	0/1

A total of 241 persons have been admitted to the DMH Sexually Violent Predator Treatment Program (SVPTP) by Court order through December 27, 2012. Another admission is pending. A total of 77 residents have been released by Court order, and 8 have died while still in the program. There were no residents released in 2012.

At the current and projected rate of growth of the SVPTP census, even with the addition of the Congaree unit it is projected that the program will again be at maximum capacity by January, 2015, and possibly sooner.

January 2012	140 Residents
January 2013	158 Residents
January 2014	176 Residents
January 2015	194 Residents
January 2016	212 Residents
January 2017	230 Residents
January 2018	248 Residents

Although the Congaree unit should provide adequate space to house SVPTP residents for an additional two years, continuing to house the program at the Broad River Correctional Institution presents challenges. Even with modifications, there will not be as much treatment and activity space for residents as program staff would prefer. There is limited space for staff offices, which requires many staff to spend part of their work time in office areas off-site, which is less efficient. Because of limited space for on-site medical care, there is more frequent need for transport of residents to off-site medical providers, which is costly, time-consuming and inefficient.

Both agencies recommend that to meet the program's space needs into the future -- available beds, treatment and activity space, office space for staff and space for security and other support services functions -- the State should strongly consider constructing a new facility, or renovating an existing facility.

VI. Security

- There have been no escapes ever by a SVPTP resident.
- Both BRCI and CRCC have both external and internal security officers on duty at all times, and both locations are within secure, access-controlled facilities, behind one or more security fences. If residents have to leave the premises for treatment or legal reasons, they are transported by certified law enforcement officers.

VII. Costs

The annual costs per SVPTP resident, based on FY 12 costs are:

Edisto unit (104 beds) at Broad River Correctional Institution (SCDC): **\$69,544**

- DMH provides unit security, clinical staff, housekeeping, medical and pharmacy services.
- DMH provides secure transportation for residents for off-site medical care and legal proceedings.
- SCDC provides the space, the utilities, the meals and perimeter security, currently at no cost to DMH.

Unit 4 (44 beds) Columbia Regional Care Center (Geo Care, Inc.): **\$102,812**

- Geo Care, Inc. is a private for profit company.
- DMH first began separately housing SVP residents at the facility at the end of 2008.
- GEO Care Inc. provides security, nursing services, pharmacy, nutritional services, and housekeeping.
- DMH staffs and manages the unit with other clinical staff.
- DMH provides secure transportation for residents for off-site medical care and legal proceedings.

Congaree unit (90 beds) at Broad River Correctional Institution (SCDC):

- SCDC is making the Congaree unit -- an adjacent unit to the Edisto unit at BRCI -- available to DMH to house and treat SVPTP residents.
- DMH has established a project to renovate the Congaree unit for this purpose. It is estimated the additional unit/beds will be available by February, 2013.
- Once the Congaree unit is operational, DMH will pay SCDC a monthly amount roughly equivalent to the costs which SCDC will incur to support the SVPTP within BRCI. The costs are currently estimated to be \$19,000 per month for both units (Congaree and Edisto) for meals, water, sewer, electricity, natural gas and trash removal. DMH will also have additional security staffing costs at the gate between the two units.

VIII. Private operation of the Program

As explained, having adequate space to operate the treatment program has been a major issue over the past several years. Although the opening of the Congaree unit will provide adequate

space in the short-term, both agencies recommend that decisions be made as soon as possible in order to ensure that there will be available additional space by January, 2015, when it is projected that the program will again be at maximum capacity. Also, as previously stated, both agencies recommend that to address the program's space needs, not just in terms of the number of available beds, but needed treatment and activity space, office space for staff and space for security and other support services functions, the State should strongly consider constructing a new facility, or renovating an existing facility, designed specifically to meet the requirements of this growing program into the future.

An option which Florida has utilized for its SVP treatment program, and one which several other States with SVP programs are currently exploring, is utilizing a private vendor for both the construction and operation of a SVP treatment facility for the State. A mechanism available under the South Carolina Procurement Code allows the State to seek bids to Design, Finance, Build, Operate and Maintain a facility for the State. If such a procurement process provided specific State property on which the successful bidder would construct and operate the facility, provisions would be included regarding a mandatory ground lease between the State and the bidder. Such an approach would likely be the most affordable and expedient method for the State to obtain an appropriate facility designed to meet the space needs of this program in the future, as it would permit the cost of construction and maintenance of the facility to be amortized in a long-term agreement.

State land or buildings

As noted, DMH previously issued a request for proposals (RFP) seeking proposals from private vendors to operate the treatment program in their own facility, which was subsequently withdrawn. The cancellation of the prior Procurement was primarily because of the difficulty and local opposition to a potential vendor securing property on which to build or modify a facility to house the Sexually Violent Predator Treatment Program.

In 2008, as noted, DMH turned to a private provider, GEO Care, Inc. to obtain additional space for SVPTP residents in the Columbia Regional Care Center (CRCC) when it was unable at the time to obtain needed additional space from SCDC. Recently, when local officials and neighborhood residents became aware that a portion of the SVPTP was being operated at the CRCC, significant neighborhood opposition developed:

<http://www.thestate.com/2012/03/27/2209399/violent-sexual-predators-to-be.html>

The fact that DMH was by then in the process of working with SCDC to renovate the Congaree unit in order to move the majority of the SVPTP residents from CRCC to the Broad River Correctional Institution is likely the only reason the opposition diminished.

Because of the nature of the program -- a Sexually Violent Predator treatment program -- both DMH and SCDC recommend that before further exploring private operation of the program, the State identify an available State property for a new treatment facility or a suitable available State facility for renovation to a treatment facility.