



Report to the Vermont General Assembly
Civil Commitment of Dangerous Predators

August 1, 2005

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TABLE OF CONTENTS

	<u>Page</u>
I. Executive Summary	3
II. Legislative Request	5
III. Scope of Civil Commitment Program	6
Introduction	
Assumptions	
Timeframe	
Predicated Offenses	
Risk Assessment and Process	
Cost Considerations	
Estimating the Demand	
IV. Assessment and Treatment Protocol	14
V. Placement	19
Out-of-State Placement Options	
In-State Placement Options	
Redesignating an Existing Unit	
Renovating an Existing Unit	
Constructing Unit on Grounds of Existing Facility	
Community Residential Placement	
Physically Secure Community Housing	
Staff Secure Community Residential Placement	
Conditional Release Outpatient Program	
VI. Recommendations	24
VII. Appendices	25

I. EXECUTIVE SUMMARY

Discussion and testimony on the Governor's proposed Safe Communities Act during the 2005 Legislative Session included planning for the structure and resources required to implement a civil commitment program for Vermont. Those plans were based on an examination of other states which have adopted civil commitment programs and an analysis of the Vermont offender population. This document expands on that effort and presents a comprehensive plan for the program.

Included in this Report is a close examination of the population which might be considered for civil commitment, the process for screening individual cases for referral, the adjudicatory process for determining whether an offender is a Sexually Violent or Dangerous Violent Predator, and the specific and detailed plan to enhance offender treatment and public safety.

The public safety of the people of the State of Vermont requires that certain offenders who, at the time of their release from total confinement, pose a significant risk of further harm to others must be placed in a secure setting where further treatment to reduce that risk can occur. Certain offenders include those who have committed the following predicate offenses:

- Aggravated Sexual Assault
- Sexual Assault
- Lewd and Lascivious Conduct with a Child
- Aggravated Murder
- Kidnapping
- Aggravated Assault

The hope is that every person civilly committed will successfully engage in treatment to such a degree that they no longer pose a threat of harm to others and qualify for a full discharge from the program.

We recommend that the program for these certain offenders provide for a secure environment, with treatment consistent with accepted clinical protocols. As part of our recommendation, we envision that the program will be managed by the Commissioner of Health, and that he will have the authority and discretion to enter into any contract to ensure that secure placement and clinically appropriate treatment are provided. Courts have found it acceptable to house such committed offenders within a corrections facility as long as there is only incidental contact with the general population. We will accomplish this by redesignating the Close Custody Unit at Northern State Correctional Facility for the sole purpose of housing civil commitment offenders. This unit will accommodate a maximum of 10 offenders, and cost \$430,000 to \$600,000 per year to operate, depending upon occupancy. This will provide Vermont with the beds needed to meet the projected demand of 9 civil commitment offenders over the next ten years.

At the request of the Legislature, we have also discussed Community Residential Care Program options and provided attending costs. We do not recommend this course of action for public safety, as well as financial reasons, since the placements will be extremely dangerous high risk

offenders who have a mental abnormality or personality disorder that has not been successfully treated.

We urge the Vermont General Assembly to enact law to implement a process and program for the civil commitment of sexually violent and other dangerous violent predators.

II. THE LEGISLATIVE REQUEST

Act 83 of the 2005 Session of the General Assembly:

Sec. 17. SEX OFFENDER COMMUNITY REENTRY; CIVIL COMMITMENT

(h) The commissioner of health, commissioner of public safety, and commissioner of corrections shall jointly submit a report to the house committee on judiciary regarding the administration's proposals for civil commitment of sex offenders. The report shall be submitted no later than August 1, 2005.

(i) The report shall address the administration's three options, including out-of-state placement, a Vermont facility-based program, and a module-based program. The report shall address, at a minimum, the following:

- (1) Capacity.
- (2) Staffing.
- (3) Treatment.
- (4) Program and capital costs.

(j) The report shall include findings regarding community based out-patient civil commitment and address 24-hour staff supervision of offenders, GPS monitoring, and viability of staffed halfway houses.

(k) The report shall include findings regarding which states will accept Vermont sexually violent predators who have been civilly committed, the cost, the duration, and number of offenders.

(l) The report shall include the impacts of dedicating a wing of an existing Vermont correctional facility, including the cost of displacing Vermont inmates to an out-of-state facility, as well as capital costs for retrofitting a designated wing for sexually violent predators."

III. SCOPE OF CIVIL COMMITMENT PROGRAM

INTRODUCTION

There are a very small number of extremely dangerous sexually violent and violent offenders who pose an imminent danger to others upon their release from total confinement, because they have difficulty controlling their criminal conduct due to a mental abnormality or personality disorder.¹ Subsequent and necessary improvements to the criminal justice system, in such areas as sentencing, rehabilitative programs, prosecution and investigation, may result in longer incarcerative sentences for future offenders and serve to reduce the pool of those offenders who would otherwise be potentially subjected to the civil commitment process.² As important as these measures may be, there will always be some number of sexually violent and violent offenders who will be released into the community upon completion of their criminal sentence.

The civil commitment process has been adopted by 17 states, and is applied to sexually violent offenders who pose an immediate danger to others upon their release from total confinement, because they have difficulty controlling their criminal conduct due to a mental abnormality or personality disorder. During the period of committal, the offender is offered treatment. The offender remains in the care and custody of the state until such time that he no longer poses a risk to public safety sufficient to justify his continued committal, and is fully discharged. Governor Douglas has proposed that the legislature pass a civil commitment law in Vermont that applies to highly violent offenders, as well as sexually violent offenders.³

In order to address issues such as capacity and facility options, it is necessary to first estimate the number of offenders who may be eligible for the process and then how many may ultimately be committed pursuant to the civil commitment process.

¹ The danger to others is as a result of their high risk to commit or attempt to commit serious criminal offenses such as murder, aggravated murder, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, lewd and lascivious conduct with a child.

² An offender sentenced to life without parole would not be released and therefore not subject to the civil commitment process. Likewise, an offender who successfully reduced his risk to re-offend while incarcerated would not qualify for the civil commitment process.

³ The Attorney General's office has reviewed the Governor's proposal to include violent offenders, and based upon its research, has expressed the opinion that the proposal would be constitutional under both the federal and state constitutions, although the courts have not specifically addressed this issue.

ASSUMPTIONS

The civil commitment process requires the Commissioner of the Department of Corrections (DOC) to establish a multi-disciplinary team to identify certain offenders approaching their release date.⁴ These are offenders who:

- Have been convicted of one or more predicate offenses;
- Scored in the High Risk category on various assessment tools used by DOC;
- After a forensic evaluation, are believed to have a mental abnormality and/or personality disorder that makes it difficult for them to control their conduct; and
- Upon release, pose an imminent risk of harming another person.

Any offenders identified by DOC are then referred to the Attorney General's office for review by a committee appointed by the Attorney General for the purpose of determining whether a person so referred meets the legal threshold necessary for the filing of a petition. It is also assumed that the Attorney General will have discretion in determining which cases referred by DOC will result in the filing of a petition for civil commitment. We also assume that a court or jury will determine whether the state proved the petition employing the standard of "beyond a reasonable doubt."

A. Time Horizon

The report assumes a ten-year period of time from 2005-2014.

B. Predicate Offenses

For the purposes of this report, the predicate offenses are: murder, aggravated murder, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, and lewd and lascivious conduct with a child.⁵

⁴ States civilly commit offenders who are charged with certain offenses, but who are not convicted due to a determination that they are incompetent or insane. We do not include those numbers in our estimate because we cannot estimate how many people over the next ten years will be eligible for referral based upon an adjudication of incompetence or insanity.

⁵ Sexually violent offense: aggravated sexual assault as defined in 13 V.S.A. § 3253, sexual assault as defined in 13 V.S.A. § 3252, or lewd and lascivious conduct with a child as defined in 13 V.S.A. § 2602, any attempt to commit a crime listed herein, or a comparable offense in another jurisdiction of the United States. Violent offense: murder as defined in 13 V.S.A. § 2301, aggravated murder as defined in 13 V.S.A. § 2311, kidnapping as defined in 13 V.S.A. § 2405, aggravated assault as defined in 13 V.S.A. § 1024, any attempt to commit a crime listed herein or a comparable offense in another jurisdiction of the United States.

C. Risk Assessment and Process

Assessing Risk to Re-offend

All offenders undergo some form of assessment of risk during incarceration as part of the treatment program assessment and/or planning for release.

For sex offenders, “High Risk” is determined initially by the Static-99, an actuarial tool used to predict sexual offense recidivism. Scores fall into one of seven levels, reflecting increasing probabilities of reoffending sexual behavior at five-, ten-, and fifteen-year intervals.⁶ This instrument may be used by trained casework staff. A score of 6 or higher on the Static-99 indicates the offender is at high risk to re-offend. High risk means a 52% probability of re-offense within 15 years of release.

For violent offenders, a screening tool for High Risk determination will be the Level of Service Inventory (Revised), (LSI-R); a structured assessment of an offender’s needs used to assist in treatment planning and assignment of varying levels of supervision. The LSI-R is a 54-item measure of general recidivism risk which examines both static and dynamic risk factors. A score of 34 or greater on the instrument represents a 57% probability of re-offense within one year of release.

It is important to note that the results of these assessment tools are only one of a number of factors taken into consideration when making the referral determination. There may be rare instances where an offender scoring below the thresholds identified would warrant consideration for referral.

Screening

Offenders who demonstrate high risk and are in the offense categories eligible for consideration will undergo screening by the multi-disciplinary committee. The committee will be established by the Department of Corrections and will be comprised of a multidisciplinary team. As the inmate approaches the end of the sentence of incarceration, the team will identify those offenders to be referred for a forensic evaluation in order to assist in evaluating the presence of a mental abnormality or personality disorder. Offenders who, based upon the findings of the forensic evaluation, lacked the requisite mental abnormality or personality disorder would not be referred to the Attorney General’s office. Conversely, the team would refer to the Attorney General those offenders they believed had a mental abnormality or personality disorder.

Referral

The referral of an offender to the Attorney General will trigger a process for review of each offender’s assessment by a review committee designated by the Attorney General.

⁶ Hanson and Thornton, 2000.

Prosecution

The review by the Attorney General and the Attorney General's committee may result in a petition alleging that the person is a sexually violent predator or a violent predator requiring further treatment after incarceration.

Probable Cause Hearing

The court will hold a probable cause hearing to determine the sufficiency of evidence to sustain the allegation. If the court finds probable cause, the court may order the person placed in the custody of the Commissioner of Health upon completion of the term of incarceration, and may order the person transferred to an appropriate secure facility for evaluation. If the court does not find probable cause, the petition is dismissed.

Adjudication

After a finding of probable cause, a trial will be held to determine if, beyond a reasonable doubt, the offender is a sexually violent or violent predator under the definitions in the law. The offender has the right to request a jury trial. It is important to note that the determination that an individual has a mental abnormality or personality disorder is a legal, rather than a clinical, decision that takes place during the judicial process for civil commitment.

Upon such determination, the offender will be placed in the care and custody of the Commissioner of Health for further treatment.

Care and Custody of the Commissioner of Health

The Commissioner of Health will have the ability to contract with private entities, individuals, or the Department of Corrections, for placement and/or treatment. It is assumed that placement will be in a secure facility until such time as the offender is fully discharged.

D. Cost Considerations

Courts have found that the sharing of correctional facility space between civil commitment programs and other offender programs is acceptable as long as the populations are separated and have only incidental contact. The term "incidental contact" has been interpreted widely to mean anything from passing in the halls to sharing dining room space. For the purposes of this Report, the strictest definition of "incidental contact" is used. Costs may be reduced if we allow for a less strict approach to incidental contact, such as using shared dining space.

There are several factors which may also affect cost, but while they should be noted, they cannot at this time be quantified. They include:

- The number of new offenders who will enter the corrections system in coming years whose release date will fall within the ten-year time frame and who will be identified as potential civil commitment referrals.
- A civil commitment program may have an effect on offenders who might be eligible for the program. That is, a civil commitment program might motivate some offenders to reduce their risk to re-offend by completing a treatment program while incarcerated. This would enable them to avoid being subjected to the civil commitment process.
- The impact that improvements to the criminal justice system may have – such as special investigative units or enhanced sentencing options – on reducing the offender population who may be eligible for the civil commitment process.
- The cost offset that occurs when an offender is civilly committed may reduce other costs our society and government incur when subsequent crimes are committed and people are victimized. These costs include the monetary costs associated with criminal investigations, criminal forensic testing, prosecution, court time, incarceration and caring for some of the victims of these crimes. For example, it costs the Department for Children and Families (DCF) roughly \$35,000 per year to care for a child placed in state custody. It is understood by all of us that the life of another human being is priceless, and there is no method available that quantifies the emotional toll associated with the victimization of another human being and their loved ones. Our agencies regularly deal with victims of crime, and it is our experience that our communities also bear a cost when people become victims of violent and sexual crimes. Many victims of violent and sexual crimes have, as a result of their victimization, difficulty forming and maintaining healthy relationships, maintaining employment, and maintaining productive ties to their communities. Many require years of medical and mental health treatment. We cannot quantify these costs, but we are certain that substantial costs are avoided when a person does not become a victim of a violent or sexually violent crime. Such is the outcome when a sexually violent or violent predator is removed from society until such time that he no longer poses a high threat of harm to other human beings.

E. Estimating the Demand

Number of Persons Eligible for a Forensic Evaluation

Currently, 19 inmates in the custody of DOC are eligible for a forensic evaluation during the years 2005-2014.⁷ Each forensic psychiatric evaluation is estimated to cost approximately \$3,000.

TABLE 1

Maximum Release Year	High Risk Sex Offenders (6+ on Static99)	High Risk Violent Offenders (34+ on LSI-R)	Total "eligible for a forensic evaluation"
2005 (Jul-Dec)	0	2	2
2006	4	1	5
2007	3	1	4
2008	0	2	2
2009	0	1	1
2010	0	1	1
2011	1	0	1
2012	1	0	1
2013	0	0	0
2014	1	1	2
Totals	10	9	19

Although we also estimate that approximately 11 high risk offenders enter the system each year, there is no accurate way to predict how many will be released 2005-2014; and who will, at the time of release, be eligible for a forensic evaluation. However, we do not anticipate that these numbers will be as high as 11 per year. Most of the new high risk sexually violent and violent offenders will likely have sentences that take them beyond 2014 for release. Even those offenders convicted of Lewd and Lascivious conduct with a child will soon have longer sentences due to the recent change in the penalty (15 yrs/1st offense, 30 yrs/2nd offense and life/3rd offense). Finally, legislative efforts that assist in improving criminal investigations, prosecution, criminal sentencing and rehabilitation will have an impact on reducing this number. Future incoming high risk offenders who may be released 2005-2014 are likely to come from two groups: High risk offenders who receive shorter than normal sentences of incarceration due to plea agreements (executed as a matter of necessity in order to save a difficult case), and

⁷ Release schedule for high risk offenders in prison as of July 13, 2005 and past minimum release date. In addition, there are 20 high risk offenders who have not yet reached their minimum. These offenders are not included in Table 1, because we are unable to predict how many of these offenders will successfully complete treatment and/or successfully reduce their risk levels, such that they would not be referred for a forensic evaluation.

offenders convicted of Lewd and Lascivious conduct with a child sentenced under the old law.⁸ For all of these reasons, we have not included incoming offenders in Table 1.

Number of Persons Estimated to be Civilly Committed During 2005-2014

One way to predict how many offenders will be civilly committed over the next 10 years is to analyze the current incarcerated population. In doing so, DOC identified approximately 19 people who may be referred for a forensic evaluation. The number of people referred to the Attorney General's office will be smaller than 19, based upon the winnowing that will occur as a result of forensic evaluations which will advise as to the presence of mental abnormality and/or personality disorder.

The numbers will be reduced further when the Attorney General's committee applies its selection process and then prosecutorial discretion is exercised. Looking at the 17 states now employing the civil commitment process does, however, provide some guidance in this area. In states which employ rigorous screening mechanisms at the DOC level, as is contemplated in this model, approximately 50% result in civil commitment. This percentage includes states that civilly commit a person based upon the lesser burden of proof "clear and convincing evidence." Where the burden of proof is lower, we can reasonably expect that the commitment rate is higher because the process is more advantageous to the state. Given the assumption that Vermont will use the highest standard of proof, we think that 50% is overstated, but we have applied it for purposes of this Report.

We also expect that the effect of an Oversight Commission will assist in further limiting those persons referred and subjected to the process.⁹ As proposed by the Governor, the Oversight Commission will provide an annual review of all civil commitment cases in which a judge or jury has reached a final determination. The Commission's report will be given to the House and Senate Judiciary Committees so that the legislature will, on an annual basis, be able to address any concerns it may have, including burgeoning numbers. This Commission is a key part of the plan to ensure that the civil commitment process is working as envisioned. This Commission is what will set Vermont apart from other states with a civil commitment process, and should assist in further limiting the numbers of people who are subject to referral, petition, and commitment.

⁸ Maximum sentences under 13 V.S.A. 2602, prior to the passage of Act 79 in 2005, were: 1st offense/5 yrs., 2nd offense/10 yrs., and 3rd offense/20 yrs.

⁹ We cannot, however, predict the impact in terms of numbers and so we have not attempted to quantify the effect the Commission will have on the number of persons referred, subjected to the process by petition or adjudicated as a sexually violent or violent predator.

TABLE 2
Estimating Demand over Time

Maximum Release Year	Total Past Min Releases	Estimate at 50% Adjudicated	Cumulative
2005 (Jul-Dec)	2	1	1
2006	5	2	3
2007	4	2	5
2008	2	1	6
2009	1	0	6
2010	1	1	7
2011	1	0	7
2012	1	1	8
2013			8
2014	2	1	9

Based upon the numbers set forth above, we estimate that Vermont will have 9 offenders over a ten-year period (2005-2014).¹⁰

¹⁰ This number is not reduced based upon the winnowing that results during the forensic evaluation; it does not include the number added based upon incoming offenders released 2005-2014; it is not reduced by the number of offenders currently incarcerated who successfully minimize their risk, such that they would not qualify for a forensic evaluation at the time of release, and it does not account for a reduction in numbers based upon the anticipated effect of the review by the Attorney General's committee or the work of the Oversight Commission. It also uses a success rate (50% committed of those referred) that is based upon an average of a mix of states using a lesser standard of proof than Vermont.

IV. ASSESSMENT AND TREATMENT PROTOCOL

This clinical protocol will be used for all offenders adjudicated as Sexually Violent Predators or Violent Predators, in the custody of the Commissioner of Health.

Placement in Program

Phase one of the program will involve extensive assessment and evaluation of individual specific treatment needs.

Case Plan Development

A detailed case plan will be developed by a case manager in close consultation with program clinicians. A case plan will identify type, frequency and duration of treatment services, service providers, specific measurable goals and objectives, and performance criteria. The client will participate in case planning to the extent feasible.

Case Plan Elements

Diagnosis: Determination of any mental illness and/or personality disorder.

Problem Appraisal: Assessment of strengths and weaknesses in client's personal and social education and vocational domains.

Functional Assessment: Assessment of social and interpersonal skills.

Clinical Assessment: Determine treatment plan priorities, using standardized testing and instrumentation.

Treatment Plan Monitoring

Periodic assessment will be conducted of the achievement of treatment goals and the treatment plan will be revised as necessary by the treatment team.

Treatment Program Overview

Program Model: Sexually Violent Offenders

The most research-supported and commonly used program is a cognitive-behavioral model. Cognitive therapy is based on the premise that how we think largely determines how we act, and that we can change how we act by changing how we think. Behavioral therapy is founded on the premise that behavior is learned and that it can be changed by a variety of conditioning methods.

Treatment Goals

The major goals of most programs are to help offenders:

- Accept responsibility for sexual offending,
- Modify distorted thinking patterns,
- Enhance victim empathy,
- Control deviant sexual urges,
- Improve social competence,
- Improve emotion management,
- Develop relapse prevention skills, and
- Develop community support systems.

Patient Characteristics and Treatment Needs

Programs individualize treatment interventions for this very heterogeneous population. Four broad types of patients populate civil commitment programs.

Conventional High Risk Patients: These are sexually deviant patients without other mental health problems. Treatment focuses on standard sex offender rehabilitation approaches.

Patients with High Psychopathy: Treatment focuses on the antisocial thinking and behavior patterns of individuals of this very criminally oriented population.

Developmentally Disabled Patients: Treatment focuses on simplified treatment approaches matched to the low intellectual functioning of these patients.

Mentally Ill Patients: Treatment focuses on managing the psychiatric symptoms of these patients in order to assist them in engaging in appropriate sex offender treatment services.

Modes of Treatment

Group therapy will be used when clinically appropriate, and will be supplemented by individual therapy. Most programs view vocational training and leisure activities as important

rehabilitation components and provide opportunities for both. Patients with major mental illness will receive psychotropic medication and therapy as clinically indicated.

Program Intensity and Length

Patients typically receive individual therapy each week, supplemented by group therapy, if available and clinically appropriate. On average, patients receive about six hours of treatment per week.

Staffing

Treatment staff will be licensed and have at least a master's degree with specific training and expertise in cognitive behavioral approaches. A program director and clinical director will be needed; however, they may also provide some of the direct care. Access to psychiatric staff for mentally ill offenders will be necessary.

Treatment Program Overview

Program Model: Violent Offenders

Overview: Studies supporting specific treatments for violent offenders are not available in the clinical literature. The most promising treatments utilized in similar behavioral conditions will be offered to violent offenders in this program. These treatments are based on cognitive-behavioral approaches, coupled with motivational interviewing, to solicit buy-in to the treatment components. Contingency-based behavioral approaches will also be utilized to enhance motivation to engage in treatments. Reinforcers will be the primary contingency tool used, but negative reinforcers will be judiciously used only with those residents failing to respond to positive reinforcement. Punishers will not be used. For individuals with diagnosable mental illnesses, the underlying mental illness will be treated utilizing standard treatments for the condition, including when appropriate, psychotropic medications and the psychotherapies.

Other correctional systems provide programs for both adult and juvenile violent offenders for limited periods of time. These programs are both institution-based and community-based. Vermont will be the first state to implement a program specifically for a civilly committed, non-mentally ill population and the treatment program will be a prototype for other states. Since there is evidence of success in cognitive behavioral approaches and in treatments of this nature for violent sex offenders, the proposed program will be modeled on this approach. Cognitive therapies will be used to change how the person thinks and behavioral therapy will be applied to help the person learn new ways of behaving through conditioning techniques.

Treatment Goals

Goals will be similar to those for violent sex offenders:

- Accept responsibility for violent offending,
- Modify distorted thinking patterns,
- Enhance victim empathy,
- Control violent urges,
- Improve social competence,
- Improve emotion management,
- Develop relapse prevention skills, and
- Develop a graduated re-entry program.

Modes of Treatment

As in violent sex offender treatments, group therapy will be used where clinically appropriate, and will be supplemented by individual coaching of learned skills between group learning sessions. The general milieu will provide behavioral conditioning in practicing the learned skills. Social skills, vocational rehabilitation and training, and planning and utilizing unstructured time will also be important components. Patients with mental illnesses will have

standard treatments for those illnesses provided, including, when appropriate, medications and psychotherapies.

Program Intensity

Based on the experiences of successful sexual offender programs, the violent offender program will initiate treatments with the same intensity. As the impact of this frequency and intensity of treatments is assessed, these will be adjusted for each individual. As in the sexual offender program, daily individual therapy/coaching will be provided, and group therapy will be used when available and clinically appropriate.

Staffing

Treatment staff will be licensed and have at least a master's degree with specific training and expertise in cognitive behavioral approaches. A program director and clinical director will be needed; however, they may also provide some of the direct care. Access to psychiatric staff for mentally ill offenders will be necessary.

V. PLACEMENT

OUT-OF-STATE PLACEMENT OPTIONS

Theoretically, there are two possible mechanisms for out-of-state placements for civil offenders:

- Contracting with another state to provide secure confinement, or
- Contracting with a private entity to provide the secure confinement outside Vermont.

In addition to a review of the literature of the civil commitment programs in the 17 states, a telephone interview was conducted with a program representative from each. We also conducted phone interviews with three private vendors of correctional services.

A. Public Entities

At this time, none of the state-operated programs contacted have indicated a willingness to contract with Vermont for the housing of civil commitment offenders.

B. Private Entities

The administration has also been in contact with several private providers of incarcerative services. At this writing, none has indicated definitive interest in providing service for civilly committed offenders without clarity of law and authority. Corrections Corporation of America and GEO Group (formerly Wackenhut Corporation), have concerns over the small size of the program needed by Vermont. However, both organizations are currently preparing a bid proposal to manage Florida's new civil commitment facility, and have expressed strong interest in accepting Vermont's civil offenders should they be successful in the bid process. This facility is scheduled to open in 3 years. We are unsure at this writing if this presents a future opportunity for Vermont.

With this said, while housing civil offenders out of state is our preference, we have not yet been able to identify a viable option.

IN-STATE PLACEMENT OPTIONS

Some states operate secure confinement facilities that are operated by the Mental Health or Health Department, separate from hospital facilities. Other states use Correctional facilities, either separated wholly or on the same grounds as other facilities, operated by Corrections for security functions, but with treatment provision by Mental Health or Human Services/Health Departments. A few states contract with private providers within their own jurisdictions. It is important to keep in mind that we have not yet engaged in any community dialogue concerning possible Vermont sites, as we are uncertain which option the legislature will support.

Options for Vermont within the state include:

- Redesignating a Unit within Northern State Correctional Facility and relocating current inmates
- Renovating an Existing Underutilized Unit at Northwest Correctional Facility
- Constructing a Separate Unit on the Grounds of Southern State Correctional Facility

Each configuration has differential capital and operating parameters. Commonalities include:

- 24 hours a day, 7 days a week, 365 days a year close supervision
- Secure confinement
- Intensive treatment
- Recreational opportunity
- Basic needs provision
- Visitation and access to courts

Redesignating the Close Custody Unit at Northern State Correctional Facility

The number of potential offenders during the first few years of the program is estimated to be relatively small. We also believe that, to ensure public safety, these offenders must be in a secure facility. The most practical and economical solution, in the near term, would be to redesignate the 10-bed single cell Close Custody Unit of Northern State Correctional Facility in Newport. The current nine Close Custody inmates could be absorbed in other facilities. And while program space is limited, it is manageable and cost effective. This would provide a secure setting for up to ten offenders, and offer the administration an opportunity to gain experience with the process and be in a better position to predict future needs.

The estimated cost for this option ranges from \$430,000 to \$600,000 per year, depending upon occupancy. At 10 bed utilization, the per capita cost is \$60,000. There will also be approximately \$100,000 in “fit-up” renovation costs that would need to be made. These would be insignificant in relation to the capital costs associated with our other options. Please refer to Appendix A on page 26 for details.

Renovating an Existing Unit at Northwest Correctional Facility

Renovating D-Wing of the Northwest Correctional Facility would provide for 10 offenders. This is an older facility, and the D-Wing, which has two 10-bed units, has been underutilized due to the need for extensive renovations. The estimated renovation cost of the entire D-Wing is \$2.2 million. There would continue to be substantial logistical challenges associated with the adjacencies of the 10-bed segregation unit and a 10-bed civil commitment unit.

The estimated cost to run this renovated facility is \$350,000 to \$515,000 per year, depending upon occupancy. At 10 bed utilization, the per capita cost is \$51,600. Please refer to Appendix B on page 27 for details.

Constructing a Separate Unit on the Grounds of Southern State Correctional Facility

As a result of further analysis, the Department of Buildings and General Services has determined that, for the security level required for civil offenders, modular construction is not appropriate, and is not substantially less expensive than standard construction.

The construction of a 15-bed unit on the grounds of an existing facility, such as Southern State Correctional Facility in Springfield, would enable the state to take advantage of the existing facility and infrastructure. This option provides us with the capacity to expand the scale if initial experience suggests it would be the best long-term solution. The capital cost for this option is estimated to be approximately \$3.4 million in today's dollars.

The estimated cost to run this facility is \$2.2 million to \$3.6 million per year, based upon occupancy. At 10 bed utilization, the per capita cost is \$358,000. Please refer to Appendix C on page 28 for details.¹¹

¹¹ For construction of a new facility, 2-4 years is a reasonable estimate for the completion of a unit, accounting for time for legislative authorization, capital appropriation, siting, permitting, design and engineering, and construction.

COMMUNITY RESIDENTIAL PLACEMENT

For those offenders found to be Sexually Violent and/or Violent through the civil commitment process, Community Based Residential Placement is not a viable option. The very definition of Sexually Violent or Violent Offender is an offender who poses an imminent danger to others upon their release from total confinement, because they have difficulty controlling their criminal conduct due to a mental abnormality or personality disorder. As such, to even consider a community placement option would place Vermont communities at significant risk.

We have, however, at the request of the Legislature, included in this Report a discussion and costing of the various Community Placement Options.

Option 1 – Physically Secure Community Housing

This is envisioned as a secure half-way house, with physical security and supervision designed on a correctional model, with 24-7 staffing, shift supervision, and backup. Staff supervision of offenders would be augmented with Global Positioning System (GPS) monitoring at all times, on grounds or off. Inpatient treatment would be as described in protocol. In addition, reintegration would be structured and supervised with a wraparound service model. The program would be operated by the Department of Health, with security consultation from the Department of Corrections. The capital costs for this option vary greatly based on the type of facility.

The estimated cost to run this facility is \$1.5 million to \$2.5 million per year, based upon occupancy. At 10 bed utilization, the per capita cost is \$246,000. Please refer to Appendix D on page 29 for details.

Option 2 – Staff Secure Community Residential Placement

This is designed as a small (up to 2 offenders) program under 1-1 supervision by onsite staff. Demand greater than two offenders may require multiple locations. Some efficiencies in administration can be made if used for multiple programs. The facility would be staff secure, with scheduled building lock-in at night. The facility would be staffed 24-7, with awake staff night and day. Inpatient treatment would be as described in protocol. Offenders would engage in treatment initially onsite, and gradually engage in outpatient treatment, work, and other programming within the parameters of safety and security.

The estimated cost to run this program is \$1.1 million to \$4.3 million per year, based on occupancy. At 10 bed utilization, the per capita cost is \$429,000. Please refer to Appendix E on page 30 for details.

Option 3 – Conditional Release Outpatient Program

Offenders in this least restrictive program are monitored by electronic tracking devices (GPS) and are placed in intensive outpatient treatment programs. Failure to comply with treatment protocols can result in violation procedures and commitment to secure custody. Monitoring the compliance with treatment would require resources for the Department of Health.

The estimated cost to run this program is \$87,000 to \$340,000 per year, based upon occupancy. At 10 bed utilization, the per capita cost is \$34,000. Please refer to Appendix F on page 31 for details.

VI. RECOMMENDATIONS

Based upon the analysis contained in this Report, we strongly recommend that the Vermont General Assembly enact law to implement a process and program for the civil commitment of sexually violent and other dangerous violent predators as described in this document.

We recommend that the program for these certain offenders provide for a secure environment, with treatment consistent with accepted clinical protocols. We will accomplish this by redesignating the Close Custody Unit at Northern State Correctional Facility for the sole purpose of housing civil commitment offenders. This unit will accommodate a maximum of 10 offenders, and cost \$430,000 to \$600,000 per year to operate, depending upon occupancy. This will provide us with the beds needed to meet the projected demand of 9 civil commitment offenders over the next ten years.

As a backup plan, if demand was to be significantly greater than our projections, we would consider building an appropriately-sized facility on the grounds of the existing Southern State Correctional Facility site. In today's dollars, this option has an estimated capital cost of \$3.4 million and an estimated operating cost of \$2.2 million to \$4.2 million, based upon occupancy.

We will request financial support for this recommendation through the budget process during the upcoming Legislative Session.

VII. APPENDICES

APPENDIX A

Department of Corrections
Redesignating an Existing Unit at Northern State Correctional Facility

<u>Position Title*</u>	<u>Pay Grade</u>	<u>Cost per Position</u>	<u>2 Offenders</u>	<u>6 Offenders</u>	<u>10 Offenders</u>
Shift Supervisor	21	\$ 67,179	1.20	1.20	1.20
Case Manager	22	\$ 62,116	0.50	1.00	1.00
Correctional Officer II (security post)	18	\$ 56,060	<u>5.10</u> 6.80	<u>5.10</u> 7.30	<u>5.10</u> 7.30
		<u>Cost Per Offender</u>	<u>2 Offenders</u>	<u>6 Offenders</u>	<u>10 Offenders</u>
Positions			\$ 397,579	\$ 428,637	\$ 428,637
Other Personal Services:					
Contractual					
Sex Offender Treatment		\$ 3,000			
Mental Health					
Annual Psychosexual Evaluation		\$ 3,000			
Individual Therapy 1 hr/week					
@Medicaid Rate		\$ 4,491			
Psychopharmacology 1 hr/mo					
@Medicaid Rate		\$ 2,303			
Behavior Management Contract		<u>\$ 4,000</u>			
Total Other Personal Services		\$ 16,794	<u>\$ 33,588</u>	<u>\$ 100,764</u>	<u>\$ 167,940</u>
Total Personnel Services			\$ 431,167	\$ 529,401	\$ 596,577
Total Personal Services and Operating			\$ 431,167	\$ 529,401	\$ 596,577
Per Capita Cost			\$ 215,583	\$ 88,233	\$ 59,658
Capital Costs - Approximate		\$ 100,000			

*Incremental Staff Need

APPENDIX B

Department of Corrections
Renovating an Existing Unit at Northwest Correctional Facility

<u>Position Title*</u>	<u>Pay Grade</u>	<u>Cost per Position</u>	<u>2 Offenders</u>	<u>6 Offenders</u>	<u>10 Offenders</u>
Correctional Officer II (security posts, control, etc)	18	\$ 56,060	5.10	5.10	5.10
Case Manager	22	\$ 62,116	<u>.50</u>	<u>1.00</u>	<u>1.00</u>
			5.60	6.10	6.10
		<u>Cost Per Offender</u>	<u>2 Offenders</u>	<u>6 Offenders</u>	<u>10 Offenders</u>
Positions			316,964.00	348,022.00	348,022.00
Other Personal Services:					
Contractual					
Sex Offender Treatment		\$ 3,000			
Mental Health					
Annual Psychosexual Evaluation		\$ 3,000			
Individual Therapy 1 hr/week @Medicaid Rate		\$ 4,491			
Psychopharmacology 1 hr/mo @Medicaid Rate		\$ 2,303			
Behavior Management Contract		<u>\$ 4,000</u>			
 Total Other Personal Services		 \$ 16,794	 <u>\$ 33,588</u>	 <u>\$ 100,764</u>	 <u>\$ 167,940</u>
Total Personnel Services			\$ 350,552	\$ 448,786	\$ 515,962
Operating:					
Total Personal Services and Operating			\$ 350,552	\$ 448,786	\$ 515,962
Per Capita Cost			\$ 175,276	\$ 74,798	\$ 51,596
 Capital Costs – Approximate		 \$ 2,200,000			

*Incremental Staff Need

APPENDIX C

Department of Corrections
New Construction of Separate Unit on the Grounds of Southern State Correctional Facility

<u>Position Title*</u>	<u>Pay Grade</u>	<u>Cost per Position</u>	<u>2 Offenders</u>	<u>6 Offenders</u>	<u>10 Offenders</u>
Correctional Officer II (security posts, control, etc)	18	\$ 56,060	20.40	20.40	20.40
Correctional Officer II (visiting, external travel, etc)	18	\$ 56,060	6.80	20.40	27.20
Correctional Shift Supervisor	21	\$ 67,179	5.10	5.10	5.10
Program Director	24	\$ 57,728	1.00	1.00	1.00
Program Coordinator	22	\$ 60,840	3.40	3.40	3.40
Administrative Assistant B	19	\$ 47,203	1.00	1.00	1.00
Case Manager	22	\$ 60,840	<u>0.50</u>	<u>1.00</u>	<u>1.00</u>
			38.20	52.30	59.10
			<u>Cost Per Offender</u>	<u>2 Offenders</u>	<u>6 Offenders</u>
				<u>10 Offenders</u>	
Positions			\$ 2,002,796	\$ 2,795,632	\$ 3,176,840
Other Personal Services:					
Contractual					
Sex Offender Treatment		\$ 3,000			
Mental Health					
Annual Psychosexual Evaluation		\$ 3,000			
Individual Therapy 1 hr/week @Medicaid Rate		\$ 4,491			
Psychopharmacology 1 hr/mo @Medicaid Rate		\$ 2,303			
Behavior Management Contract		<u>\$ 4,000</u>			
Total Other Personal Services		\$ 16,794	<u>\$ 33,588</u>	<u>\$ 100,764</u>	<u>\$ 167,940</u>
Total Personnel Services			\$ 2,036,384	\$ 2,896,396	\$ 3,344,780
Operating:					
Fee for Space			\$ 100,000	\$ 100,000	\$ 100,000
Utilities			\$ 15,000	\$ 20,000	\$ 30,000
Marginal Costs		\$ 4,000	\$ 8,000	\$ 24,000	\$ 40,000
Medical and Dental		\$ 6,500	<u>\$ 13,000</u>	<u>\$ 39,000</u>	<u>\$ 65,000</u>
Total Operating			\$ 136,000	\$ 183,000	\$ 235,000
Total Personal Services and Operating			\$ 2,172,384	\$ 3,079,396	\$ 3,579,780
Startup Equipment and Supplies			\$ 20,000	\$ 40,000	\$ 60,000
Total Personal Services, Operating & Startup			\$ 2,192,384	\$ 3,119,396	\$ 3,639,780
Per Capita Cost with Startup			\$ 1,096,192	\$ 519,899	\$ 363,978
Per Capita Cost without Startup			\$ 1,086,192	\$ 513,233	\$ 357,978

Capital Costs – Approximate \$ 3,400,000

*Incremental Staff Need

APPENDIX D

Department of Health Physically Secure Community Housing

<u>Position Title</u>	<u>Pay Grade</u>	<u>Cost per Position</u>	<u>2 Offenders</u>	<u>6 Offenders</u>	<u>10 Offenders</u>
Correctional Officer II (security posts)	18	\$ 56,060	10.20	10.20	10.20
Correctional Officer II (visiting, external travel, etc)	18	\$ 56,060	3.40	10.20	13.60
Correctional Shift Supervisor	21	\$ 67,179	5.10	5.10	5.10
Program Director	24	\$ 57,728	1.00	1.00	1.00
Administrative Assistant B	19	\$ 47,203	1.00	1.00	1.00
Case Manager	22	\$ 60,840	<u>0.50</u>	<u>1.00</u>	<u>1.00</u>
			21.20	28.50	31.90
		<u>Cost Per Offender</u>	<u>2 Offenders</u>	<u>6 Offenders</u>	<u>10 Offenders</u>
Positions			\$ 1,240,380	\$ 1,652,008	\$ 1,842,612
Other Personal Services:					
Contractual					
Sex Offender Treatment		\$ 3,000			
Mental Health					
Annual Psychosexual Evaluation		\$ 3,000			
Individual Therapy 1 hr/week @Medicaid Rate		\$ 4,491			
Psychopharmacology 1 hr/mo @Medicaid Rate		\$ 2,303			
Behavior Management Contract		<u>\$ 4,000</u>			
Total Other Personal Services		\$ 16,794	<u>\$ 33,588</u>	<u>\$ 100,764</u>	<u>\$ 167,940</u>
Total Personnel Services			\$ 1,273,968	\$ 1,752,772	\$ 2,010,552
Operating:					
Fee for Space (estimate)			\$ 200,000	\$ 200,000	\$ 200,000
Utilities			\$ 15,000	\$ 20,000	\$ 30,000
GPS		\$ 10,950	\$ 21,900	\$ 65,700	\$ 109,500
Marginal Costs		\$ 4,000	\$ 8,000	\$ 24,000	\$ 40,000
Medical and Dental		\$ 6,500	<u>\$ 13,000</u>	<u>\$ 39,000</u>	<u>\$ 65,000</u>
Total Operating			\$ 257,900	\$ 348,700	\$ 444,500
Total Personal Services and Operating			\$ 1,531,868	\$ 2,101,472	\$ 2,455,052
Startup Equipment and Supplies:			\$ 20,000	\$ 40,000	\$ 60,000
Total Personal Services, Operating & Startup			\$ 1,551,868	\$ 2,141,472	\$ 2,515,052
Per Capita Cost with Startup			\$ 775,934	\$ 356,912	\$ 251,505
Per Capita Cost without Startup			\$ 765,934	\$ 350,245	\$ 245,505

APPENDIX E

Department of Health
Staff Secure Community Residential Placement

<u>Position Title</u>	<u>Pay Grade</u>	<u>Cost per Position</u>	<u>2 Offenders</u>	<u>6 Offenders</u>	<u>10 Offenders</u>
Psych Tech (step 6) (1staff per offender - 24x7)	20	\$ 59,196	15.30	35.70	61.20
Program Coordinator	24	\$ 57,728	1.00	1.00	1.00
Case Manager	22	\$ 62,118	<u>0.50</u>	<u>1.00</u>	<u>1.00</u>
			16.80	37.70	63.20
		<u>Cost Per Offender</u>	<u>2 Offenders</u>	<u>6 Offenders</u>	<u>10 Offenders</u>
Position Costs			<u>\$ 994,492</u>	<u>\$ 2,233,157</u>	<u>\$ 3,742,666</u>
Other Personal Services:					
Contractual					
Sex Offender Treatment		\$ 3,000			
Mental Health					
Annual Psychosexual Evaluation		\$ 3,000			
Individual Therapy 1 hr/week @Medicaid Rate		\$ 4,491			
Psychopharmacology 1 hr/mo @Medicaid Rate		\$ 2,303			
Behavior Management Contract		<u>\$ 4,000</u>			
Total Other Personal Services		\$ 16,794	<u>\$ 33,588</u>	<u>\$ 100,764</u>	<u>\$ 167,940</u>
Total Personnel Services			\$ 1,028,080	\$ 2,333,922	\$ 3,910,606
Operating:					
Rent		\$ 12,000	\$ 24,000	\$ 72,000	\$ 120,000
Marginal Costs		\$ 6,500	\$ 13,000	\$ 39,000	\$ 65,000
Utilities		\$ 2,000	\$ 4,000	\$ 12,000	\$ 20,000
Medical and Dental		\$ 6,500	\$ 13,000	\$ 39,000	\$ 65,000
GPS Lease		\$ 10,950	\$ 21,900	\$ 65,700	\$ 109,500
Total Operating			\$ 75,900	\$ 227,700	\$ 379,500
Total Personal Services and Operating			\$ 1,103,980	\$ 2,561,622	\$ 4,290,606
Startup Equipment and Supplies			\$ 14,800	\$ 28,800	\$ 42,800
Total Personal Services, Operating & Startup			\$ 1,118,780	\$ 2,590,422	\$ 4,332,906
Per Capita Cost with Startup			\$ 559,390	\$ 431,737	\$ 433,291
Per Capita Cost without Startup			\$ 551,990	\$ 426,937	\$ 429,011

APPENDIX F

Department of Health
Conditional Release Outpatient Program

Staffing :

<u>Position Title</u>	<u>Pay Grade</u>	<u>Cost per Position</u>	<u>2 Offenders</u>	<u>6 Offenders</u>	<u>10 Offenders</u>
Case Manager	22	\$ 62,116	0.50	1.00	1.00
Total Salary and Benefits					
		<u>Cost Per Offender</u>	<u>2 Offenders</u>	<u>6 Offenders</u>	<u>10 Offenders</u>
Staff			\$ 31,058	\$ 62,116	\$ 62,116
 Other Personal Services:					
Contractual					
Sex Offender Treatment		\$ 3,000			
Mental Health					
Annual Psychosexual Evaluation		\$ 3,000			
Individual Therapy 1 hr/week					
@Medicaid Rate		\$ 4,491			
Psychopharmacology 1 hr/mo					
@Medicaid Rate		\$ 2,303			
Behavior Management Contract		<u>\$ 4,000</u>			
 Total Other Personal Services		 \$ 16,794	 <u>\$ 33,588</u>	 <u>\$ 100,764</u>	 <u>\$ 167,940</u>
 Total Personal Services			 \$ 64,646	 \$ 162,880	 \$ 230,056
 Operating:					
GPS		\$ 10,950	<u>\$ 21,900</u>	<u>\$ 65,700</u>	<u>\$ 109,500</u>
Total Operating			\$ 21,900	\$ 65,700	\$ 109,500
 Total Personal Services and Operating			 \$ 86,546	 \$ 228,580	 \$ 339,556
 Per Capita Cost			 \$ 43,273	 \$ 38,097	 \$ 33,956