INTERIM REPORT OF THE
VIRGINIA STATE CRIME COMMISSION

Task Force Study of Drug Trafficking, Abuse and Related Crime

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

SENATE DOCUMENT NO. 30

COMMONWEALTH OF VIRGINIA
RICHMOND
1990

MEMBERS OF THE VIRGINIA STATE CRIME COMMISSION

From the Senate of Virginia:

Elmon T. Gray, Chairman
Howard P. Anderson
Elmo G. Cross, Jr.

From the House of Delegates:

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V. Thomas Forehand, Jr.
Raymond R. Guest, Jr.
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Warren G. Stambaugh
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Appointments by the Governor:

Robert C. Bobb
Robert F. Horan, Jr.
George F. Ricketts, Sr.

Attorney General's Office:

H. Lane Kneedler

COMMONWEALTH of VIRGINIA

VIRGINIA STATE CRIME COMMISSION

General Assembly Building

IN RESPONSE TO
THIS LETTER TELEPHONE
(804) 225-4534

ROBERT E. COLVIN
EXECUTIVE DIRECTOR

January 16, 1990

TO: The Honorable L. Douglas Wilder, Governor of Virginia, and Members of the General Assembly:

Senate Joint Resolution 144, adopted by the 1989 General Assembly, directed the Virginia State Crime Commission to conduct a "comprehensive legislative study of combatting drug trafficking, abuse and related crime in Virginia, including needed changes in legislation with a primary focus on law enforcement efforts, consumption reduction and correctional/rehabilitative issues." In addition, Senate Joint Resolution 144 directed the Commission to designate a select Task Force of twenty-one individuals to assist with the study and submit an interim report by December 1, 1989, and a final report and recommendations by December 1, 1990. In fulfilling this directive, an interim report of findings and recommendations, including a schedule of activities for 1990, has been prepared by the Drug Study Task Force of the Virginia State Crime Commission. On December 19, 1989, the Drug Task Force met and approved the interim report and requested that the report be printed. On December 19, 1989, the Virginia State Crime Commission adopted the Drug Study Task Force report, approved it for publication and requests that the Governor and General Assembly adopt the recommendations therein. I have the honor of submitting herewith the interim report of the Drug Study Task Force.

Respectfully submitted,

Elmon T. Gray
Chairman

ETG/dgs

Enclosure

TWENTY-ONE MEMBER DRUG STUDY TASK FORCE
SJR 144

Thirteen Members of the Commission:

Senator Elmon T. Gray, of Sussex, Chairman
Delegate Robert B. Ball, Sr., of Henrico, Vice Chairman
Senator Howard P. Anderson, of Halifax
Mr. Robert C. Bobb, of Richmond
Senator Elmo G. Cross, Jr., of Hanover
Delegate V. Thomas Forehand, Jr., of Chesapeake
Delegate Raymond R. Guest, Jr., of Front Royal
The Honorable Robert F. Horan, Jr., of Fairfax
Mr. H. Lane Kneedler, Attorney General's Office
Speaker A. L. Philpott, of Henry
Rev. George F. Ricketts, Sr., of Richmond
Delegate Warren G. Stambaugh, of Arlington
Delegate Clifton A. Woodrum, of Roanoke

Two Legislators Appointed by the Senate:

Senator Edward M. Holland, of Arlington
Senator Johnny S. Joannou, of Portsmouth

Two Legislators Appointed by the House:

Delegate Thomas M. Jackson, Jr., of Hillsville
Delegate Clinton Miller, of Woodstock

Four Citizens Appointed by the Commission:

Col. J. C. Herbert Bryant, Jr., of Sterling
The Honorable W. M. Faulconer, of Orange
The Honorable Christopher W. Hutton, of Hampton
Chief Richard W. Presgrave, of Harrisonburg

Virginia State Crime Commission Staff

Robert E. Colvin, Executive Director
Dana G. Schrad, Esquire, Project Research Manager
Susan A. Bass, Research Analyst
Sylvia A. Coggins, Executive Administrative Assistant

With invaluable assistance from:

B. S. Allsbrook	Virginia State Police
Ken Batten	Department of Mental Health, Mental Retardation and Substance Abuse Services
R. L. Berryman	Virginia State Police
Marla Coleman	Department of Education
Lisa Claiborne	Virginia Commonwealth University (Intern)
Paul Henick	Department of Corrections
Dean Jennings	Department of Criminal Justice Services
James Kouten	Department of Criminal Justice Services
Andrew Molloy	Department of Corrections
Dorothy Papciak	Virginia Commonwealth University (Intern)
Forrest Powell	Department of Corrections
Carole Roper	Virginia Commonwealth Alliance for Drug Rehabilitation and Education (CADRE)
Hope Seward	Department of Mental Health, Mental Retardation and Substance Abuse Services
John Warner	Department of Criminal Justice Services

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I. MESSAGE FROM THE CHAIRMAN

Senator Elmon T. Gray, Chairman
Virginia State Crime Commission

Senate Joint Resolution 144 directs this task force, with the assistance of the Governor's Council on Alcohol and Drug Abuse Problems and the Office of the Attorney General, to conduct a two-year comprehensive study of drug trafficking, abuse and related crime in Virginia. Three subcommittees have been assigned the task of finding ways to improve drug law enforcement efforts, provide rehabilitation and treatment to drug users, provide punishment for drug dealers and reduce the demand for drugs through education programs.

During the past six months, concerned citizens, police officers, educators, sheriffs, treatment providers and others have testified at our meetings and public hearings. We have heard repeated requests for additional drug enforcement personnel, training and equipment, adequate treatment programs for offenders and more drug awareness education for children and adults. In this regard, the Commission and the General Assembly are keenly aware of the need for a comprehensive drug strategy for Virginia that coordinates law enforcement, corrections, treatment and education efforts. Developing this strategy is the charge of this legislative study.

We have much to be proud of: Virginia has some of the toughest drug laws in the country. Efforts are underway to make more treatment programs available to drug offenders. Our drug awareness education programs are among the best in the country, but our efforts still fall short of meeting the needs of the workers on the forefront of the drug battle. Drug abuse and drug-oriented crime affect almost every aspect of our society, and the need for coordination of efforts has become acute.

The drug crisis was not born overnight, and it will not be solved quickly or easily. Knee-jerk solutions are not the answer. The key to success is in well-thought-out long-term solutions. These solutions will require the public and <u>especially</u> parents to get "up in arms" if we are to be successful. Drug abuse has so permeated our society that it may take years to effect changes in the public's attitudes about drugs. Virginia can promote health-oriented intolerant attitudes about drug abuse through dedicated drug awareness education programs. Providing drug treatment for offenders can help reduce substance abuse relapse and decrease criminal recidivism. More sophisticated law enforcement efforts can deter widespread drug law violations.

The interim report before you lays the groundwork for the work of this task force in 1990. The three subcommittees have come forward with well-conceived recommendations. The subcommittees have not been quick to the trigger with massive budget requests or lock-them-all-up legislation. We are building on the mass of information we have collected thus far. Most of the

suggested recommendations seek to ensure that we will have complete information for our final deliberations next year. Others provide immediate action on certain pressing issues. The research projects and administrative recommendations will be carried out in the coming year to further the objectives of the drug study. Next December, this task force will produce its final report of recommendations to the Governor and General Assembly for changes in the law, creation of programs and development of a drug strategy for the State. The success of our efforts plays a critical part in defeating the drug trade in Virginia. I commend the efforts of this task force. We look forward to working with Governor Wilder, Lt. Governor Beyer and Attorney General Terry on this most important drug trafficking study in 1990.

II. EXECUTIVE SUMMARY OF RECOMMENDATIONS

The Drug Study Task Force met in full and in subcommittee meetings 17 times during 1989. Fifteen findings, 48 recommendations and 65 activities, developed by the subcommittees, were adopted by the full task force and are included in the interim report as a plan of action for the task force in 1990. The 65 activities and their subparts are the catalyst for the five legislative bills, three budget amendments, one formal resolution, 25 administrative recommendations and support resolutions and 36 studies. A brief description and index of the aforementioned activities follows.

A. Legislation:

- Include all Schedule I and II drugs in the enhanced penalty for a second drug conviction (Code of Virginia § 18.2-248)

- Revoke driver's license when driver is convicted of a drug distribution scheme involving a vehicle (Code of Virginia § 18.2-248)

- Extend the penalty for distribution of drugs to a minor to persons convicted of involving a minor in drug distribution (Code of Virginia § 18.2-255)

- Extend the Safe School Zone law to include areas open to the public, and to cover after-school programs (Code of Virginia § 18.2-255.2)

- Allow joinder of trial of drug co-conspirators when certain conditions are met (Code of Virginia § 18.2-256)

B. Budget Amendments:

- Provide funds to purchase eight surveillance vans for local law enforcement drug investigations, totaling $440,000 in the first year and $40,000 in the second year of the FY90-92 biennium (Law Enforcement Activity #7)

- Provide funds for the Department of Corrections to acquire four handlers, four drug detection dogs and the requisite training and supplies, not to exceed $300,000 for the FY90-92 biennium (Corrections/Treatment Activity #1)

- Provide funds for four full-time equivalent (FTE) positions in the Department of Education Office of Youth Risk Prevention to facilitate school substance abuse education programs, totaling $167,657 in the first year and $174,779 in the second year of the FY90-92 biennium (Education Activity #6)

- Provide funds for 48 FTE deputy sheriff positions to ensure that Drug Abuse Awareness Education (DARE) is available in every school district statewide, totaling $1,058,729 in the first year and $1,080,638 in the second year of the FY90-92 biennium. (Education Activity #9)

C. **Formal Resolution:**

- Request that the Board of Education amend general teacher certification regulations to require a substance abuse education course (Education Activity #15)

D. **Administrative Recommendations and Proposed Studies:**

Law Enforcement Subcommittee:

Description	Target Date	See Page
State task force support committee.	1 Jun 90	23
Encouragement of multi-jurisdictional cooperation.	1 May 90	24
Availability of federal grant funds to appoint multi-jurisdictional grand juries and special drug prosecutors.	1 May 90	24
Enhanced training for law enforcement personnel.	ASAP*	24
Program model for training in undercover operations.	1 Jun 90	25
Survey of local law enforcement agencies' resources.	1 May 90	25
Support request for change in formula for determining the number of law enforcement deputies.	'90 Session	25

*The "As Soon As Possible" target dates are assigned to those activities in continuing development that could not be given specific reporting dates.

Corrections/Treatment Subcommittee:

Drug testing of offenders policy.	ASAP	30
Alternatives to limit inmate access to drugs.	1 Jun 90	30
Support recommendation by COPJO that treatment space be incorporated in prison space.	'90 Session	31
Support request of DOC to establish permanent treatment programs.	'90 Session	31
Support recommendation by COPJO for improvement of inmate education programs.	'90 Session	31
Review improvement of inmate education programs.	1 Jun 90	31
Assessment of inmate education and treatment programs.	1 Jun 90	31
Evaluation and improvement of minimum qualifications standards for substance abuse specialists.	ASAP*	32
Coordination of pre-discharge planning.	1 Jun 90	32
Support efforts of DOC to administer substance abuse program for probationers and parolees.	ASAP*	32
Formula for forecasting community-based program needs for offenders.	1 Jun 90	32
Survey and evaluation of community-based programs.	1 Jun 90	32
DAWN and DUFS reporting systems.	1 Jun 90	33
Incentives to enter treatment field.	1 Jun 90	33
Conditions of parole.	1 May 90	33
Staffing of Community Service Boards.	1 Jun 90	33
DYS study of treatment and education programs for juveniles.	1 Jun 90	34
Survey of available programs for youth.	1 Jun 90	34

Education Subcommittee:

Monitoring of the progress of the Task Force studying violence on school property.	1 Apr 90	41
Availability of funding for programs in public housing projects and communities.	1 Jun 90	41
Evaluation of efforts to curb drug and alcohol abuse on college campuses.	1 Jun 90	42
State government policies regarding drug usage.	ASAP*	42
Feasibility of initiation of statewide media campaign.	1 Jul 90	42

III. AUTHORITY AND PURPOSE FOR THE STUDY

Senate Joint Resolution 144, whose chief patron was Senator Elmon T. Gray, was adopted by the 1989 General Assembly and directs the Virginia State Crime Commission, with the assistance of the Governor's Council on Alcohol and Drug Abuse Problems and the Office of the Attorney General, to conduct a comprehensive study of combatting drug trafficking, abuse and related crime.

The legislative-based Commission's charge is to develop a statewide comprehensive coordinated strategy and agenda, in cooperation with the executive and judicial branches of government, to address the drug trafficking and drug-related crime problem. In this context, the study will develop legislative and other proposals with its focus on law enforcement efforts, consumption reduction and correctional treatment issues.

SJR 144 resolves that "the Crime Commission shall designate a select Task Force of twenty-one individuals to assist with the study, and such Task Force shall report directly to the Commission. This Task Force will consist of all thirteen members of the Crime Commission and eight other members as follows: two members of the House of Delegates appointed by the Speaker, two members of the Senate appointed by the Senate Privileges and Elections Committee and four individuals from criminal justice fields, business or community leaders or other individuals as the Commission may so select."

To strengthen Virginia's criminal justice system, the General Assembly created the Virginia State Crime Commission in 1966. The primary purpose and legislative mandate of the Commission is to study, report, and make recommendations to the Governor and the General Assembly on all areas of public safety and protection. The Commission develops legislation and assists in coordinating proposals of various agencies and organizations as to legislation affecting crime, crime prevention and control and criminal procedures.

In meeting its responsibility, the Crime Commission acts as a sounding board for agencies, organizations and individuals in the Commonwealth to report legislative concerns regarding criminal justice to the General Assembly and serves as a locus for analyzing and dealing with the multitude of difficult and diverse issues in our criminal justice system. The Commission also regularly develops and evaluates law and administrative procedures which affect judges, prosecutors, law enforcement officials, jails and prisons, forensic laboratories, community diversion programs, crime prevention programs, probation and parole, criminal procedure and evidence, victims and witnesses of crime and private security.

§9-125 of the Code of Virginia establishes and directs the Virginia State Crime Commission "to study, report and make recommendations on all areas of public safety and protection." §9-127 of the Code of Virginia provides that "the Commission shall have duty and power to make such studies and gather information in order to accomplish its purposes, as set forth in §9-125, and to formulate its recommendations to the Governor and the General Assembly." §9-134 of the Code of Virginia authorizes the Commission to "conduct private and public hearings, and to designate a member of the Commission to preside over such hearings." The Virginia State Crime Commission, in fulfilling its legislative mandate, hereby undertakes the Drug Task Force Study as directed by Senate Joint Resolution 144.

IV. MEMBERS APPOINTED TO SERVE

During the August 1, 1989 meeting of the Virginia State Crime Commission, its Chairman, Senator Elmon T. Gray of Sussex, introduced the twenty-one member Drug Study Task Force, and selected the chairmen for the three study subcommittees.

Speaker A. L. Philpott of Bassett was selected to serve as chairman of the Law Enforcement Subcommittee. Members of the Drug Study Task Force who serve on the Law Enforcement subcommittee are:

Speaker A. L. Philpott of Bassett, Chairman
Col. J. C. Herbert Bryant, Jr., of Sterling
Sheriff W. M. Faulconer of Orange
Mr. Robert F. Horan, Jr., of Fairfax
Senator Johnny S. Joannou of Portsmouth
Mr. H. Lane Kneedler of Richmond
Delegate Warren G. Stambaugh of Arlington

Delegate Robert B. Ball, Sr., of Henrico was selected to serve as chairman of the Corrections/Treatment Subcommittee. Members of the Drug Study Task Force who serve on the **Corrections/Treatment** subcommittee are:

Delegate Robert B. Ball, Sr., of Henrico, Chairman
Senator Elmo G. Cross, Jr., of Hanover
Senator Edward M. Holland of Arlington
Mr. Christopher W. Hutton of Hampton
Delegate Clinton Miller of Woodstock
Rev. George F. Ricketts, Sr. of Richmond
Delegate Clifton A. Woodrum of Roanoke

Senator Howard P. Anderson of Halifax was selected to serve as chairman of the Education Subcommittee. Members of the Drug Study Task Force who serve on the **Education** subcommittee are:

Senator Howard P. Anderson of Halifax, Chairman
Mr. Robert C. Bobb of Richmond
Delegate V. Thomas Forehand, Jr., of Chesapeake
Senator Elmon T. Gray of Sussex
Delegate Raymond R. Guest, Jr., of Front Royal
Delegate Thomas M. Jackson of Hillsville
Chief Richard W. Presgrave of Harrisonburg

DRUG TASK FORCE STEERING SUBCOMMITTEE:

Senator Elmon T. Gray, Chairman
Speaker A. L. Philpott, Chairman, Law Enforcement
Delegate Robert B. Ball, Sr., Chairman, Corrections/Treatment
Senator Howard P. Anderson, Chairman, Education
Mr. H. Lane Kneedler, Attorney General's Office

V. STUDY DESIGN

Pursuant to SJR 144, the Secretary of Transportation and Public Safety, the Secretary of Human Resources and the Secretary of Education designated the Department of Criminal Justice Services, the Department of Mental Health, Mental Retardation and Substance Abuse Services, and the Department of Education, respectively, to provide staffing support for the Commission staff. Dean Jennings, Ken Batten, and Marla Coleman were designated as the primary contacts within the respective agencies for the study.

During the month of September, each subcommittee held a unique meeting. During a closed meeting, the Law Enforcement Subcommittee received confidential information relating to law enforcement issues from across the

state. The Corrections/Treatment Subcommittee visited Hegira House, a therapeutic community in Roanoke, and heard from substance abuse treatment providers to community-based corrections and rehabilitation programs. The Education Subcommittee attended a fifth grade DARE class at G. W. Carver Elementary School in Salem and heard from members of the local PTA. In all, each subcommittee held four public meetings in 1989 to gather information and develop findings, recommendations and activities for 1990.

At its two public hearings and initial meeting, the 21-member Drug Study Task Force heard testimony and received reference materials from representatives of the law enforcement, treatment, corrections, education and citizen communities. The task force met for the final time in 1989 on December 19 to consider the proposed reports of the three subcommittees. The task force approved the subcommittee reports, and voted to publish the combined subcommittee reports and supporting documentation in an interim study report. On December 19, 1989, the Virginia State Crime Commission adopted the Drug Study Task Force report, approved it for publication and requested that the Governor and General Assembly adopt the findings, recommendations and activities therein. The Commission further recommended at its January 16, 1990 meeting, that the requests for study reports by executive branch agencies be introduced to the General Assembly as language in the 1990 Appropriations Act.

MEETINGS

Drug Study Kickoff	August 1, 1989
Education Subcommittee	August 15, 1989
Law Enforcement Subcommittee	August 25, 1989
Corrections/Treatment Subcommittee	August 29, 1989
Full Task Force Public Hearing - Richmond	September 19, 1989
Law Enforcement Subcommittee	September 20, 1989
Education Subcommittee	September 29, 1989
Corrections/Treatment Subcommittee	September 29, 1989
Full Task Force Public Hearing - Roanoke	September 29, 1989
Education Subcommittee	October 17, 1989
Law Enforcement Subcommittee	October 17, 1989
Corrections/Treatment Subcommittee	October 18, 1989
Law Enforcement Subcommittee	November 14, 1989
Education Subcommittee	November 15, 1989
Corrections/Treatment Subcommittee	November 15, 1989

Law Enforcement Subcommittee December 19, 1989

Full Drug Task Force December 19, 1989

See Appendix B for the proposed schedule for 1990.

VI. INFORMATION FROM PUBLIC HEARINGS AND MEETINGS

During the course of its work, the Drug Study Task Force has received information about the extent of the drug problem in Virginia from concerned citizens as well as members of the law enforcement, corrections and education communities. Not only are the metropolitan areas affected, but now rural areas are suffering from the negative effects of drugs and drug-related crime. Out-of-state drug dealers are increasingly being discovered and arrested in Virginia. Many of them use the profits from their drug deals to purchase weapons from Virginia retailers. Additionally, the drug-abusing population is changing significantly. Drug users are younger, and a greater percentage than ever before are female. Furthermore, many are polydrug users and dealers. Some elementary school children now are using drugs. Children from dysfunctional families such as those whose parents abuse drugs frequently become drug users at an early age. The state Departments of Education, Mental Health, Mental Retardation and Substance Abuse Services, Criminal Justice Services, Youth Services and Social Services need support from the General Assembly for joint initiatives to address problems that cross bureaucratic boundaries, such as criminal behavior and problems of addiction.

Law Enforcement Issues

Three major needs in the area of law enforcement were presented at the initial meeting of the Drug Task Force. First, the Virginia State Police expressed a need for a centralized reporting network that profiles abusers. Secondly, the U.S. Marshal's Service is in need of support for its crucial role in combatting drug trafficking. Similarly, the international agency of INTERPOL needs support to develop a subdivision to evaluate and disseminate information about international drug-related crimes. The Maricopa County Plan, the Miami Coalition and the Oregon Regional Drug Initiative are three noteworthy programs established in other states to address the drug problem.

Suggestions offered regarding the punishment of drug-related offenders include stiffer fines and sentences for both users and dealers; mandatory sentences for selling drugs to a minor; uniform sentencing; death penalty for drug kingpins; establishment of a shock incarceration program for youthful offenders and drug users; mandatory revocation of driver's license if an offender is found to be in illegal possession of any drug while driving; and stricter paraphernalia laws.

A Virginia constitutional amendment is needed to direct all profits from the seizure of drug assets towards law enforcement efforts, particularly toward interdiction and local efforts, equipment and manpower. According to testimony, additional funding is necessary to enhance resources for local law enforcement agencies.

Juvenile concerns include the need to address the problems of gang turf wars, drug-related crime by juveniles and the use of minors in all facets of the drug trade. Prosecutorial concerns include the backlog of the state crime laboratories, the case overload experienced by the court system, and the need for multi-jurisdictional task forces in many regions of the state.

Because of the direct relationship between drugs and crime, especially in low-income housing projects, problems are surfacing such as non-leaseholders selling drugs out of public housing projects and juveniles being used as runners and lookouts. Several suggestions have been made to help alleviate these problems, including the cancellation of a lease upon arrest for a drug crime; employment of security guards in the projects; rewards for tips from informants; and enforcement of vagrancy and curfew laws.

Other general law enforcement concerns include money laundering, open air drug markets, crack houses, access to firearms, possession of weapons by minors, and the use of juveniles as drug mules. Furthermore, the Commonwealth needs a comprehensive law enforcement strategy, a grass roots approach to the problem of user accountability and a means for better surveillance of rural airports.

Corrections/Treatment Issues

The state is involved in several treatment programs. The role of the Department of Mental Health, Mental Retardation and Substance Abuse Services continues to be crucial in the prevention of drug abuse, the treatment of addictive behaviors, and the implementation of programs to assist families affected by substance abuse and mental health problems.

Suggested corrections issues include random drug testing for all inmates, probationers and parolees; drug monitoring, treatment and rehabilitation of offenders; the problems caused by overcrowded conditions of correctional facilities; elimination of the waiting period for parolees and probationers seeking treatment; and the special treatment needs of offenders.

Treatment concerns include mandatory rehabilitation; school-based personnel for substance abuse counseling; integration of peer-led counseling groups and treatment; correlation between high risk youth and substance abuse; funding for emergency program planning for agencies with successful records; and problems related to alcohol on university campuses. Most treatment programs now are operating at or above capacity and need resources to expand staff in substance abuse programs and in the Community Services Board system.

Education and Prevention

One of the most important issues surrounding the drug problem is the need to promote change in society's permissive attitude towards drug use. It is possible that this goal can be achieved through educational means. In Virginia, the DARE program is a major contributing factor to the incorporation of drug education programs in the school systems. The program needs to be expanded to successfully reach every school in Virginia; however, some divisions are not able to implement the DARE program due to a lack of manpower and/or funds. Forty-eight DARE positions are needed statewide, and additional local funding is needed to alleviate the problem.

The drug problems in public housing projects extend to the education system because children are being influenced by parents who use drugs. Applications to live in public housing should be prioritized to accept first those applicants with drug-free records. In addition, a list should be maintained of persons barred from residing in or visiting public housing property as the result of a drug offense.

Drug education programs in general need more financial support. Direct funding could be used to create alternative programs to increase drug awareness, to provide motivation, education and training to welfare recipients, and to initiate peer-led programs to counsel on education and prevention. The role of education programs should be expanded to teach values, conflict resolution, mutual respect and the work ethic.

The following individuals provided the information described above at the Full Drug Task Force's initial meeting and public hearings (listed in order of appearance):

August 1, 1989 Initial Meeting:

Mr. Alan Albert	Governor's Office
Mr. William Alden	Drug Enforcement Agency
Mr. John Twomey	U.S. Marshals Service
Mr. Richard Stiener	International Criminal Police Organization
Mr. Richard Harris	Department of Criminal Justice Services
Mr. Robert Berryman	Virginia State Police
Mr. Wayne Thacker	Office of Substance Abuse Services
Ms. Jeanne Bentley	Department of Education

September 19, 1989 Richmond Public Hearing:

Senator Eddy Dalton	County of Henrico
Chief Larry Daniel	Town of Front Royal Police
Chief Richard Engels	Henrico County Police
Lt. John Karinshak	Arlington County Police
Ms. Gloria Hall	Virginia PTA
Mr. Arthur Johnson	Richmond City Schools
Dr. David Saunders	VCU School of Social Work
Ms. Susan Grossman	UVA Substance Abuse Project
Sheriff C.W. Jackson	Westmoreland County Sheriff's Office
Chief Larry Nowery	City of Petersburg Police
Mr. Thompkins	Petersburg Housing Authority
Major Chuck Bennet	City of Richmond Police
Ms. Anne Brackett	Alexandria Probation and Parole
Ms. Kay Sears	Henrico County School Board
Mr. Hylan Carter	Richmond City Mental Health
Mr. Bill Luchie	Center for Creative Development
Mr. Arthur Whitener	Portsmouth Housing Authority
Mr. Tom McGrath	Mothers Against Drunk Drivers

September 29, 1989 Roanoke Public Hearing

Judge Philip Trompeter	23rd Judicial District
Deputy Martha Spencer	Montgomery County Sheriff's Office
Commander Rick Pillar	City of Lynchburg Police
Ms. Lois Hinkle	Montgomery County Schools
Mr. John Jones	Virginia State Sheriffs' Association
Sheriff C.H. Wells	Bedford County Sheriff's Office
Sheriff R.D. Carrico	Carroll County Sheriff's Office
Deputy Randy Mosby	Carroll County Sheriff's Office
Sheriff M.E. Honaker	City of Bristol Sheriff's Office
Mr. Jim Snyder	City of Harrisonburg Schools
Ms. Margo Kiley	Roanoke Valley Substance Abuse Services
Mr. Herbert McBride	Roanoke Housing Authority
Chief Fred Russell	City of Bedford Police
Mr. Robert Whythal	City of Pulaski Schools
Chief Harry Haskins	City of Salem Police
Ms. Janet McKinney	Substance Abuse Treatment Facility
Mr. Mark Cowell	Mt. Regis
Mr. Ned Snead	Central Virginia Community Services
Ms. B.J. Patsell	City of Roanoke Schools
Mr. Shaheed Omar	Citizen
Ms. Lynn Atkins	Virginia Cares
Ms. Roseanna Anderson	Roanoke Valley Virginia Cares

VII. OVERVIEW

BACKGROUND

Drug trafficking, abuse and related crime result in economic costs to the Commonwealth of Virginia of more than four billion dollars each year. More than one-third of all arrests in Virginia in 1987 were related to substance abuse, and the Department of Corrections estimates that 60 to 80 percent of the prison population has a history of substance abuse. Drug abuse and related crime have become issues that affect the whole of society, and more comprehensive coordinated strategies for enforcement, consumption reduction and rehabilitation now are required.

The drug problem is growing in the Commonwealth. That is no surprise either to public officials or to the public at large. Unfortunately, while growth has been at a steady rate, recently we have seen a large burst in illegal drug activity in some of our communities.

During 1988, the Virginia State Crime Commission conducted a thorough study of drug crime-related asset seizure and forfeiture. Several significant legislative measures were enacted as a result of the Commission's work. These included re-writing of the state's forfeiture law, enhancing of procedures for receiving federal returned assets, and most importantly Senate Joint Resolution 36, which calls for a referendum to change the Constitution of Virginia to allow drug-related seized assets to be diverted solely to law enforcement purposes. Currently, Virginia law requires these resources to be deposited in the state's literary fund.

During the course of the 1988 study, members of the General Assembly and the Virginia State Crime Commission, as a legislative-based Commission, heard increasing outcry from citizens and law-enforcement officials across the Commonwealth for a comprehensive state level strategy and plan of attack in terms of enforcement efforts, consumption reduction efforts and rehabilitation efforts.

The state has been busy cooperating with local police in investigative and enforcement activities. The General Assembly has authorized the creation of new positions for drug law enforcement within the Department of State Police. The General Assembly also has toughened the anti-drug criminal laws.

The Virginia Supreme Court has observed in its continuing study of sentencing patterns that, within the past two years, judges have been lengthening sentences for drug dealing. The result is and will be a strain on our Department of Corrections, even after completion of two new major facilities within the next two years, and the addition of 800 beds funded in 1989 for the field units.

It also is apparent to most that law enforcement alone cannot manage this problem. Drug Abuse Resistance Education (DARE) is a program of law enforcement involvement in the education of our young people that has been recognized professionally for its potential impact in assisting our young people to resist the temptations of a drug-abusing lifestyle. The Department of Mental Health, Mental Retardation and Substance Abuse Services has directed major new anti-drug funding through its local Community Services Boards.

All these efforts take resources, people and time. But we are aware more than ever before that it will take a major cooperative effort to manage this problem and make us safe on our streets and in our homes.

We also are keenly aware that the solutions to the drug problem are not simple or easily found. It is for this reason, and in responding to many concerns voiced to the legislature and to the Crime Commission by the public and law enforcement officals across Virginia, that Senate Joint Resolution 144, whose Chief Patron was Senator Elmon T. Gray, Crime Commission chairman, was introduced in the 1989 Session of the General Assembly. Senate Joint Resolution 144 was adopted by the General Assembly and directs the Crime Commission to undertake a major two-year task force study of drug trafficking, abuse and related crime. The Commission will seek to develop a comprehensive strategy and plan of attack at the state level to combat more effectively the drug problem in Virginia. This will include coordinating our efforts with all state, local and federal authorities and agencies. The Crime Commission will focus on enforcement, consumption reduction and correctional-rehabilitative issues.

The task force consists of all thirteen members of the Crime Commission, two additional members of the Senate, two additional members of the House of Delegates, and four citizen members appointed by the Crime Commission. The twenty-one member task force has been divided into three subcommittees of seven members each. One subcommittee is focusing on enforcement efforts; the second subcommittee is focusing on corrections and treatment efforts; the third subcommittee is focusing on education and consumption reduction efforts. In addition, the chairman of the Crime Commission has named a steering committee of approximately five members from the task force. The three subcommittees reported recommendations to the full task force on December 19, 1989. The full task force then reported to the Commission, which conveys formal interim recommendations to the Governor and the 1990 General Assembly. A final report will be made to the Governor and the 1991 General Assembly.

Senator Howard P. Anderson and Delegate Robert B. Ball, Sr., both Crime Commission members, successfully introduced amendments to the budget in their respective Houses to provide $22,825 in FY89-90 in general funds to enable the Crime Commission to undertake this major initiative. Additionally, a federal grant of $93,793 for FY89-90 has been approved and a like amount the second year is anticipated. Thus, a total amount of $116,618 for the first year is required to initiate this study. The total study budget for the second year, FY90-91, is projected to be of a similar amount.

Objectives of the drug study:

1. Examine current drug-related efforts in law enforcement, consumption reduction and corrections/rehabilitation.

2. Examine the structure within which these efforts are carried out, and the resources allocated to support them.

3. Assess the effectiveness of the state's anti-drug efforts, the adequacy of the current structure for implementing them and the resources available to support them.

4. Develop legislative, budgetary and programmatic proposals for strengthening and improving the state's anti-drug efforts.

LAW ENFORCEMENT

Drug trafficking is a sophisticated business in which accountants keep meticulous records and cash-flow problems are solved by the purchase of legitimate businesses, including small-town banks and urban shopping centers. At present the drug trade is better financed, better equipped and, in many instances, better coordinated than narcotics law enforcement efforts. In addition, successful law enforcement efforts to control drug trafficking and related crime naturally result in increased arrests; however, jails and prisons operating at full capacity cannot accommodate the growing inmate population.

Additional equipment, training and personnel are needed if law enforcement agencies are to strengthen efforts against drug trafficking and related crime. With each day the drug trade becomes more experienced and widespread. In a U.S. Department of Justice report presented in the fall of 1989 to President Bush, federal officials observed what they called the "gradual maturing of the drug trade," and the increasingly international flavor of the drug trade, even in rural localities. That international flavor already is apparent in Virginia, where drug gangs from the Caribbean attempt to utilize Interstate 95 to traffic narcotics between Miami and New York City and to points in-between. Wars between drug gangs are the cause of an increasing number of violent drug-related deaths, many of which involve teenagers.

The number of juveniles involved in drug crimes and drug-related crimes is growing at an alarming rate. Law enforcement statistics parallel the growth in the number of juvenile killers with the number of juveniles involved in the drug trade. Juvenile justice specialists attribute the drug trade and easy access to handguns with compounding the problems of young people who grow up in an atmosphere of violence at home and in the communities.

Virginia law enforcement agencies have been able to supplement their narcotics enforcement budgets as a result of the seized assets program. The additional funds allow officers and agencies to buy drugs, pay informants and purchase sophisticated equipment that the agencies otherwise would not have been able to afford.

However, on October 1, 1989, Virginia's law enforcement agencies became ineligible to participate in the federal equity sharing process to receive money from drug dealers' forfeited assets. At the request of the Virginia State Crime Commission, Senator John W. Warner and Congressman Rick Boucher successfully introduced several pieces of legislation in the U. S. Senate and House of Representatives to permit law enforcement agencies to continue benefitting from the federal adoptive forfeiture and equity sharing system. This system allows federal agencies to return to local and state law enforcement agencies up to 90 percent of the proceeds gained from the sale of drug dealers' forfeited property. President Bush has signed into law measures introduced by Warner and Boucher. The Boucher bill guaranteed continued use of the federal system for an additional two years, which is the time period needed for Virginia to change its constitution and be eligible for continued participation in equity sharing. In further action, the Armed Forces Appropriations bill, amended by Senator Warner, was signed November 29, 1989 at the White House. The Warner amendment provides for a total repeal of the current restrictive prohibition on equity sharing.

The best efforts of state and local law enforcement agencies to combat drug trafficking and drug-related crime are destined to fail without adequate funding, training and personnel. Coordination and interagency planning among law enforcement agencies of drug investigations is the exception rather than the rule of practice. The focus of drug law enforcement efforts shifts frequently, as law enforcement strategies focus first on traffickers and kingpins, then on small-time dealers and abusers. Finally, successful drug law enforcement efforts have resulted in crowded jails and prisons, which present an additional set of problems for the Commonwealth.

The drug problem is immense. To battle it successfully requires a coordinated, comprehensive enforcement strategy, supported with sufficient funding and trained personnel. The drug problem cannot be solved as long as it grows at a faster rate than the law enforcement efforts designed to eradicate the problem.

CORRECTIONS AND TREATMENT

While the number of casual users of illegal drugs is dropping, the number of crack addicts is increasing dramatically, according to a report by the U.S. Department of Health and Human Services. These results support what specialists already suspected: that cocaine is an extremely addictive drug, and that crack in particular can entrap its victims after just one usage. Among this group of crack addicts is a growing number of teenagers and young adults.

Crack addiction does not pose just a health problem; it has become a public safety problem. Addicts can become paranoid, which can lead to violent criminal behavior. Statistics indicate that crack addicts are responsible for most of the drug-related violence in urban centers. The National Institute of Justice reports that a large majority of persons arrested for felony offenses other than sale or possession of drugs test positive for at least one of ten illegal drugs. Female arrestees now test positive for drug use at about the same rate as male arrestees.

Arrests and convictions for drug crimes have increased to record levels; however, drug abuse and drug-related crime continues on the rise. Law enforcement alone cannot win the drug war. Prevention, intervention and treatment must be utilized more efficiently to help solve the drug crisis. The most recent National Institute of Justice survey reports that only about 25 percent of persons arrested for using drugs indicated a need for substance abuse treatment. This suggests an increased need for improved supervision, monitoring or court-mandated requirements for arrestees to be treated and rehabilitated.

Approximately 50,000 cocaine users nationwide will try to kick the habit this year. The battle is fierce, especially for crack addicts who find the addiction particularly difficult to shake. However, treatment programs are overburdened, and private centers charging $15,000 or more a month are full. Public and non-profit treatment centers are even more crowded, and many addicts must wait months for available treatment. The Federal Office for Substance Abuse Prevention reports that many treatment centers for the poor cannot provide the level, type or length of treatment best indicated for an abuser's needs. As a result, many programs offer substance abuse treatment that fails to meet the needs of the client. Studies indicate that treatment for cocaine addiction is difficult to administer successfully. Many hard-core addicts will be in treatment for the rest of their lives. Addicts report that it is easier to quit using drugs initially than it is to remain drug-free; thus the need for long-term treatment, supervision and evaluation. Treatment providers report that, while it is difficult to profile the typical abuser, the average patient is getting younger and becoming addicted in a shorter period of time.

Abuse and addiction are reaching epidemic proportions. The National Cocaine Hotline estimates that 5,000 people are introduced to some form of cocaine every day. The broad economic effects are overwhelming: a U.S. Congressional report estimates that, in 1988, drug abuse cost Americans more than $100 billion in drug purchases, treatment costs and lost employee productivity.

The best way to combat drug abuse is to prevent drug abuse, and an effective means is identification of high risk personalities. Scientists are attempting to determine whether a personality trait or a chemical predisposition primarily contributes to an addictive character, or whether upbringing and environment are controlling factors. For prevention and intervention to be effective, service providers must be better able to identify a particular substance abuser's needs and structure an effective rehabilitation and treatment program.

Substance abuse goes hand-in-hand with criminal activity, and the result has been an increasing number of inmates in correctional facilities with alcohol and drug dependencies. Incoming inmates must be assessed to determine the nature and degree of their chemical dependencies in order for correctional treatment programs to be successful. In addition, parolees who have been treated for substance abuse in jail or prison usually need aftercare programs and monitoring upon release to ensure against criminal recidivism and substance abuse relapse.

The overcrowded conditions of Virginia's jails and prisons have been well documented, but any solutions must take into consideration the 60 to 80 percent of the inmate population that has a substance abuse history. As programs are proposed that would increase probation and parole populations to answer prison and jail overcrowding problems, an effort must be made to ensure that these high-risk populations receive appropriate substance abuse treatment. Criminal recidivism rates among probation and parole populations may be affected by whether an inmate has received proper treatment for a chemical dependency.

A significant proportion of the criminal justice population has a drug or alcohol problem. In many instances, and especially with cocaine or crack addictions, the effects of and need for drugs are key factors in the criminal activity that leads to incarceration. Effective and efficient treatment programs are of vital importance in our correctional facilities. Likewise, recidivism rates among substance abusers indicate the critical need for ongoing treatment and close supervision of parolees in aftercare programs. Treatment programs are now insufficient in number, with many of them operating above capacity. To properly assess and treat a substance abuser, programs must operate at a manageable capacity, and with adequate resources to assess substance abusers. Proper substance abuse treatment for our criminal population is a key factor in prevention and intervention efforts in Virginia's war against drug abuse and related crime.

EDUCATION

The focus of drug education programs has been on risk prevention through age-appropriate education, both in the schools and in the communities. Successful educational efforts must involve all segments of society, particularly educators, the medical community, law enforcement agencies, business and community leaders and private individuals. The problems of drug trafficking and abuse are tied directly to the growth of violence and crime in the schools and in the communities.

The number of at-risk youth is growing, and the population becomes younger every year. More than one-half of America's teenagers will use drugs at least once before they finish high school, according to the most recent national survey of high school seniors by the University of Michigan's Institute for Social Research. Drug abuse now tops the list as the number one discipline problem in America's schools, based on a study by the National School Safety Center. However, research indicates that less than one-half, about 48 percent, of the nation's high school seniors see great risk in experimenting with cocaine.

The abusers are getting younger: the National Institute on Drug Abuse reported in a 1985 survey that approximately 5.1 million (23.7 percent) of the nation's young people, ages 12-17, have used marijuana at some time during their lives. A study by the National Council on Alcohol and Drug Abuse reveals that the average age for a boy to begin experimenting with drugs is 11; the average age for girls is 13.

Not only is substance abuse the major problem presently facing our youth, drugs now are the number one contributing factor to crime. The April 1983 issue of Alcohol and Drug Report cites several studies that demonstrate a "relationship between adolescent alcohol and drug use and juvenile delinquency ranging from 84 to 90 percent." Further research ties drug abuse to growing school dropout rates. The National School Safety Center reports a direct relationship between the numbers of suspended or expelled students and dropouts and the incidence of daytime burglaries.

The Drug-Free Schools and Communities Act was signed into law by President Reagan in October, 1986. The Act has been funded for the 1989 fiscal year as Title V of the Elementary and Secondary Education Act of 1965. Under the guidelines of the federal act, the Virginia Department of Education Youth Risk Prevention Project oversees the funding and development of youth substance abuse prevention programs in the local education agencies. A variety of risk prevention programs have been implemented in the schools, including the Drug Abuse Resistance Education program, known as DARE.

For drug awareness education to be successful, it must be implemented not only in the schools but in the communities. The Governor's Council on Alcohol and Drug Abuse Problems coordinates the Commonwealth's public and private efforts to control alcohol and drug abuse by reviewing proposals and providing grant funds for community drug prevention programs. The Virginia Commonwealth Alliance for Drug Rehabilitation and Education, known as CADRE, was created by the Attorney General after the CADRE program first was announced at the White House Conference on Drugs in 1988. Virginia CADRE provides coordination of state efforts to promote drug-free youth programs. At least 15 states, including Virginia, now utilize the CADRE media campaign to educate the public about drug abuse.

As schools are a reflection of our society, so are the problems of drug abuse and related crime and violence in the schools mirrored in our communities. Youth education and community education are the keys to drug abuse prevention and crime prevention.

CONCLUSION

Virginia already has launched a number of successful efforts aimed at combatting drug abuse, drug trafficking and drug-related crime. Law enforcement, treatment and education programs are in place at the state and local levels in a variety of stages of development. Some jurisdictions have well-funded, highly-coordinated drug law enforcement efforts. Other jurisdictions are struggling to supply the trained manpower needed to deal with the fast-moving, violent drug trade. High-quality drug treatment programs can make a positive impact on drug offenders, but the availability of such programs is limited in some areas of the state. A few counties and cities are blessed with sophisticated drug awareness education programs in the schools and communities that reach children at several grade levels. In sharp contrast are the jurisdictions still attempting to start DARE education programs in fifth grade classrooms.

What is needed most in Virginia is a strategy for comprehensive coordination of the Commonwealth's efforts to win the war on drugs. Drug awareness education programs are enhanced by the participation of law enforcement agencies. Substance abuse treatment providers in the communities can plan more efficiently for the provision of services to drug offenders when there is coordination with the courts and correctional facilities. Effective community education efforts should complement programs offered in the schools. Law enforcement agencies can work with the schools and communities to identify drug problems in their areas and plan successful enforcement strategies.

The primary goals of the Drug Study Task Force are to identify and study ways to improve coordination of Virginia's efforts, and to develop strategies to better enable law enforcement agencies, educators, treatment providers and the criminal justice system to work together efficiently and effectively in combatting drug abuse, drug trafficking and drug-related crime.

VIII. FINDINGS AND RECOMMENDATIONS

This section is divided into findings, recommendations, and activities for each of the three subcommittees. The full task force met on December 19, 1989 and considered each finding, recommendation and activity proposed by the three subcommittees. Presented below are those items from each subcommittee as approved by the full task force. For the purposes of this report, a **finding** is a general, widely-accepted statement of fact. A **recommendation** describes a particular problem or situation and suggests a possible solution or remedy, and an **activity** further explains the specific course of action to be taken.

LAW ENFORCEMENT SUBCOMMITTEE
House Speaker A. L. Philpott, Chairman

Comments from the Subcommittee Chairman

The members of the Law Enforcement subcommittee met four times this year, including a closed meeting with a number of law enforcement officials. I would like to thank my fellow subcommittee members for their hard work. They are:

Col. J. C. Herbert Bryant, Jr.
Sheriff W. M. Faulconer
The Honorable Robert F. Horan, Jr.
Senator Johnny S. Joannou
Mr. H. Lane Kneedler
Delegate Warren G. Stambaugh

Drug trafficking and drug-related crime have become the most difficult problems facing Virginia law enforcement agencies. The drug trade is well equipped with arsenals of sophisticated weapons, communications equipment and vehicles. In addition, drug gangs employ young children as lookouts and mules to protect and serve the trafficking activities of the organization. The drug trade is highly mobile and can become established in neighborhoods practically overnight. Selling drugs is easy, fast work that offers tremendous financial benefits to the dealers. But the cost to Virginia exceeds $4 billion each year, and the price paid in human suffering and lives brought on by the violence inherent in the drug trade is immeasureable.

The law enforcement subcommittee is considering ways to enhance law enforcement and related efforts in order to curb drug trafficking and drug-related crime. Over the course of our meetings and public hearings since August, the members of this subcommittee have heard <u>increasingly</u> that law enforcement needs help to deal with drug crime. Special training, better equipment, more personnel and improved access to investigative information have been suggested to us <u>repeatedly</u> as urgent needs of law enforcement agencies.

The most successful drug law enforcement efforts involve community participation. Successful community involvement programs require dedicated manhours from law enforcement agencies and community leaders, and should be encouraged and supported. In many areas, multijurisdictional efforts that allow adjacent cities and counties to work together to investigate and arrest drug offenders have had a major impact on the drug trade.

Law enforcement officials are emphasizing the need for a coordinated and comprehensive statewide strategy for combatting the drug trade. Police and sheriffs want better access to investigative information and specialized equipment, and improved working relationships among local, state and federal enforcement agencies. Virginia already has some of the toughest drug laws in the country; however, there may be room to improve those laws constructively to support law enforcement. We hope the findings, recommendations and activities proposed by the Law Enforcement subcommittee represent steps towards improved drug law enforcement and prosecution, and better coordinated efforts on a statewide basis.

<u>Findings and Recommendations - Law Enforcement</u>

FINDING I

The continuation and encouragement of multi-jurisdictional cooperation to investigate and arrest suspected drug offenders is an essential step in combatting drug abuse and trafficking and drug-related crime.

RECOMMENDATIONS AND ACTIVITIES

- ***Establishment of Support Committee.*** A state-level support committee

should be established to provide a vehicle for the voluntary exchange of information and to lend technical support to the multi-jurisdictional task forces. The membership should consist of the chairpersons, or their designees, and representatives from each of the multijurisdictional cooperative efforts.

Activity 1: The Bureau of Criminal Investigations of the Virginia State Police should develop a strategy for organizing and facilitating such a support committee. The planning unit should present findings and recommendations on a proposed strategy to the Law Enforcement Subcommittee by May 1, 1990.

- ***Encouragement of Multi-Jurisdictional Cooperation.*** Multi-jurisdictional cooperation should be encouraged where appropriate statewide to enhance investigation and prosecution of drug law violations and drug-related crimes.

  Activity 2: The Commission staff will monitor multi-jurisdictional efforts and work with the Department of Criminal Justice Services (DCJS) and Virginia State Police to continue evaluation of federal funding resources, and present findings and recommendations to the Law Enforcement Subcommittee by June 1, 1990.

- ***Appointment of Multi-Jurisdictional Grand Juries and Special Drug Prosecutors.*** The appointment of multi-jurisdictional grand juries to issue indictments for drug law violations should be encouraged where appropriate. The number of special drug prosecutors should be increased and made available where needed in the Commonwealth.

  Activity 3: The Commission staff and DCJS will monitor and evaluate the availability of federal grant funds, and present findings and recommendations to the Law Enforcement Subcommittee by May 1, 1990.

FINDING II

Adequate training, equipment and manpower for law enforcement are essential to enhance drug intervention efforts.

RECOMMENDATIONS AND ACTIVITIES

- ***Enhanced Training of Law Enforcement Personnel.*** Law enforcement officers and deputies should be provided enhanced training in drug identification and drug law enforcement through basic and in-service and specialized training.

  Activity 4: The Department of Criminal Justice Services (DCJS), with the assistance of the Virginia State Police, should increase the emphasis on drug identification and drug law enforcement in basic, performance-based law enforcement training, specialized training and biennial in-service training.

- ***Undercover Operations Training.*** A state-level law enforcement training program in undercover operations should be developed.

  Activity 5: The Virginia State Police and DCJS, with the assistance of the Virginia Forensics Science Academy, should develop a program model for drug law enforcement training in undercover operations and present findings and recommendations to the Law Enforcement Subcommittee by June 1, 1990.

- ***Resources for Law Enforcement Equipment.*** Additional resources should be made available to localities for law enforcement equipment when appropriate to support drug law enforcement efforts.

  Activity 6: The Commission staff will survey local law enforcement agencies for manpower, funding and equipment resource information to assess needs, and present findings and recommendations to the Law Enforcement Subcommittee by May 1, 1990. Additionally, the survey should seek to identify resources that are available for sharing among localities. The Crime Commission will study the feasibility of publishing a resource-sharing directory for law enforcement officials.

  Activity 7: Recommend a budget amendment to appropriate $440,000 in FY 91 for the Virginia State Police to purchase and maintain eight surveillance vans for use primarily by local law enforcement agencies. The vans would be assigned to Virginia State Police headquarters and to the seven divisional headquarters and loaned to local law enforcement agencies for drug law enforcement on a first-come, first-served basis.

- ***Need for Sufficient Deputies.*** The number of law enforcement sheriff's deputies in localities needs to be sufficient to provide effective drug law enforcement.

  Activity 8: Support the request of the Virginia Compensation Board to the Governor that the formula for determining the number of law enforcement sheriff's deputies be based on a ratio of 1 deputy per 1,500 population.

- ***Training for Subsidized Housing Personnel.*** Managers and directors of public and subsidized housing projects need to be provided with training about the proper response to substance abuse-related problems in housing communities.

  Activity 9: The Crime Prevention Resource Center of DCJS should work with the Virginia Authority of Housing and Community Development Officials to study the development and implementation of training programs for housing project directors and managers, and present findings and recommendations to the Law Enforcement Subcommittee by June 1, 1990.

FINDING III

Access by law enforcement agencies to drug investigation information is essential to effective drug law enforcement efforts.

RECOMMENDATIONS AND ACTIVITIES

- ***Intelligence/Information Sharing.*** Intelligence/information sharing among law enforcement agencies should be enhanced.

  Activity 10: The Virginia State Police, Virginia Association of Chiefs of Police, Virginia State Sheriffs' Association and the Department of Criminal Justice Services, in collaboration, should develop a proposal for enhanced intelligence sharing among state and local law enforcement agencies and present findings and recommendations to the Law Enforcement Subcommittee by June 1, 1990.

- ***Centralized Reporting of Drug-Related Health Data.*** Uniform reporting of drug-related health data to a central data bank should implemented to identify trends in drug abuse and drugs of choice.

  Activity 11: The Commission staff will work with the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services, Virginia Board of Medicine and the Virginia Hospital Association to develop a plan for anonymous statistical reporting of emergency room admissions of drug overdose patients to track trends in drug abuse and identify drugs of choice, and present findings and recommendations to the Law Enforcement Subcommittee by June 1, 1990.

FINDING IV

Certain state laws governing substance abuse, drug trafficking and drug-related crime need to be amended to better facilitate drug law enforcement and prosecution.

RECOMMENDATIONS AND ACTIVITIES

- ***Asset Seizure and Forfeiture.*** The Commission will continue its efforts to ensure that assets seized from drug offenders can be forfeited and directed towards drug law enforcement.

  Activity 12: Recommend that the 1990 session of the General Assembly adopt Senate Joint Resolution 36 (1989), providing that assets seized from convicted drug offenders be earmarked for drug law enforcement efforts. Upon adoption by the 1990 General Assembly, the Commission will help to promote public awareness of the importance of passing a referendum in support of the resolution.

Activity 13: The Commission staff, the Virginia Bankers' Association and the Virginia State Police will study the problem of money laundering and recommend ways for law enforcement agencies to track and investigate suspected profiteering from illegal drug trade, and present findings and recommendations to the Law Enforcement Subcommittee by June 1, 1990.

- ***Federal Kingpin Statute and Virginia Conspiracy Laws.*** The Commission should study the federal drug kingpin statute and assess the adequacy of Virginia conspiracy laws relating to drug offenses.

Activity 14: The Commission staff will study the effectiveness of the federal drug kingpin statute and present findings and recommendations to the Law Enforcement Subcommittee by May 1, 1990.

Activity 15: Introduce legislation in the 1990 General Assembly session to allow defendants in a drug conspiracy to be tried jointly, upon a showing by the Commonwealth that such joinder would not be unfairly prejudicial to the accused parties.

Activity 16: Introduce legislation in the 1990 General Assembly session to amend the Code of Virginia § 18.2-256 to disallow separate juries for defendants indicted and tried together in drug conspiracy cases.

NOTE: There were dissenting positions on Activities 15 and 16. Activities 15 and 16 are addressed in one bill to amend Code of Virginia § 18.2-256.

- ***Commission's Role in Combating Drugs.*** The Commission should propose changes in Virginia law to advance solutions to the drug problem, and should be a clearinghouse for drug trafficking and drug-related crime legislation for the Commonwealth and its agencies.

Activity 17: The Commission staff will study and report to the Law Enforcement Subcommittee by May 1, 1990 on the following issues:

(a) Whether the criminal justice system could reduce crime effectively by identifying and controlling drug-using offenders. Staff should develop a pilot plan which integrates (i) the arrest of drug-using criminals for either drug or street crimes, (ii) the systematic identification of those with serious drug problems, (iii) diversion to alternative compulsory drug treatment with regular urine screening, and (iv) measurement of the effectiveness of the program in reducing crime.

(b) The degree and nature of gang violence in Virginia and approaches and tactics that could be implemented to destroy the capabilities of these criminal organizations.

(c) The capability of the state forensic laboratories to analyze criminal evidence and distribute evidence reports to the criminal justice system in a timely manner.

(d) Whether a judge, clerk or Commonwealth's Attorney should be granted subpoena duces tecum power under the Code of Virginia § 19.2-277 for the purpose of expediting the gathering of physical and documentary evidence in drug investigations, with consideration given to uniform reciprocal agreements with other states.

Activity 18: The Commission recommends that:

(a) Law enforcement agencies, including local law enforcement agencies, develop and adopt strong drug policies that include screening and strict employment standards as an example of responsive leadership for other government agencies and the private sector.

(b) The interagency substance abuse work group and its efforts to periodically update the Interagency Substance Abuse Plan be continued.

(c) The Department of Health Professions and the Virginia State Police study the problem of diverted pharmaceuticals, especially those in Schedule II of the Drug Control Act, and present findings and recommendations to the Law Enforcement subcommittee by June 1, 1990.

Activity 19: In addition to the legislation identified in Activities 7, 15, and 16, the Commission will support or introduce:

(a) Legislation to amend Code of Virginia § 18.2-248 to allow for revocation of a driver's license upon conviction of an offense involving the use of a motor vehicle by the driver for the transportation, distribution or possession with intent to distribute drugs.

NOTE: There were dissenting positions on Activity 19(a).

(b) Section 18.2-255 of the Code establishes a penalty of 10-50 years and up to $50,000 in fines for distributing certain drugs to minors. It is recommended that this section be amended to provide that any person over the age of 18 who uses or involves a minor in the illegal distribution of drugs be subject to the same penalty.

CORRECTIONS/TREATMENT SUBCOMMITTEE
Delegate Robert B. Ball, Sr., Chairman

Comments from the Subcommittee Chairman

The members of the Corrections/Treatment subcommittee met four times this year, including a special visit to Hegira House, a therapeutic community for drug offenders in Roanoke. I would like to thank my fellow members of the subcommittee for their participation and support:

Senator Elmo G. Cross, Jr.
Senator Edward M. Holland
The Honorable Christopher W. Hutton
Delegate Clinton Miller
Rev. George F. Ricketts, Sr.
Delegate Clifton A. Woodrum

Sixty to 80 percent of the inmate population has a history of substance abuse. Statistics show that crack addicts are responsible for most of the drug-related violence in urban areas. Arrests and convictions for drug crimes have increased to record levels, but drug abuse and drug-related crime continue to rise. Law enforcement alone cannot win the drug war. Prevention, intervention and treatment must be used more efficiently to help solve the drug crisis.

Effective and efficient treatment programs are of vital importance in our correctional facilities. Likewise, recidivism rates among substance abusers indicate the critical need for ongoing treatment and close supervision of parolees in aftercare programs.

The Corrections/Treatment Subcommittee began its work by focusing on three major issues. First, we considered the problem of drug abuse and trafficking in correctional facilities. As a result, we are recommending that the Department of Corrections' drug dog detection program be expanded and that the drug testing of criminal justice system employees be studied.

Secondly, we looked at substance abuse education and treatment programs in correctional facilities. Consequently, we are recommending that existing inmate education and treatment programs be assessed, improved and formally instituted in correctional facilities.

Next, we considered community-based prevention and intervention programs for adults and juveniles to reduce drug abuse and drug-related crime. As a result, we are recommending that community-based treatment, education and "aftercare" programs be assessed and expanded. We found that providing treatment at the jail level is important to catch drug users early and turn them around if possible.

We believe proper substance abuse treatment for our criminal population is a key factor in prevention and intervention efforts in Virginia's war against drugs and drug-related crime.

Findings and Recommendations - Corrections/Treatment

FINDING I

The illegal use and distribution of drugs in correctional facilities should be monitored and controlled.

RECOMMENDATIONS AND ACTIVITIES

- ***Expansion of Drug Detection Dog Program.*** The drug dog program should be expanded to enhance drug detection capabilities in correctional facilities.

  Activity 1: Support funding, not to exceed $300,000, to Department of Corrections (DOC) for four full-time dog handlers and four additional drug detection dogs for the 1990-92 biennium. The program should be evaluated to make any necessary modifications or adjustments before the second fiscal year.

  Activity 2: The Virginia State Police and DOC should study the coordination of drug dog training to maximize the utilization of federal grant and state funds and present findings and recommendations to the Corrections/Treatment Subcommittee by June 1, 1990.

- ***Testing of Criminal Justice System Employees.*** Drug testing of criminal justice system employees should be studied for possible implementation.

  Activity 3: The Secretary of Administration should study the feasibility of drug testing of state employees in public safety-related positions and present findings and recommendations to the Corrections/Treatment Subcommittee by June 1, 1990.

- ***Drug Testing of Offenders.*** Procedures and standards for drug screening and testing of offenders should be updated in response to the growing population of substance abusers in the criminal justice system.

  Activity 4: DOC and the Virginia Parole Board should initiate and request funding for (1) random testing of inmates just prior to release on parole, (2) increased drug testing while on parole, and (3) increased placement in treatment programs when appropriate on parole.

- ***Inmate Access to Drugs.*** Additional measures to detect and limit the transfer of drugs between inmates and visitors should be developed and implemented.

  Activity 5: DOC should study alternatives to tighten security concerning visitors and the distribution of pharmaceuticals to inmates and present findings and recommendations to the Corrections/Treatment Subcommittee by June 1, 1990.

- *Drug Treatment in Prisons.* Appropriate treatment and support service space should be provided in prisons.

  Activity 6: Support the recommendation of the Commission on Prison and Jail Overcrowding that treatment and support service space be incorporated into prison space planning and construction.

FINDING II

Substance abuse education and treatment for incarcerated offenders is essential to reduce substance abuse relapse and criminal recidivism.

RECOMMENDATIONS AND ACTIVITIES

- *Institutionalization of Treatment and Education Services.* Drug treatment and education programs should be formally instituted in correctional facilities.

  Activity 7: Support the request of DOC to establish permanent treatment programs in correctional facilities based on existing pilot programs.

- *Inmate Programs to Enhance Employment Opportunities.* Academic and vocational programs to provide self-supporting employment skills should be upgraded and expanded in correctional facilities.

  Activity 8: Support the recommendation of the Commission on Prison and Jail Overcrowding for improvement of academic and skills development programs within correctional facilities.

  Activity 9: The Department of Correctional Education (DOCE) should review the improvement and coordination of academic and vocational training programs for offenders, and work with DOC in classifying offenders for placement in education, treatment and jobs skill training programs. DOCE and DOC should present findings and recommendations to the Corrections/Treatment Subcommittee by June 1, 1990.

- *Assessment of Inmate Education and Treatment Programs.* A longitudinal tracking system should be created to assess the impact of substance abuse education and treatment programs on incarcerated offenders.

  Activity 10: DOC should develop such an evaluation method for continuing and improving its programs, and present findings and recommendations to the Corrections/Treatment Subcommittee by June 1, 1990.

- ***Acquisition of Specialized Correctional Personnel.*** Substance abuse education and treatment specialists should be acquired to provide services in correctional facilities.

  Activity 11: DOC and the Department of Personnel and Training should evaluate and improve minimum qualifications standards for case managers, substance abuse therapists and substance abuse clinical supervisors, and correctional officers.

FINDING III

Community-based prevention, intervention and treatment programs for the criminal justice population are essential to reduce drug abuse and drug-related crime.

RECOMMENDATIONS AND ACTIVITIES

- ***Coordination of Pre-Discharge Planning.*** Pre-discharge planning coordination should be developed between DOC and public, non-profit and private substance abuse treatment providers for "aftercare" services to offenders.

  Activity 12: The Virginia Parole Board, the Parole Release Unit, the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) and the Community Service Boards should develop a pre-discharge planning strategy to establish conditions of parole that reflect the offender's need for treatment services. Findings and recommendations should be presented to the Corrections/Treatment Subcommittee by June 1, 1990.

  Activity 13: Support the DOC Division of Adult Community Corrections in its efforts to develop and administer a comprehensive substance abuse program for probationers and parolees.

- ***Education/Treatment Services for Probationers and Parolees.*** The availability of substance abuse education and treatment services for offenders under probation and parole supervision should be ensured.

  Activity 14: DMHMRSAS and DOC should develop a formula for forecasting specific community-based program needs for the criminal justice population and present findings and recommendations to the Corrections/Treatment Subcommittee by June 1, 1990.

- ***Survey and Evaluation of Community-Based Programs.*** Community-based prevention, intervention and treatment programs for the criminal justice population should be surveyed and evaluated to identify gaps and inadequacies in services.

Activity 15: DMHMRSAS should survey and evaluate program availability and present findings and recommendations to the Corrections/Treatment Subcommittee by June 1, 1990.

- ***Incentives for Hospital Participation in DAWN.*** Financial and other incentives to increase the number of hospitals participating in the Drug Abuse Warning Network (DAWN) should be provided to facilitate treatment planning.

- ***Program for Treatment Facilitation.*** Funding for participation in, or development of a program similar to the federal Drug Use Forecasting System (DUFS) should be considered to facilitate treatment planning.

Activity 16: DOC and the Commission staff will study the DAWN and DUFS reporting systems and present findings and recommendations to the Corrections/Treatment Subcommittee by June 1, 1990.

- ***Incentives to Enter Treatment Field.*** Incentives should be developed to encourage individuals to enter the substance abuse treatment field to increase the number of treatment providers.

Activity 17: The Department of Personnel and Training should study ways to increase the availability of treatment providers and present findings and recommendations to the Corrections/Treatment Subcommittee by June 1, 1990.

- ***Conditions of Release or Parole.*** Parolees should be required to secure employment and suitable housing and participate in substance abuse treatment and education programs when appropriate as conditions of release on parole.

Activity 18: The Commission staff will review the new parole conditions to be released by the Virginia Parole Board in 1990, and present findings and recommendations to the Corrections/Treatment Subcommittee by May 1, 1990.

- ***Staffing of Community Service Boards.*** The Community Service Boards should be staffed sufficiently to enable them to provide alcohol, drug abuse and mental health services in local and regional jails.

Activity 19: DMHMRSAS should prioritize the allocation of any new federal grant funds to provide for substance abuse treatment services to the jails through the Community Services Boards. DMHMRSAS should report on the progress of such efforts to the Corrections/Treatment Subcommittee by June 1, 1990.

FINDING IV

Prevention, intervention and treatment programs for juveniles in the criminal justice system are essential to curb drug abuse, trafficking and drug-related crime among our youth.

RECOMMENDATIONS AND ACTIVITIES

- ***Training for Juvenile Correctional Personnel.*** Training programs should be developed for court service units and learning center employees to assist in substance abuse identification and referral of youth to treatment and education services.

- ***Program Development for Juvenile Offenders.*** DMHMRSAS and the Department of Youth Services should work cooperatively in the development of treatment and education programs for juvenile offenders.

  Activity 20: DYS should report on its study of treatment and education programs in the learning centers to the Corrections/Treatment Subcommittee by June 1, 1990, with recommendations for improvement and enhancement.

- ***Expansion of Community-Based Programs for Juveniles.*** Community-based treatment and education programs for juvenile offenders should be expanded to provide adequate residential and out-patient services.

  Activity 21: DYS and DMHMRSAS should survey available programs for youth and present findings and recommendations to the Corrections/Treatment Subcommittee by June 1, 1990.

- ***Screening, Testing and Assessment of Juveniles.*** A program for uniform drug screening, testing and assessment of juveniles in the criminal justice system should be implemented.

  Activity 22: DYS and DMHMRSAS should develop a plan for implementing a drug screening program in the learning centers and present findings and recommendations to the Corrections/Treatment Subcommittee by June 1, 1990.

FINDING V

A state-level interagency planning process for identifying short- and long-term goals is essential to efficiently and effectively provide substance abuse treatment to the criminal justice population.

RECOMMENDATIONS AND ACTIVITIES

- ***Interagency Substance Abuse Plan.*** The 1989 Interagency Comprehensive Substance Abuse Plan should be supported and endorsed.

  Activity 23: The Commission endorses the Interagency Comprehensive Substance Abuse Plan. Commission staff will monitor the interagency planning effort to ensure that substance abuse services are available to the criminal justice population, and that a long-term process for monitoring and evaluating such programs is instituted.

- ***Inmate Population Demand Survey.*** A demand survey should be conducted of the inmate population in jails, prisons and community programs to determine what is needed to provide adequate treatment and education to substance abusers in the criminal justice system.

  Activity 24: A joint report on program availability in the jails, prisons and the communities shall be compiled by DCJS, DOC and DMHMRSAS and presented to the Corrections/Treatment Subcommittee by June 1, 1990.

- ***Development of Planning Network.*** A planning network should be developed to provide adequate prevention, intervention and treatment programs in the communities to service the criminal justice population.

  Activity 25: The Commission staff will study the working relationship between the court service units, probation and parole, Community Diversion Incentive, Community Service Boards and state mental facilities and present findings and recommendations to the Corrections/Treatment Subcommittee by May 1, 1990.

EDUCATION SUBCOMMITTEE
Senator Howard P. Anderson, Chairman

Comments from the Subcommittee Chairman

The members of the Education subcommittee have met four times over the past year, including a visit to a DARE class in Salem. I would like to thank my fellow subcommittee members for their hard work:

Mr. Robert C. Bobb
Delegate V. Thomas Forehand, Jr.
Senator Elmon T. Gray
Delegate Raymond R. Guest, Jr.
Delegate Thomas M. Jackson
Chief Richard W. Presgrave

The drug trade has become so prevalent in our society that young children who used to sell lemonade at sidewalk stands now serve as lookouts for drug dealers. Children who saw police officers and teachers as role models now look up to big brothers and sisters who buy fancy clothes and cars with drug money. The number of dysfunctional families is increasing in these single parent families, low income families, families in which a parent or a sibling is drug or alcohol dependent. Dysfunctional families lead to dysfunctional children, who in turn become dysfunctional adults. Instead of becoming contributors to society, they become dependent on government and drain the public coffers with their special needs.

Not all of our social problems can be blamed on drugs. However, a significant number of high school dropouts have drug problems or are involved in the drug trade. Look to where the drug trade operates, and you will find violent and fearful neighborhoods. Much of the increasing violence in our schools can be attributed in one way or another to drugs. Public housing projects have become prime operating centers for the drug trade, creating a dangerous atmosphere for the children who live there.

The objective of the Education Subcommittee is crime prevention through drug awareness education. Law enforcement alone cannot win the war on drugs, and corrections and treatment solutions deal with the drug problem after the fact. Our best efforts to curtail the trafficking of drugs may be to make drug use unpopular, and to do this, we must educate the children and the adults of this state. Drug abuse is a law enforcement problem and a health problem, but in many ways it also represents a <u>failure</u> to educate. Many young people have misconceptions about the dangers of drugs, and are unaware of how severely drug abuse can damage their health. Some parents are apathetic and even tolerant of drug abuse, and many do not recognize the symptoms of drug abuse in their children, their spouses or in themselves. To raise a generation free of the debilitating effects of drug abuse, we have to do more than just teach our children to say "no." They need to understand <u>why</u> they're saying "no."

The findings, recommendations and proposed activities of the Education Subcommittee are designed to broaden and enhance Virginia's drug education efforts to reach as many children and adults as possible. Our proactive efforts are best spent in crime prevention and drug awareness. Education is our best plan of attack.

<u>Findings and Recommendations - Education</u>

Substance abuse prevention and education have been and will continue to be one of the Commonwealth's top priorities. Governor Wilder has designated substance abuse as a major priority. The Governor's Council on Alcohol and Drug Abuse Problems is a policy board which advises and makes recommendations to the Governor and coordinates the Commonwealth's public and private efforts to control alcohol and drug abuse. Additionally, the following eight state agencies coordinate substance abuse services at the state level through the Commonwealth Alliance for Drug Rehabilitation and Education ("CADRE"), a

public-private partnership for drug-free youth launched in 1986 by the Attorney General: the Department of Mental Health, Mental Retardation and Substance Abuse Services, the Department of Education, the Department of Social Services, the Virginia State Police, the Department of Alcohol Beverage Control, the Department of Motor Vehicles, the Department of Criminal Justice Services and the Office of the Attorney General. For further reference within this document, these eight agencies will be referred to as the "interested state agencies."

FINDING I

Identification of the existing school and community substance abuse education, prevention and early intervention programs in Virginia is an essential step in furthering the effective development of such programs.

RECOMMENDATIONS AND ACTIVITIES

- *Collection and Compilation of Data and Statistics.* Data should be collected on existing substance abuse education, prevention and early intervention programs in Virginia's schools and communities for the purpose of identifying gaps in services.

  Activity 1: The Department of Education (DOE), the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS), and other interested state agencies and the Commission staff should work on a survey to identify populations served by specific education, prevention and early intervention programs, and to identify populations that presently are not served, with findings and recommendations reported to the Education Subcommittee by May 1, 1990.

- *Strategy Development Process.* Substance abuse education, prevention and early intervention programs in other states should be studied to develop a statewide strategy for Virginia.

  Activity 2: The DOE, in consultation with the DMHMRSAS, and the Departments of Social Services and Health, will collect data on education, prevention and early intervention programs in other states through surveys and information-gathering from the 1989 National Assessment Evaluation and the five regional centers for Drug-Free Schools and Communities to produce a profile of typical programs in other states for comparison with Virginia's programs, and present findings and recommendations to the Education Subcommittee by June 1, 1990.

FINDING II

Evaluation of the effectiveness of substance abuse education, prevention and early intervention programs in Virginia schools and communities is necessary to ensure the provision of efficient and effective programs.

RECOMMENDATIONS AND ACTIVITIES

- ***Development of Comprehensive Programs.*** The development of comprehensive school and community substance abuse education, prevention and early intervention programs should be instituted.

  Activity 3: The DOE and DMHMRSAS should develop the curricula for such programs, and develop standards of quality for their respective programs. Where such standards must be approved by an agency's board, the agencies should submit their proposed program standards to their respective boards for approval by October 1, 1990, to be implemented by June 1, 1991.

  Activity 4: The DOE should develop a cost-effective biennial self-reported adolescent usage survey for grades 6, 8, 10, 12, and present findings and recommendations to the Education Subcommittee by June 1, 1990.

FINDING III

A comprehensive funding strategy is essential to ensure the stability and reliability of substance abuse education, prevention and early intervention programs in Virginia's schools and communities.

RECOMMENDATION AND ACTIVITIES

- ***Preparation of Funding Resources Report.*** A composite report of funding resources for school and community substance abuse education and prevention programs in order to plan for general fund expenditures should be prepared.

  Activity 5: The interested state agencies should prepare and submit a report of existing funding resources to the Education Subcommittee by December 15, 1989.

- ***Classification of Key Professional Positions.*** Key professional positions within the Department of Education should be full-time classified positions to attract and retain qualified personnel in the areas of substance abuse education, prevention and early intervention. Currently, certain key positions are federally-funded temporary positions and part-time wage positions.

  Activity 6: Currently, all 5 positions in the DOE Office of Youth Risk Prevention are federally-funded grant positions, and only one is permanent full-time. The workload has outgrown the existing staffing level, and it is difficult to retain qualified professionals in P-14 positions. Therefore, a budget amendment will be introduced to add 4

FTE positions and $167,657 to provide a supervisor, two professionals and a secretary to institutionalize the efforts of this office. Figures given include a 26% fringe benefit calculation. Additionally, one or more restricted federally-funded positions could be retained to handle the increased workload, but only as needed and subject to surplus funds.

Supervisor	$55,004
Assistant Supervisor	$46,011
Assistant Supervisor	$46,011
Secretary	$20,631

DOE should redirect the salary savings from the current federally-funded grant positions to devote $139,000 to implement **School/Community Team Approach Training Levels I and II** as needed statewide. **School/Community Team Training Level I** would allow the remaining fifty school divisions to be offered training during 1990-91. **Level I** training assists schools and communities to identify needs, develop action plans and implement comprehensive community-wide substance abuse prevention programs. Implementation of **Level II** training would make it possible to teach previously-trained divisions how to replicate innovative programs like the Henrico County "Insight" program and the Staunton City "Pulsar" program. At this time, there are several highly promising innovative programs worthy of replication, but funds have not been available for this level of training. On-going technical assistance and training must be available to all communities as they complete training and implement programs.

FINDING IV

A strategy for coordinating substance abuse education, prevention and early intervention programs in Virginia should be developed and implemented.

RECOMMENDATIONS AND ACTIVITIES

- ***Designation of Lead Agency for Policy Development.*** A lead legislative branch agency should be designated for substance abuse policy development. The lead agency should provide policy direction for developing legislative proposals on substance abuse education, prevention and early intervention programs.

  Activity 7: The Commission will be proactive in its work with the Governor's Council on Alcohol and Drug Abuse Problems to assist agencies responsible for law enforcement, corrections, and education and treatment programs and services in developing legislative proposals.

Activity 8: The interested state agencies should continue their work as a coordinating committee to exchange information and provide technical support in the program planning, implementation and evaluation process, and should present a progress report to the Commission by June 1, 1990.

FINDING V

The implementation of valid substance abuse education, prevention and early intervention programs in Virginia's schools and communities is essential to the successful reduction in the demand for drugs and in curbing drug trafficking, substance abuse and related crime.

RECOMMENDATIONS AND ACTIVITIES

- ***Availability of DARE Program.*** Drug Abuse Resistance Education (DARE) should be available for fifth graders in every public and private school in Virginia.

  Activity 9: The request of the State Compensation Board for the funding of 48 full-time deputy sheriff's positions is supported by the Commission to facilitate coverage of 473 elementary schools in 88 localities across Virginia.

  Activity 10: Commission staff will present findings and recommendations to the Education Subcommittee by May 1, 1990 on staffing requirements for cities and counties with police departments to implement the DARE program in all fifth grade classrooms.

- ***Expansion of DARE Program.*** Additional drug awareness education curricula and programs should be developed and implemented in grades K-12 in public and private schools through the use of visitation by DARE instructors, formal DARE classes, DARE follow-up programs, and other instructional methods for upper grades.

  Activity 11: The Virginia State Police, DOE and DMHMRSAS should study the development of drug awareness education curricula and present findings and recommendations to the Education Subcommittee by June 1, 1990.

- ***Educational Programs to Promote Drug-Resistant Attitude.*** Educational programs to promote self-esteem, crisis management, development of morals and values, and resistance to peer pressure should be mandated to prevent drug abuse among youth.

  Activity 12: The Commission staff will monitor the progress of the HJR 336 study of School Dropouts and Ways to Promote Self Esteem in Youth and Adults and request a report from the staff of the HJR 336 study by June 1, 1990.

- ***Inclusion of Substance Abuse Education in School Curriculum.*** Educational programs to identify substance abuse as a health concern should be developed and integrated in the science, health, social studies, physical education and family life curricula.

  Activity 13: Request that the Secretary of Education direct the DOE to integrate substance abuse education into the basic general curricula. DOE should present a progress report on such efforts to the Education Subcommittee by June 1, 1990.

- ***Programs for High-Risk Youth.*** Educational programs targeted to identify and assist high-risk youth should be developed and implemented to prevent substance abuse and curb drug-related crime.

  Activity 14: The Commission staff will monitor the progress of the Task Force on Emergencies Related to Weapons, Violence and Medical Emergencies on School Property study, which reports to the Joint Legislative Subcommittee Studying Acts of Crime and Violence by Students on School Property, and monitor related state agency efforts, and present a progress report to the Education Subcommittee by April 1, 1990.

- ***Substance Abuse Training for Educators.*** Substance abuse identification and prevention education should be a required component of training for educators of grades K-12.

  Activity 15: Introduce a resolution in the 1990 Session of the General Assembly calling on the Board of Education, in consultation with the State Council of Higher Education, to amend its regulations to require completion of a state-approved substance abuse education program for initial teacher certification.

- ***Aid to Housing Projects and Communities.*** Communities and subsidized housing projects should be provided with funding and technical assistance to implement prevention and intervention programs.

  Activity 16: The DMHMRSAS, and the Departments of Social Services and Housing and Community Development, should prepare a report on the availability of funding for programs in communities and public housing projects and present findings and recommendations to the Education Subcommittee by June 1, 1990.

FINDING VI

The enactment of laws to protect youth from the drug culture and discourage drug abuse is essential to affect behaviors and attitudes about substance abuse.

- ***Expansion of Safe School Zone.*** Virginia laws should provide protection to children and students from exposure to drug abuse, drug trafficking and drug-related crime.

  Activity 17: Propose legislation in the 1990 session of the General Assembly to amend the Code of Virginia § 18.2-255.2 to expand the definition of "safe school zone" in Virginia law to include any areas open to the public within the boundaries of the safe school zone.

  Activity 18: Propose legislation in the 1990 session of the General Assembly to amend the Code of Virginia § 18.2-255.2 to expand the "safe school zone" law in Virginia to include any public or private school facilities used for education, recreation and after-school programs.

  Activities 17 and 18 are addressed in one bill to amend Code of Virginia § 18.2-255.2.

  Activity 19: The Commission staff, the Department of Alcoholic Beverage Control and the Virginia Association of Campus Law Enforcement Executives should evaluate current efforts toward curbing alcohol and drug abuse on college campuses and present findings and recommendations to the Education Subcommittee by June 1, 1990.

- ***State Government Policies Regarding Drug Usage.*** The Commonwealth of Virginia should set an example for private industry in establishing state government policies that discourage drug abuse, drug trafficking and drug-related crime.

  Activity 20: The Governor should ensure that informational programs are developed to educate state employees in recognition and prevention of substance abuse. The objective of such education would be to increase employees' awareness of substance abuse in the workplace and in their homes, and to provide information about drug addiction, treatment and counseling services. A state employee drug education program should serve as a model program to be emulated and implemented by private industries.

- ***Initiation of Statewide Media Campaign.*** The Commission should provide leadership in working with the Governor, the Governor's Council on Alcohol and Drug Abuse Problems, CADRE, the Attorney General, churches, broadcasters and media organizations, and civic organizations in developing a comprehensive plan for initiating a statewide media campaign to focus on changing the attitudes of Virginians toward drug abuse.

Activity 21: The interested state agencies and the staff of the Commission should conduct a feasibility study on development and implementation of a media campaign and report findings and recommendations to the Commission by July 1, 1990. A major component of the study would be to find ways to draw upon businesses, religious and civic organizations and the media to coordinate planning and solicit financial support and commitment through a public/private cooperative effort. The objective of the campaign would be to educate the public on the detrimental health effects of drug abuse, the harshness of federal and state penalties for illegal drug activities and on the positive alternatives to drug abuse.

IX. ACKNOWLEDGEMENTS

The members extend thanks to the following agencies and individuals for their cooperation and valuable assistance to this study effort:

City of Roanoke Sheriff's Office
Sheriff W. A. Hudson

City of Salem Police Department
Chief Harry Haskins
Officer Rosemary McElvein

City of Salem Schools
Wayne Tripp, Superintendent
Diane Washenberger, Principal, G. W. Carver Elementary School

Commonwealth Alliance for Drug Rehabilitation and Education (CADRE)
Office of the Virginia Attorney General
Carole R. Roper, CADRE Program Director

Commonwealth Attorneys Services and Training Council
Walter S. Felton, Jr., Administrative Coordinator

Drug Enforcement Administration (DEA)
John C. Lawn, Administrator
William Alden, Congressional Liaison

Hegira House, Roanoke
Henry Altice, Director

Virginia Department of Planning and Budget
Lin Corbin-Howerton, Staff Director
Commission on Prison and Jail Overcrowding

Senate Finance Committee
Richard E. Hickman, Deputy Staff Director

House Appropriations Committee Staff
James Roberts, Senior Legislative Fiscal Analyst

Loudoun County Sheriff's Office
Sheriff John Isom

Virginia Commonwealth University
Department of Justice and Risk Administration
Dr. David J. Farmer, Chairman
Dr. James L. Hague, Professor
Dr. Richard M. McDonald, Assistant Professor
Dr. Donna B. Towberman, Assistant Professor

Virginia Department of Corrections
Division of Adult Institutions
Edward C. Morris, Deputy Director
R. Forrest Powell, Chief of Operators, Programs
Donald Zimmerman, Inspector General
Wade McGinley, Management Analyst
Paul Henick, Substance Abuse Project Coordinator
H. Scott Richeson, Statewide Program Coordinator
P. Michael Leininger, Legislative Liaison
Division of Adult Community Corrections
Gene M. Johnson, Deputy Director
Walter M. Pulliam, Jr., Manager, Probation and Parole Support Services
Andrew Molloy, Intensive Supervision Officer, Henrico County

Virginia Department of Criminal Justice Services
Division of State and Local Services
James Kouten, Director
Dan Catley, Corrections Specialist
J. Dean Jennings, Law Enforcement Chief
Richard Kern, Systems Analyst
Jay Malcan, Evaluation Specialist
John Warner, Drug Enforcement Coordinator
School-Based Crime/Delinquency Prevention Program
Marianne Paulus, Coordinator
Patrick Harris, Crime Prevention Specialist

Armored Response Group United States (ARGUS)
Col. J. C. Herbert Bryant, Commander
Sgt. Colleen Broderick, Director of Administration

Virginia Department of Education
Division of Health, Physical Education and Driver Education
Youth Risk Prevention Project
Jeanne L. Bentley, Associate Director, Curriculum and Instruction
Marla M. Coleman, Supervisor, Youth Risk Prevention Project
Rayna L. Turner, Staff Assistant, Youth Risk Prevention Project
Pupil Personnel Services
Dr. Patricia White, Director

Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services
Office of Substance Abuse Services
Wayne Thacker, Director
Ken Batten, Substance Abuse Consultant
Mellie Randall, Substance Abuse Consultant
Office of Prevention Promotion and Library Services
Hope Seward, Assistant Director

Virginia Department of Youth Services
Charles Kehoe, Director

Virginia Parent/Teacher Association
Barbara Keller, Juvenile Protection Chairman
Gloria Hall, Substance Abuse Chairman

Virginia State Police
Colonel R. L. Suthard, Superintendent
Lt. Col. W.F. Corvello, Deputy Superintendent
Bureau of Criminal Investigations
R. L. Berryman, Director
B. S. Allsbrook, Assistant Director

Virginia State Sheriffs' Association
John W. Jones, Executive Director

Virginia Association of Chiefs of Police
Col. John Pearson, Executive Director

Virginia State Lodge, Fraternal Order of Police
Robert Walker, Executive Director

Federal Bureau of Investigation
Terry T. O'Conner, Special Agent in Charge, Richmond

X. RESOURCES

Demand Reduction Program for Maricopa County
City of Phoenix Police Department
Phoenix, Arizona

The Miami Coalition for a Drug-Free Community
University of Miami/James L. Knight International Center
Miami, Florida

Narcotics Control Technical Assistance Program
Bureau of Justice Assistance
Washington, D.C.

Institute for Law and Justice, Inc.
Alexandria, Virginia

National Institute of Justice
Office of Justice Programs
U.S. Department of Justice

National Parents Resource Institute for Drug Education, Inc. (PRIDE)
Dr. Thomas J. Gleaton, Executive Director
Atlanta, Georgia

National School Safety Center
Pepperdine University
Malibu, California
Ronald W. Garrison, Field Services Director

Office of Juvenile Justice and Delinquency Prevention
Verne L. Speirs, Administrator
U.S. Department of Justice

Regional Drug Initiative for the State of Oregon
Portland, Oregon
Carol N. Stone, Administrator

The Report to Congress and the White House on the Nature and Effectiveness of Federal, State and Local Drug Prevention/Education Programs
October, 1987

APPENDIX A

SENATE JOINT RESOLUTION NO. 144

Senate Amendments in [ ] - February 6, 1989

Directing the Virginia State Crime Commission to conduct a comprehensive study combatting drug trafficking, abuse and related crime.

Patrons--Gray, Dalton, Benedetti, Anderson and Cross; Delegates: Jones, R. B., Ball, Guest, Philpott, Stambaugh, Woodrum, Clement, Marks, DeBoer, Dicks and Thomas

Referred to the Committee on Rules

WHEREAS, drug trafficking and abuse cause society extensive damage in human suffering and crime, and Virginia suffers an annual economic cost exceeding $4 billion; and

WHEREAS, evidence of a close relationship between drug abuse and crime continues to mount, and drug abuse is one of the best indications of a serious criminal career; and

WHEREAS, a dramatic increase in cocaine and crack use across all age groups has raised great concern, and in 1987 over one-third of all arrests in Virginia were related to substance abuse; and

WHEREAS, the Department of Mental Health, Mental Retardation and Substance Abuse Services, with assistance from the Department of Criminal Justice Services, is publishing the 1989 Interagency Comprehensive Substance Abuse Plan which summarizes both current and projected research, prevention, education, treatment, rehabilitation and law-enforcement activities related to substance abuse, at the request of a joint subcommittee established by Senate Joint Resolution 65 at the 1988 session of the General Assembly; and

WHEREAS, the Department of Criminal Justice Services is developing a strategy for the expenditure of federal funds pursuant to the Anti Drug Abuse Act; and

WHEREAS, the Attorney General has evidenced her concern by chairing the Governor's Council on Alcohol and Drug Abuse Problems and by creating the Commonwealth Alliance for Drug Rehabilitation and Education, and the General Assembly has evidenced its support by creating sixty-five additional positions for drug investigation purposes within the Department of State Police; and

WHEREAS, members of the General Assembly and the Virginia State Crime Commission, as a legislative-based Commission, have heard increasing outcry from citizens and law-enforcement officials across the Commonwealth for a comprehensive state level strategy and plan of attack in terms of enforcement efforts, consumption reduction efforts and rehabilitation efforts; and

WHEREAS, the General Assembly recognizes the need for a comprehensive coordinated strategy and agenda developed in a cooperative effort with the executive and judicial branches of government, to address the drug trafficking and related crime problem; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Virginia State Crime Commission, with the cooperation of the Governor's Council on Alcohol and Drug Abuse Problems and the Office of the Attorney General, is directed to conduct a comprehensive study of combatting drug trafficking, abuse and related crime in Virginia, including needed changes in legislation with a primary focus on enforcement efforts, consumption reduction and correctional/rehabilitative issues. The Commission may employ whatever methods of inquiry it deems necessary, including public hearings across the Commonwealth. The Secretary of Transportation and Public Safety, the Secretary of Human Resources and the Secretary of Education shall each designate one staff person from his secretariat to assist the Commission with staffing the study. All state agencies and institutions shall, if requested, endeavor to assist the Commission in completing this study; and, be it

RESOLVED FURTHER, That the Crime Commission shall designate a select Task Force of [~~twenty-five~~ twenty-one] individuals to assist with the study, and such Task Force shall report directly to the Commission. This Task Force will consist of all thirteen members of

the Crime Commission, and [~~twelve~~ eight] other [members as follows: two members of the House of Delegates appointed by the Speaker, two members of the Senate appointed by the Senate Privileges and Elections Committee and four] individuals from criminal justice fields, business or community leaders or other individuals as the Commission may so select.

The Commission shall make an interim report by December 1, 1989, and its final report and recommendations by December 1, 1990.

Official Use By Clerks	
Agreed to By The Senate	Agreed to By The House of Delegates
without amendment ☐	without amendment ☐
with amendment ☐	with amendment ☐
substitute ☐	substitute ☐
substitute w/amdt ☐	substitute w/amdt ☐
Date: _____	Date: _____
_____	_____
Clerk of the Senate	Clerk of the House of Delegates

APPENDIX B

VIRGINIA STATE CRIME COMMISSION

DRUG TRAFFICKING STUDY - SJR 144

1990 - TASK FORCE MEETINGS

- Proposed Schedule of Meetings and Work Plan -

LWNF = Law Enforcement
EDUC = Education and Prevention
CORR = Corrections and Treatment

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APRIL MEETINGS - TO BE ANNOUNCED

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NO MAY MEETINGS

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Date	Time	Subcommittee
Work Session: Receive and Discuss Staff Studies		
• Tuesday, June 19	10:00 - 4:30 p.m.	LWNF Subcommittee
• Wednesday, June 20	10:00 - 4:30 p.m.	EDUC Subcommittee
• Thursday, June 21	10:00 - 4:30 p.m.	CORR Subcommittee

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Work Session: Receive and Discuss Staff Studies		
• Tuesday, July 17	10:00 - 4:30 p.m.	LWNF Subcommittee
• Wednesday, July 18	10:00 - 4:30 p.m.	EDUC Subcommittee
• Thursday, July 19	10:00 - 4:30 p.m.	CORR Subcommittee

DRUG TRAFFICKING STUDY - SJR 144
1990 MEETINGS

Date	Time	Subcommittee
(A.M.) Work Session: Receive and Discuss Staff Studies (P.M.) Discuss and Agree to Final Subcommittee Recommendations		
• Tuesday, Aug. 21	10:00 a.m. - 4:30 p.m.	LWNF Subcommittee
• Wednesday, Aug. 22	10:00 a.m. - 4:30 p.m.	EDUC Subcommittee
• Wednesday, Aug. 22	10:00 p.m. - 4:30 p.m.	CORR Subcommittee
Receive Recommendations from the Subcommittees: Agree to Preliminary Study Recommendations		
• Tuesday, Sept. 18	10:00 a.m. - 4:30 p.m.	Full Task Force
Receive Public and Agency Reaction to Proposed Preliminary Study Recommendations		
• Tuesday, October 16	2:00 p.m. - 4:00 p.m.	Full Task Force
Discuss and Agree to Final Study Recommendations:		
• Tuesday, Nov. 13	10:00 a.m. - 4:30 p.m.	Full Task Force
Concluding Meeting to Approve Final Study Report		
• Tuesday, Dec. 18	1:00 p.m. - 2:00 p.m.	Full Task Force

1988

Annual Report of the Virginia State Crime Commission

General Assembly Building
910 Capitol Street
Richmond, Va. 23219

April 18, 1989

COMMONWEALTH of VIRGINIA

VIRGINIA STATE CRIME COMMISSION

General Assembly Building
910 Capitol Street

POST OFFICE BOX 3-AG
RICHMOND, VIRGINIA 23208

IN RESPONSE TO
THIS LETTER TELEPHONE
(804) 225-4534

ROBERT E. COLVIN
EXECUTIVE DIRECTOR

April 18, 1989

TO: The Honorable Gerald L. Baliles, Governor of Virginia,
and Members of the General Assembly:

Pursuant to the provisions of the Code of Virginia (Title 9, Chapter 20, §§9-125 through 9-138) creating the Virginia State Crime Commission and setting forth its purpose, I have the honor of submitting herewith the Annual Report for the calendar year ending December 31, 1988, as mandated by §9-132 of the Code.

Respectfully submitted,

Elmon T. Gray
Chairman

ETG:sc

MEMBERS OF THE COMMISSION

Elmon T. Gray, Chairman

Robert B. Ball, Sr., Vice Chairman

Howard P. Anderson

Robert C. Bobb

Elmo G. Cross, Jr.

V. Thomas Forehand, Jr.

Raymond R. Guest, Jr.

Robert F. Horan, Jr.

H. Lane Kneedler

A. L. Philpott

George F. Ricketts, Sr.

Warren G. Stambaugh

Clifton A. Woodrum

Robert E. Colvin, Executive Director

TABLE OF CONTENTS

I. INTRODUCTION

The 1988 Report

The 1988 Report of the Virginia State Crime Commission to the Governor and the General Assembly will briefly discuss the mandate, purpose, membership, recommendations, issues, activities and accomplishments of the Commission. The legislative recommendations backed by the Commission were thought to be those which merited consideration by the 1989 General Assembly for the advancement of the criminal justice effort in the Commonwealth.

Overview of the Crime Commission

To strengthen Virginia's criminal justice system, the General Assembly created the legislatively based Virginia State Crime Commission. The primary purpose and legislative mandate of the Commission is to study, report, and make recommendations to the Governor and the General Assembly on all areas of public safety and protection. The Commission develops legislation and assists in coordinating proposals of various agencies and organizations as to legislation affecting crime, crime prevention and control, and criminal procedures.

In meeting its responsibility, the Crime Commission acts as a sounding board for agencies, organizations, and individuals in the Commonwealth to report legislative concerns regarding criminal justice to the General Assembly and serves as a locus for analyzing and dealing with the multitude of difficult and diverse issues in our criminal justice system. The Commission also regularly develops and evaluates law and administrative procedures which affect judges, prosecutors, law enforcement officials, jails and prisons, forensic laboratories, community diversion programs, crime prevention programs, probation and parole, criminal procedure and evidence, victims and witnesses of crime, and private security.

In the course of its functions, the Commission works closely with the Governor's office, the General Assembly, and the Attorney General. The Commission takes pride in the excellent working relationship it has with these various entities and individuals and appreciates their continued support.

II. MEMBERSHIP

The Commission is composed of thirteen members: six Delegates are appointed by the Speaker of the House of Delegates; three Senators are appointed by the Senate Privileges and Elections Committee; three citizen members are appointed by the Governor from the state at large; and the Attorney General of Virginia serves as an ex officio member with full voting privileges. The term of each appointee is for four years, with the exception of the Attorney General, whose membership on the Commission is concurrent with his/her term as Attorney General of Virginia. The Commission elects its own chairman and vice-chairman, and is authorized to appoint and employ an executive director, counsel, and such other persons as it may deem necessary.

In 1988, Senator Elmon T. Gray of Sussex served as Chairman. Delegate Robert B. Ball, Sr., of Henrico served as Vice-Chairman.

Other members of the General Assembly who served on the Commission in 1988 were Senator Howard P. Anderson of Halifax, Senator Elmo G. Cross, Jr. of Hanover, Delegate V. Thomas Forehand, Sr., of Chesapeake, Delegate Raymond R. Guest, Jr., of Front Royal, Speaker of the House of Delegates A. L. Philpott of Bassett, Delegate Warren G. Stambaugh of Arlington, and Delegate Clifton A. Woodrum of Roanoke.

The Honorable Mary Sue Terry, Attorney General of Virginia, was represented on the Commission by Chief Deputy Attorney General H. Lane Kneedler.

Serving as gubernatorial appointees to the Commission in 1988 were Mr. Robert C. Bobb of Richmond, the Honorable Robert F. Horan of Fairfax, and the Reverend George F. Ricketts, Jr., of Richmond.

Staff and Offices:

During 1988 the Commission employed two full-time staff. The Executive Director of the Commission is Mr. Robert E. Colvin, and Ms. Tammy E. Sasser held the position of executive administrative assistant. Mr. D. Robie Ingram, Esquire, is employed by the Commission on a part-time basis as staff attorney.

In March of 1989, Ms. Sasser left the Commission. The entire Commission extends to her a sincere appreciation for her fine work since joining the Commission in 1987. Ms. Sylvia A. Coggins of Midlothian, Virginia, joined the Commission March 1, 1989, and will assume the responsibilities of administrative assistant. We welcome her and look forward to her service with the Commission.

The offices of the Commission are located on the ninth floor of the General Assembly Building, 910 Capitol Street, Richmond, Virginia. The office is open during regular business hours and additional hours as needed during sessions of the General Assembly. The telephone number is 804-225-4534. The Chairman, members, and staff cordially invite parties with criminal justice concerns or inquiries to contact the Commission.

III. OVERVIEW OF 1988 ACTIVITIES

The Commission began its activities in January of 1988 by sponsoring twenty-one bills in the 1988 General Assembly. Eleven of these bills resulted from the formal research projects undertaken by the Commission during 1987. The remaining ten bills resulted from our annual legislative hearing. All but one of the twenty-one bills became law. Additionally, the Commission endorsed or recommended several successful budget amendments which provided increased funding for the State Law Enforcement Officers Education Program (SLEOEP) and the DNA genetic testing program in the State Forensic Laboratories.

The 1988 General Assembly, before adjournment in mid-March, passed eight joint resolutions directing the Crime Commission to study certain topics and issues in criminal justice and report its recommendations to the 1989 General Assembly. The Commission conducted a study of court appearance waiver pursuant to Senate Joint Resolution 56, a study of part-time and auxiliary police as directed by House Joint Resolution 19, and considered issues relating to private security officers pursuant to House Joint Resolution 168. House Joint Resolution 40 created the Commission's major study, asset seizure and forfeiture, while House Joint Resolution 60 established a study on drug testing of arrestees. House Joint Resolution 64 directed the Commission to study building code security standards. Finally, House Joint Resolutions 48 and 184 authorized the Crime Commission's 1988 study of victims and witnesses of crime. The recommendations from each of these formal studies were reported in December of 1988 to the Governor and General Assembly. As a result of the studies, twelve bills were recommended to the 1989 Session of the General Assembly. These bills are listed and explained in Sections IV and V of this report.

Prior to each session of the General Assembly, the Crime Commission also develops a package of non-study related legislative initiatives. These bills are derived from proposals and concerns voiced by citizens, citizens groups, and criminal justice agencies and organizations. The Commission annually schedules a public hearing for interested persons from all parts of the state to bring forward suggestions for legislation to strengthen Virginia's criminal justice system. In this manner pressing issues needing administrative or legislative action are brought before the Commission. The 1988 public hearing was held on December 20 in the General Assembly Building in Richmond, Virginia. It was well attended and a substantial amount of material was presented for the Commission's consideration.

As a result of the information received from the public, the Commission endorsed or recommended a package of nine bills and resolutions to the 1989 General Assembly. A brief description of the proposed bills is presented in Section IV. As mentioned, the Commission also recommended twelve other bills which were developed from the studies conducted during 1988. At the writing of this report, all but two of the twenty-one legislative proposals recommended by the Commission were passed in the 1989 General Assembly. The Commission also successfully sponsored several budget amendments which are explained in Section IV of this report.

In further fulfilling its role the Commission considers continued contact with criminal justice participants as vital. Therefore, in addition to the important communications with such individuals by mail, telephone, or appearances before the Commission, the Commission, through staff and/or members, advocates on-site visits. During 1988, Commission representatives visited a number of correctional centers, jails, police and sheriff's departments, court houses and various support agencies across the state. This practice facilitates open discussions with practitioners, administrators, and many others at various levels of execution throughout the system. Also, visiting correctional facilities provides the opportunity to gain insight from the inmate's perspective.

During the 1988 and 1989 Sessions of the General Assembly, Commission staff and members testified on Commission-backed measures and also reviewed, evaluated and tracked a number of other criminal justice-related bills. In addition, the Commission responded to numerous requests from members of the General Assembly on various issues during session and to inquiries from interested citizens and criminal justice professionals. The Commission monitored and assisted with those legislative resolutions which directed the agency to conduct studies.

The remainder of 1988 also proved to be extremely busy for the Commission. In order to meet its responsibilities, the Commission uses a system of subcommittees. At the April meeting of the Commission, the Chairman, Senator Gray, established nine subcommittees for 1988. A subcommittee was appointed to handle each of the seven formal studies. A subcommittee on corrections and rehabilitation was created to work on detailed matters involving the state's system of corrections. Rev. George F. Ricketts, Sr. was appointed as the subcommittee chairman. The legislative subcommittee, chaired by Senator Howard P. Anderson, continued to analyze the technical and legal issues involved in proposals presented to the Commission. From these proposals, the subcommittee formulates viable, legally sufficient, and consistent legislative recommendations. Finally, an executive subcommittee was established to work with the Executive Director in the numerous administrative matters affecting the Commission. The membership of each subcommittee is listed in the respective sections of this report.

The full Commission met six times, on January 19, April 19, June 21, August 16, October 18 and December 20, 1988. The subcommittees met twenty-four times throughout the year. Eight public hearings were held during 1988, with numerous individuals addressing the Commission. A total of thirty meetings were held in 1988. In addition to those who appeared at these meetings, many other individuals aided the Commission in its inquiries and research. The Chairman and members of the Commission extend their appreciation to all of these individuals for their invaluable assistance to the Commission during 1988.

IV. RECOMMENDATIONS

Introduction

During the year and prior to each session of the General Assembly, the Crime Commission develops a package of legislative and administrative proposals. These bills and recommendations derive from the Commission's formal studies (see Section V of this report) and from proposals and concerns voiced by citizens, citizens groups and criminal justice agencies and organizations. In the course of monitoring the criminal justice system, the Crime Commission also introduces legislation as a result of its own inquiries.

The Commission introduced, in the 1989 General Assembly, sixteen bills, three joint resolutions, six budget amendments and endorsed two other bills. All but two of the bills were passed by the General Assembly. HB 1324, which related to blood extraction fees in DUI cases, and HB 1430, which related to training requirements for volunteer police officers, were stricken by the chief patrons because parallel bills accomplished the same effect and were passed.

A. Legislative Proposals From Formal 1988 Studies

This subsection presents a summary of the legislation resulting from the formal studies conducted by the Crime Commission during 1988.

Senate Joint Resolution 36 - Chief Patron: Senator Joseph V. Gartlan, Jr.

The Crime Commission endorsed the Attorney General's proposal introduced by Senator Gartlan (Senate Joint Resolution 36) to amend Article VIII, Section 8, of the Virginia Constitution to allow the return of drug crime-related forfeited assets to the state treasury. Currently, all such forfeited assets go to the state Literary Fund. The Crime Commission additionally proposed adding the language "and shall be distributed by law for the purposes of promoting law enforcement." This proposal requires all drug crime-related forfeited assets to benefit law enforcement efforts. To become law this bill must be reenacted by the 1990 General Assembly and passed by referendum.

This recommendation resulted from the Crime Commission's 1988 study on asset seizure and forfeiture.

House Bill 1318 - Chief Patron: Delegate Clifton A. Woodrum

This bill amends §19.2-123 of the Code of Virginia to enable any jurisdiction served by a pretrial services agency to conduct a voluntary drug testing program in agreement with the chief judge of the general district court. The amendment requires that the test results only be used to assist the judicial officer in setting the conditions of release. The amendment also allows the judicial officer to require an arrestee who tested positive on the initial test, and was subsequently released, to refrain from illegal drug use and submit to periodic tests until final disposition of his trial. If the accused or juvenile tests positive for illegal drugs and is admitted to bail, the judicial officer may then order that he be tested on a periodic basis until final disposition of his trial. The statute also allows the judicial officer to impose more stringent conditions of release, contempt of court, or revocation of release for any accused whose subsequent tests are positive.

House Bill 1345 - Chief Patron: Delegate Wm. Roscoe Reynolds

This bill amends §18.2-249 of the Code of Virginia to add language which makes it clear that among those things subject to seizure/forfeiture are "any interest or profits derived from the investment of money or other property" traceable to an exchange of such money or other property for controlled substances. This would make explicit something deemed implicit in current law.

The remainder of the bill adds Chapter 22.1 in Title 19.2 (§19.2-386.1 et seq.), which encompasses and includes existing language appearing in §18.2-249, §4-56, and §18.2-369 et seq., which are the drug forfeiture statute, the illegal liquor/bootlegging statute, and the general forfeiture statute, respectively. The bill also includes new language which explicitly sets out procedures and policy implicit in the language of existing law; it comprises a comprehensive drug forfeiture statute which is specific to and for drug asset seizure, the purpose of which is to clarify, simplify, and "clean up" existing law. While §18.2-249 specifically allows for return of assets to the Literary Fund, new Chapter 22.1 provides for disposal of the assets in accordance with the law of the Commonwealth. This accommodates current practice (Literary Fund enhancement) and future law, if enacted.

The major changes are as follows:

(a) Addition of a three-year statute of limitations - §19.2-386.1(c).
(b) Extended to ninety days the period during which to file complaint, after seizure - §19.2-386.1(c).
(c) Notice of seizure to owner - §19.2-386.3.
(d) Procedure for handling of seized property pending final disposition - §19.2-386.4.
(e) Exemptions for innocent owners and lienholders clearly established - §19.2-396.8.
(f) Burden of proof (by a preponderance of the evidence) clearly established - §19.2-386.10.

This bill resulted from the Crime Commission's 1988 study of drug asset seizure and forfeiture.

House Bill 1346 - Chief Patron: Delegate Wm. Roscoe Reynolds

House Bill 1346 amends the Code of Virginia by adding §58.1-3127.1 to accommodate the current practice of federal asset sharing. Existing law (specifically §58.1-3127) does not make it clear that forfeiture proceeds shared with local governments and received from the federal government are to be subject to the same accounting and audit procedures as all other funds. While virtually all localities contacted by the Commission follow this desired practice, the amendment will clarify what is implied in current law and will provide safeguards for all law enforcement authorities involved. The new language prohibits a local law enforcement agency from taking exclusive control of such federally returned monies without proper channeling through the local treasury, and subject to appropriation by the board of supervisors or city council.

This bill resulted from the Crime Commission's 1988 study of drug asset seizure and forfeiture.

House Bill 1347 - Chief Patron: Delegate Wm. Roscoe Reynolds

Section 52-4.3 of the Code establishes a non-reverting fund within the Department of the Treasury known as the Drug Investigation Special Trust Account, which consists of appropriated funds and all interest, dividends and appreciation. During the Crime Commission's 1988 study of asset seizure and forfeiture, some question arose as to the intended definition of "appreciation" as used in the current law. House Bill 1347 amends §52-4.3 to clearly establish that appreciation includes "payments to the fund from the federal government by virtue of a grant, gift, forfeiture or other disposition." This amendment accommodates the Federal Equity Sharing Program for disposal of assets seized from drug dealers, when the state police have participated in the investigation.

House Bill 1371 - Chief Patron: Delegate Warren G. Stambaugh

This bill amends §53.1-160 to require that the Department of Corrections, on written request of any victim of the offense for which the prisoner was incarcerated, notify the victim of the offender's release.

Currently, the prerelease unit already notifies by first-class mail the court committing the offender, the sheriff, chief of police, and the attorney for the Commonwealth in localities where the offense occurred, where the offender resided prior to conviction (if different) and where the offender intends to reside (if different), of the pending release of the inmate from incarceration. However, no one necessarily notifies the victim. This is especially difficult for victims of personal offenses as they often fear meeting the offender on the street.

This bill requires that a notice also be sent to the last known address of any victim of the offense for which the prisoner was incarcerated, if the victim has requested this notice in writing to the Virginia Parole Board.

This bill resulted from the Crime Commission's 1988 study on victims and witnesses of crime.

House Bill 1372 - Chief Patron: Delegate Warren G. Stambaugh

This bill amends §19.2-299 to require probation officers to notify victims of personal offenses, in writing, during the presentence investigation process of their opportunity to make parole input statements and to receive notification of hearing dates and release dates.

The Parole Board currently has a very effective system in place that permits victims to make a parole input statement and to request notification when an inmate is being considered for parole. However, there is no provision to inform victims of their opportunity to make this statement. In some localities victim-witness programs notify victims, but only thirty-four localities in the state have such programs.

The recommended legislation requires probation and parole officers, as part of the presentence investigation, to notify in writing victims of crimes against the person of their right to submit information to the Parole Board and to receive certain notifications from the Board.

The Commission has recommended that the Department of Criminal Justice Services and the Parole Board develop a brochure which provides this and other relevant information. It was the intent of the Commission that probation and parole staff provide these brochures to victims of personal offenses during the course of presentence investigations.

If incarceration was not subsequently ordered, the brochure would still benefit the victim because of other relevant information it could contain. The phone number of the local Commonwealth's attorney, police agency, victim assistance program, and probation and parole office could be included. Information on the crime victims compensation program and other details on the criminal justice system should also be presented.

One point the Commission weighed carefully was the workload already placed upon probation and parole staff, and the importance of their work. It was not the intent of the Commission that probation/parole staff divert substantial time to searching for victims, but that a brochure be provided, by mail or in person, to the victim of record in those personal offense cases where a presentence investigation was ordered by the court. In fact, it is hoped that having this pre-printed document available will (1) improve the system's attentiveness to the informational needs of victims and (2) streamline the provision of this service to victims by probation/parole staff.

This bill resulted from the 1988 Crime Commission study of victims and witnesses of crime.

House Bill 1373 - Chief Patron: Delegate Warren G. Stambaugh

Victims and witnesses often fear reprisals and therefore are reluctant to divulge their addresses and phone numbers. They are routinely asked to state their names and addresses in open court.

This bill amends §19.2-269.2 to provide that a judge may, on motion of the defendant or the Commonwealth's attorney, prohibit disclosure of the current address or telephone number of a victim or witness, if such information is determined to be immaterial.

This bill resulted from the Crime Commission's 1988 study of victims and witnesses of crime.

House Bill 1374 - Chief Patron: Delegate Warren G. Stambaugh

This bill amends §19.2-299.1 to make victim impact statements (VIS) in certain personal offenses mandatory upon request of the attorney for the Commonwealth and with consent of the victim. Victim impact statements remain discretionary in all other cases, except capital murder.

This bill also defines victim as an individual who has suffered harm as a direct result of the felony; or a spouse, child, parent or legal guardian of a minor victim; or a spouse, child, parent or legal guardian of a victim of a homicide in non-capital cases.

Based on 1987 statistics, there were 2,752 presentence investigations completed on personal offenses; 625 of these (22.6 percent) included victim impact statements. Excluding murder cases, there were 2,442 presentence investigations in personal offenses with 24 percent of them including a victim impact statement. A victim impact statement (VIS) is currently prepared in about 10 percent of murder cases.

Assuming that a victim impact statement is prepared for every single case (excluding murder), approximately 1,850 additional victim impact statements would have to be completed annually under this legislation.

The proposal resulted from the 1988 Crime Commission study on victims and witnesses of crime.

House Joint Resolution 282 - Chief Patron: Delegate Warren G. Stambaugh

Currently, no law requires separate waiting areas for victims and for prosecution and defense witnesses. In considering this issue during 1988, the Crime Commission felt that perhaps stronger legislation should be enacted, but other considerations should be weighed before the law was changed. Of primary concern was that the legislature, in requiring localities to furnish separate witness rooms, would be imposing a difficult, and in some cases, a nearly impossible financial burden on localities whose budgets are already stretched to provide minimum, necessary services. It was also pointed out that the judiciary committees governing courtroom standards already support separate waiting areas and try to provide for them, that local governments try to conform to the recommendation, and that requiring separate waiting areas in the courthouse itself might be unnecessary, inefficient, and costly when victims and witnesses may already wait in prosecutors' or victim-witness assistance workers' offices.

Therefore, the Commission recommended House Joint Resolution 282 to emphasize the importance of separate witness rooms in creating a less threatening, more comfortable environment for victims and their families and witnesses, and to remind local governing bodies "to make all reasonable efforts to furnish a separate waiting area for victims of crime and their families and witnesses." The resolution also recommends that all courthouses planned and built after July 1, 1989, and all substantial renovations of courthouses after that date, should provide for separate witness rooms.

House Bill 1430 - Chief Patron: Delegate Raymond R. Guest, Jr.

Currently, there are two conflicting provisions in the Code of Virginia regulating auxiliary police. Under §15.1-159.2A of the Code of Virginia, auxiliaries have all the powers of constables at common law and are not required to undergo formal training; however, under §15.1-159.2B, auxiliaries have the powers of full-time law enforcement officers if they have satisfied the state mandated training requirements. Arguably there is no discernible distinction between a constable at common law for whom training is not required and a full-time officer for whom full training is required.

The bill would have amended §15.1-159.2 to authorize the law enforcement agency in each jurisdiction to establish the training standards for its auxiliary (volunteer) program, except that all volunteer-auxiliary police officers who carry a firearm must meet the Criminal Justice Services Board's basic and in-service firearms training requirements. House Bill 1431 defines compensated officers as part-time employees rather than auxiliary officers and was amended by the General Assembly to also include language ensuring that all auxiliary law enforcement officers undergo firearms training if they carry a firearm. Therefore, HB 1430 was stricken because its effect is accomplished in HB 1431.

This bill resulted from the Crime Commission's 1988 study of auxiliary and part-time police.

House Bill 1431 - Chief Patron: Delegate Raymond R. Guest, Jr.

There is currently no provision in the Code which establishes minimum training standard for all part-time law enforcement officers in the Commonwealth, be they deputy sheriffs or police officers.

The Code of Virginia authorizes the Criminal Justice Services Board to establish training standards for law enforcement officers. However, the authority is qualified by §9-169, which now defines a law enforcement officer as a full-time employee. Therefore, the Department of Criminal Justice Services cannot rely on its authority under §9-170 to set training standards for part-time deputy sheriffs or other law enforcement officers.

The proposed amendment to §9-169 creates a definition of part-time employees as compensated officers who are not full-time employees as defined by the employing police department or sheriff's office. The amendment to §9-180 requires every part-time law enforcement officer employed after July 1, 1989, to comply with the compulsory minimum training standards established by the Criminal Justice Services Board. Thus, the legislative proposals enable the Criminal Justice Services Board to establish training standards for part-time officers, as they now do for full-time officers; and the Crime Commission's recommendation is for part-time officers to be trained to the same degree as full-time officers. The Commission notified the Department of Criminal Justice Services of its recommendations, contingent upon passage of the bill.

Finally, the Commission learned of circumstances where deputy sheriffs are employed for only several weekends each year to assist with special local events. To avoid requiring extensive training for such persons, the amendment to §9-180 specifically exempts from all state mandated training part-time officers who work fewer than eighty compensated hours annually, except that those who carry a firearm in the performance of duty will be required to complete basic and in-service firearms training requirements as established by the Criminal Justice Services Board. The bill was amended to also include auxiliary officers under the firearms training requirements.

This bill resulted from the Crime Commission's 1988 study on auxiliary and part-time police.

B. Other Legislative Proposals

The Crime Commission annually schedules a public hearing for interested persons from all parts of the Commonwealth to bring forward suggestions for legislative initiatives to enhance, improve or remedy some situation in Virginia's criminal justice system. In addition, the Commission recommends legislation resulting from its routine inquiries. The legislative subcommittee carefully analyzed the issues before the Commission and developed a set of legislative recommendations. The legislative subcommittee was chaired by Senator Howard P. Anderson. Also serving were Senator Elmo G. Cross, Jr., Delegate V. Thomas Forehand, Jr., Speaker A. L. Philpott, Delegate Warren G. Stambaugh, Delegate Clifton A. Woodrum, Mr. Robert F. Horan, Jr., and Mr. H. Lane Kneedler. On January 17, 1989, the full Crime Commission adopted the recommendations of the legislative subcommittee and agreed to sponsor the proposals described below:

Senate Bill 588 - Chief Patron: Senator Elmo G. Cross, Jr.

Section 46.1-49 of the Code requires vehicles owned by the Commonwealth and its political subdivisions to display license plates stamped with the words "public use." One exception is for vehicles used solely for police work when such use is certified under oath to DMV by the chief of police of a city or county with a police department, or by the sheriff of a county without a police department. This current wording excludes sheriffs of cities and sheriffs of counties with police departments from making the certification to obtain confidential license plates for their police vehicles. Senate Bill 588 amends §46.1-49 to provide that the police chief of any city or county, or the sheriff of any city or county, may certify under oath as to the sole police use of a vehicle to obtain a confidential registration.

This bill was recommended by the Crime Commission at the suggestion of the Virginia State Sheriff's Association.

House Bill 1319 - Chief Patron: Delegate Clifton A. Woodrum

Currently, §19.2-223 provides that a person may be prosecuted in the same indictment for committing, over a six-month period, any number of distinct acts involving embezzling or fraudulently converting to his own use bullion, money, bank notes or other security for money. However, a person may take items of merchandise from an employer, for example, over a period of time, yet could not currently be charged under this section of the Code. To close this loophole, House Bill 1319 simply adds "or items of personal property subject to larceny" to the items covered under §19.1-223. This amendment allows the Commonwealth to charge a succession of such acts totalling over $200 in value as one felony instead of a string of misdemeanors.

This bill was recommended by the Crime Commission at the suggestion of the Honorable Tim McAfee, Commonwealth's Attorney of Wise County.

House Bill 1324 - Chief Patron: Delegate Clifton A Woodrum

Currently, medical professionals who draw blood for analysis for driving under the influence cases receive a fee of $10, which has remained unchanged for a number of years. This bill amends §18.2-268N to increase the amount to $25. The fee is paid out of the appropriation for criminal charges. A parallel bill was introduced and passed by the General Assembly; therefore, this bill was stricken.

House Bill 1324 was recommended by the Crime Commission at the suggestion of the Virginia State Sheriff's Association.

Senate Bill 587 - Chief Patron: Senator Elmo G. Cross, Jr.

§19.2-187.01 of the Code establishes that the report of analysis from the Division of Consolidated Laboratory Services (Bureau of Forensic Science) when duly attested by the examiner, shall be prima facie evidence as to the custody of the evidentiary material described from the time of receipt by an authorized agent of the laboratory until such material is released. Recently, the definition of authorized agent was questioned during a court case. In order to clarify this matter, Senate Bill 587 amends §19.2-187.01 to establish that "the signature of the person who received the material for the Division on the Request for Laboratory Examination Form shall be deemed proper receipt by the Division for the purposes of this section." This bill should prevent unnecessary subpoenas for testimony by laboratory personnel to prove he or she is the authorized agent.

This bill was recommended by the Crime Commission at the suggestion of the Bureau of Forensic Science.

Senate Joint Resolution 144 - Chief Patron: Senator Elmon T. Gray

Senate Joint Resolution 144, patroned by Senator Elmon T. Gray, Chairman of the Crime Commission, directs the Crime Commission to undertake a major two-year study of drug trafficking, abuse and related crime. The Commission will seek to develop a comprehensive strategy and plan of attack at the state level to more effectively combat the drug problem in Virginia. Commission efforts will be coordinated with those of state, local and federal authorities and agencies. The Crime Commission will focus on enforcement, consumption reduction and correctional-rehabilitative issues.

Senator Howard P. Anderson and Delegate Robert B. Ball, Sr., both Crime Commission members, introduced amendments to the budget bill in their respective houses to provide $22,825 in FY89-90 in general funds to enable the Crime Commission to undertake this major initiative. An additional $20,000 in general funds was also provided to assist the Commission with its other responsibilities. Additionally, a federal grant of $75,000 for FY89-90 and a like amount the second year is anticipated. Thus, a total amount of $97,825 for the first year is required to initiate this study. The total study budget for the second year (FY90-91) is projected to be $113,705, which includes a second $75,000 federal grant.

House Bill 1428 - Chief Patron: Delegate Raymond R. Guest, Jr.

This bill amends §22.1-343, which establishes the powers and duties of the Board of Correctional Education. Currently the Department of Correctional Education (DCE) has the authority to assist jails in establishing new educational programs for inmates. This bill clarify's DCE's role by specifying that DCE is to provide technical assistance to jails in not only establishing but also improving various educational programs upon request of the jail administrator.

This bill was recommended by the Crime Commission's subcommittee on corrections and rehabilitation, chaired by Reverend George F. Ricketts, Sr.

House Joint Resolution 283 - Chief Patron: Delegate Warren G. Stambaugh

Public Law 94-142 is the federal Education of Handicapped Children Act, which requires that all individuals through age twenty-one have available to them a free, appropriate education which emphasizes special education designed to meet their needs. This law appears to apply to the inmates of our prisons and jails. Those potentially qualifying for special education services in jails may approach 1,000.

The Virginia Department of Education and the Department of Correctional Education have not yet developed a strategy to designate specific responsibility to provide the requisite services to those inmates in jails. Because there are a number of policy and funding issues inherent in this matter, House Joint Resolution 283 directs the legislatively based Crime Commission to determine the responsible agencies and entities, the extent of services required and the most efficient plan for such service delivery. This resolution was also recommended by the corrections and rehabilitation subcommittee.

The Commission also formally endorsed two other bills introduced in the 1989 General Assembly:

House Bill 1765 - Chief Patron: Delegate Warren G. Stambaugh

In 1987, the Crime Commission and Secretary Carolyn Moss took the lead in enabling the Bureau of Forensic Science to acquire the ability to perform DNA tests. This year the Virginia Association of Chiefs of Police and the Virginia State Sheriff's Association formally and actively recommended and sought passage of legislation to establish a DNA data base. The Commission fully endorsed HB 1765, patroned by Warren G. Stambaugh and House Speaker A. L. Philpott, both Commission members, and other legislators. This bill authorizes creation of a DNA genetic profile data base from incarcerated persons convicted of sex crimes.

A companion bill, HB 1823 introduced by Delegate James Almand and Delegate Stambaugh, clearly places the responsibility for operation of the data base with the Bureau of Forensic Science. Commission representatives testified in behalf of these measures before the committees of the General Assembly.

In creating this data base, the first step is to collect blood samples from those certain persons mentioned in the bill. Dr. Paul Ferrara, Director of the Bureau of Forensic Science, indicated the cost of collection and storage of the blood samples would be minimal. The second step will be to actually analyze and create a confidential forensic DNA data base for comparison with crime scene evidence. This second step is thought to cost around $700,000. No budget amendment was introduced in 1989 as a companion to House Bill 1765.

The intent of the bill is for the blood to be collected and stored during FY 89-90. Senator E. M. Holland has introduced Senate Joint Resolution 127, which establishes a study of detailed procedures, costs and funding of a DNA data base with recommendations reported to the 1990 General Assembly. Based on these findings, the 90-92 biennial budget could address all associated costs and the second step could then be initiated.

The Commission believes that the key element is to begin collecting blood samples now from convicted sex offenders and firmly establish that all DNA testing and data will be handled by the Bureau of Forensic Science. The Commission will be closely following the progress of the DNA testing program.

House Bill 1473 - Chief Patron: Delegate Ralph L. Axselle, Jr.

The second bill endorsed by the Commission was HB 1473, introduced by Delegate Ralph L. Axselle, Jr., which made murder during an attempted robbery punishable by the death penalty. The Commission felt that it was inequitable for the capital murder statute to be inapplicable in a situation where a robbery is botched, but during the attempt a murder occurs, the difference being that the criminal, having failed to actually complete removing money or property, could not be charged with a capital crime. The victim was no less deceased and the crime was no less horrible. Thus, the Commission supported changing the Code to include the attempted provision. The bill was expanded by the General Assembly to also include murder during an attempted rape. HB 1473 was endorsed by the Crime Commission by a majority vote. Several Commission members dissented because of their opposition to the death penalty.

C. Budget Amendments

The Crime Commission successfully endorsed and recommended three pairs of budget amendments. Senator Howard P. Anderson (chairman of the Senate Finance Public Safety Subcommittee) and Delegate Robert B. Ball, Sr. (vice-chairman of the House Appropriations Committee) each patroned two of the budget amendments on behalf of the Commission. These amendments provide funding for the Crime Commission's drug trafficking study (SJR 144) and for the Department of Criminal Justice Services to continue a crime prevention program. Senator Elmon T. Gray and Delegate Clifton A. Woodrum patroned amendments to include language in the budget bill which requires implementation of the pilot project to drug test arrested felons. In each of the three cases, an identical amendment was introduced in the House and the Senate.

Crime Prevention:

Since October 1985, $809,284 in Federal Justice Assistance Act funds and state and local match funds have been used to develop and support statewide and local crime prevention programs in Virginia. The federal funds will expire in September 1989 and consequently there will be a significant lack of resources to continue to support the demand for crime prevention services.

The crime prevention funds have been used to support the 140 local law enforcement agencies and numerous community and business groups providing crime prevention services by responding to 800 requests for technical assistance; training 900 law enforcement officers and citizens; and distributing 250,000 pieces of crime prevention literature.

The Crime Commission recommended that $160,000 and two positions be allocated to the Department of Criminal Justice Services to staff and provide material for a central crime prevention resource center. This center will make available to law enforcement officials and other interested parties printed material, public service announcements, and audio visual material. Additionally, technical assistance on all areas of crime prevention will be made available. The budget amendment was approved by the 1989 General Assembly.

Drug Trafficking Study:

The General Assembly's directive to the Crime Commission, pursuant to Senate Joint Resolution 144, to conduct a major two-year task force drug-trafficking study will require resources far beyond those originally budgeted for the Commission. Therefore, budget amendments were introduced to provide $22,825 in general funds to accompany $75,000 in anticipated federal grant funding to conduct the study. The total $97,825 ($75,000 federal plus $22,825 state) to fund the first year of the major study will provide for the employment of a full-time research project manager, clerical support, survey contracts, a computer terminal, supplies and other expenses inherent in the undertaking. An additional $20,000 in general funds was also requested and approved to provide for a part-time research specialist to assist the Commission with its mounting on-going responsibilities, exclusive of the study.

Drug Testing of Arrestees - Pilot Project:

Delegate Clifton A. Woodrum chaired the Commission's study subcommittee which examined drug testing of arrested felons as part of a pre-trial program. Delegate Woodrum introduced House Bill 1318 in the 1989 Session to establish specific legal authority and procedural safeguards for conducting the tests. This bill was passed by the 1989 General Assembly.

As a companion measure, Delegate Woodrum and Senator Elmon T. Gray introduced budget amendments in the House and Senate, respectively, to ensure that at least one of the new pre-trial programs being created around the state incorporate the drug testing component. The amendments passed and the final budget bill places the responsibility of overseeing and evaluating these pre-trial programs with the Department of Criminal Justice Services. The Department is to provide the House Appropriations and Senate Finance Committees with an initial evaluation by October 1, 1989.

D. Non-Legislative Recommendations

Forensic Laboratories

The Crime Commission has long held a significant interest in the operation of the state forensic labs. In 1972, the Crime Commission recommended and successfully sponsored legislation creating the state forensic laboratory to provide services to all law enforcement agencies in the Commonwealth. This was the first state-owned and state-operated laboratory of its type in the country. In 1974, the Crime Commission co-sponsored the first Forensic Science Academy. Finally, §2.1-427 of the Code places the Director of the Crime Commission on the Consolidated Laboratory Services Advisory Board. This section of the report will address three major issues relating to the laboratories.

The first issue relates to the physical and organizational placement of the Bureau of Forensic Science. Currently, the Division of Consolidated Laboratory Services is divided into three Bureaus: Forensic Science, Microbiology and Chemistry.

The Commission had tracked with great interest the development of a new forensic laboratory-medical examiner facility to be located adjacent to the Roanoke County Sheriffs' Office at Peters Creek and I-581. The site was conveyed to the state by Roanoke County, contingent upon initiation of action for construction of the laboratory building by May of 1992. This appears to be a tremendous opportunity to remove the western forensic lab and medical examiner offices from current inadequate locations. However, the Commission became aware that a proposal was being considered to combine forensics with the Bureaus of Microbiology and Chemistry within the same space at this new facility, utilizing "total building security." Members of the Crime Commission have serious reservations about this concept if the forensic section is not physically separate by design within the proposed structure.

The Crime Commission feels that the reputation of Virginia's forensic laboratories is regarded with the utmost confidence by our criminal courts. All efforts must be made to protect and enhance that reputation. It is important for evidentiary purposes that access be highly limited in the forensic section to protect the chain of custody of criminal evidence held and examined in the crime laboratory. At our April 19 meeting, Speaker A. L. Philpott mentioned this point to Dr. Tiedemann (Director of the Consolidated Laboratories) who was responding to an inquiry on the Roanoke laboratories. To this end, current law (§2.1-429.3) states that "The Bureau of Forensic Science shall be isolated within the Division as much as necessary to ensure the protection of evidence...."

On May 12, 1988, the Commission wrote to the Governor's Cabinet Secretary of Administration, the Honorable Carolyn Jefferson-Moss, regarding the physical configuration of the Roanoke forensic laboratory. The Commission strongly recommended that the forensic laboratory in Roanoke be kept physically separate from other laboratory functions. The Commission enjoys an excellent working relationship with Secretary Moss and commends her continued fine efforts in overseeing the operation of the Consolidated Laboratories. We were delighted to have Secretary Moss testify before the Commission on August 16, 1988, that she found no compelling reason to support the combination of Forensic Science, Microbiology and Chemistry within the same physical space in the proposed Roanoke laboratory.

In further discussions along that same line with Secretary Moss, the Commission brought up various difficulties that had been experienced by having the Bureau of Forensic Science organizationally placed under the umbrella agency, the Division of Consolidated Laboratory Services, along with the two regulatory Bureaus of Microbiology and Chemistry. The Commission specifically inquired as to the feasibility of removing Forensic Science from this organizational configuration and making it the Division of Forensic Science, equal in stature to the Division of Consolidated Laboratories (Microbiology and Chemistry). Secretary Moss indicated she was in the process of reviewing a variety of factors related to the operational efficiency of Consolidated Laboratories and would certainly keep the Commission's concerns in mind. Members of the Commission feel that a Division of Forensic Science directly under the Department of General Services may remove an additional layer of bureaucracy and could increase the responsiveness of the Forensic Labs to the law enforcement community. In any event, the Commission recommends an evaluation of the organizational placement be conducted by the Secretary of Administration.

The second major issue relating to the forensic laboratories was the backlog of drug cases.

The Commission has followed closely, over the past two years, the work of the State Forensic Laboratories, related to drug case analysis. The Commission has heard from state police, Commonwealth's attorneys, sheriffs and local police as to how increasing resources of law enforcement across Virginia are being directed at attacking drug trafficking. As a result, the number of drug cases being submitted to the Forensic Labs monthly has continued to rise and no decrease can be realistically expected.

The Commission has been advised that prosecution of drug law violations has been hampered by this backlog even to the point of dismissal of some cases by the court. With the significant connection between drug trafficking and other crime, the Commission felt strongly that the necessary resources needed to be provided to the Forensic Laboratories to process the drug cases in a timely manner.

On August 16, 1988, Secretary Carolyn Jefferson-Moss testified before the Crime Commission as to the drug case backlog and other issues related to the Forensic Labs. The Secretary evaluated the backlog as being an emergency requiring immediate attention. She stated that the drug case backlog in the labs was over 2500 cases, up from 802 on January 1. The average turn-around time for cases has risen correspondingly from three weeks to over two months. Secretary Moss also testified as to the resources needed to provide relief.

On September 12, 1988, the Crime Commission Chairman wrote to Governor Gerald L. Baliles and the leadership of the General Assembly asking that full support be given to a budget request being submitted by the Forensic Laboratories for eleven new positions and over $560,000 in funding. Governor Baliles fully funded the requested amount in his proposed 1989 Budget Bill. The General Assembly approved the recommendation of the Governor.

Finally, the Consolidated Laboratory Services Board conducted a study during 1988 on the feasibility of expanding user fees for laboratory services. The Crime Commission prevailed in its opposition to any user fees for forensic science functions.

At the fall 1987 meeting of the Consolidated Laboratory Services Advisory Board, the Chairman of the Board was asked to appoint a Board committee in order to evaluate the concept of user fees for services provided by the Division of Consolidated Laboratory Services (DCLS). The committee would also make recommendations to the Board and to the Department of General Services (DGS).

After initial organizational preparation, the committee was comprised of:

Dr. Gerald C. Llewellyn, Department of Health, Chairman;
Mr. Larry Lawson, State Water Control Board;
Mr. Billy Southall, Department of Agriculture and Consumer Services;
Mr. Robert Colvin, State Crime Commission; and
Dr. Albert W. Tiedemann, Division of Consolidated Laboratory Services, (consultant/representative of DGS/DCLS).

The committee met during the summer of 1988 to determine the scope of the issue of user fees for services provided by DCLS. A letter was prepared requesting comments on the following issues:

a. the extent of a fee schedule (who would be required to pay and for which tests);

b. fiscal support necessary for administrative needs of user agencies;

c. privatization as an option for state agencies needing laboratory services;

d. impact of user fees for state agencies and/or privatization on DCLS.

From the first meeting, the Crime Commission Director went on record as strongly opposing any user fees for the forensic science function. The Commission wrote to the criminal justice representatives on the Laboratory Board and encouraged their opposition to the imposition of user fees. These representatives joined in supporting the Commission's position:

Richard N. Harris, Department of Criminal Justice Service;
Robert L. Suthard, Virginia State Police;
John E. Kloch, Commonwealth's Attorney for Alexandria;
John deKoven Bowen, Charlottesville Police Chief;
Charles W. Jackson, Westmoreland County Sheriff;
J. David Shobe, Jr., of the ABC Board.

The subcommittee completed its work and made several recommendations. The following are two major findings of the subcommittee.

1. User fees should not be initiated for any forensic science function.

2. Initiation of user fees for lab services provided to state agencies is not cost efficient and therefore should not be initiated.

Subsequently, the full Laboratory Services Board endorsed the recommendations of the subcommittee.

Victims of Crime:

Several issues considered by the Commission were thought to merit further inquiry before legislation was introduced or before any administrative recommendation was issued. These include several areas involving victims of crime and areas involving corrections.

The Commission voted to continue the subcommittee on victims and witnesses of crime into 1989. The subcommittee, chaired by Delegate Warren G. Stambaugh, was asked by the Commission to further examine the issues of counselor confidentiality and trial attendance by victims' families and to continue monitoring the Crime Victims Compensation Program. The Joint Legislative Audit and Review Commission (JLARC) in 1988 formally requested the Division of Crime Victims Compensation to report to the Crime Commission in 1989 as to its progress in implementing JLARC's recommendations for improving the Division. The subcommittee will be closely monitoring the activities and accomplishments of the Division throughout 1989.

The Sandy Cochran Committee, at the Commission's December 20 public hearing, asked the Commission to sponsor legislation to enact a notoriety for profit law ("Son of Sam law") in Virginia.

In past years there have been several instances where offenders who have committed particularly sensational crimes have received substantial sums of money as a result of their notoriety. Books, magazine articles, and movies describing heinous crimes have resulted in significant royalties to criminals (or, often, to relatives they designated) while their victims languished without any form of restitution.

The most notorious case of this type occurred in New York, where the "Son of Sam" murders occurred. David Berkowitz, the convicted murderer in those cases, was sought out by the media with financial offers to tell his story. In response, the New York legislature passed a law in 1977 which prevents convicted criminals from receiving such financial remuneration until his or her victims have been compensated.

The full Commission voted to ask the subcommittee on victims and witnesses of crime to review the issue in 1989.

Corrections:

Mr. Frank E. Saunders, a member of the Virginia Parole Board, brought to the attention of the Commission certain difficulties being experienced with what is commonly known as the Youthful Offender Act. This procedure is codified in §§19.2-311 through 19.2-316 as an indeterminate commitment to the Department of Corrections. This law allows certain youth, ages 18 to 21, who are convicted of less than a Class 1 felony, to be sentenced to four years in a suitable facility if the Department of Corrections and the Virginia Parole Board concur with the court that the individual is likely to return to society rehabilitated. The person may be released at any time prior to completion of the sentence if the Virginia Parole Board believes the person demonstrated suitability for release.

There appears to exist substantial confusion over sentence computation, and it is reported that no such opportunity exists for female youthful offenders. The Commission agreed to review the current legislation to determine what corrections may be required and make a report of any recommendations to the 1990 General Assembly.

In regard to a second issue on corrections, Ms. Jean W. Auldridge of Alexandria, Virginia, testified to the Crime Commission on the importance of treatment programs for sex offenders. She relayed that a surprising number of those incarcerated inmates in Virginia's prisons have a sex-crime related offense on their record. She also noted that most of these inmates will one day return to our communities. Ms. Auldridge commented that the 100th Congress enacted comprehensive mental health amendments including a provision for grants to states and local governments for demonstration projects for treatment and prevention relating to sex offenses. The grants are to be administered by the Secretary of Health and Human Services through the National Institute of Mental Health (N.I.M.H.).

The Commission's subcommittee on corrections and rehabilitation, chaired by Reverend George F. Ricketts, Sr., was asked by the Commission to follow up on this issue. The Crime Commission has been very involved over the years in advocating treatment programs for sex offenders. In fact, the Commission conducted its initial study of such programs in response to Senate Joint Resolution No. 31 of the 1974 Session of the General Assembly.

Sheriffs' Staffing

The 1988 General Assembly included language in the Appropriations Act (Chapter 800) which directed the Joint Legislative Audit and Review Commission (JLARC) to conduct a study of state support for locally elected constitutional officers, including evaluating staffing standards for sheriffs.

During 1988 the Crime Commission learned of increasing demands on sheriffs in handling transports for involuntary admissions to mental health facilities. In addition, sheriffs must execute the initial detention order prior to any commitment hearing commencing.

We were informed that the increase in this particular responsibility is creating a strain on manpower availability for other vital and requisite functions of the sheriff. The Crime Commission believes this particular factor is one which should be carefully considered when evaluating the staffing levels necessary to adequately operate a sheriff's office. Therefore, the Commission by letter dated January 18, 1989, formally requested JLARC to examine this issue in the course of its study during 1989.

The Director of JLARC, Dr. Philip A. Leone, subsequently assured the Crime Commission that the mental health transportation issue would be addressed as JLARC staff conduct their study. The Crime Commission enjoys an excellent relationship with JLARC's chairman, Delegate Robert B. Ball, Sr., its director and staff. We commend them on their excellent work and look forward to receiving a report on sheriffs' staffing levels.

V. FORMAL STUDIES - 1988

The 1988 General Assembly, before adjournment in mid-March, passed eight joint resolutions directing the Crime Commission to study certain topics and issues in criminal justice, and report its recommendations to the 1989 General Assembly. The Commission conducted a study of court appearance waiver pursuant to Senate Joint Resolution 56, a study of part-time and auxiliary police as directed by House Joint Resolution 19, and considered issues relating to private security officers pursuant to House Joint Resolution 168. House Joint Resolution 40 created the Commission's major study of asset seizure and forfeiture, while House Joint Resolution 60 established a study on drug testing of arrestees. House Joint Resolution 64 directed the Commission to study building code security standards. Finally, House Joint Resolutions 48 and 184 authorized the Crime Commission's 1988 study of victims and witnesses of crime. The recommendations from each of these formal studies were reported in December of 1988 to the Governor and General Assembly. As a result of the studies, twelve bills were recommended to the 1989 Session of the General Assembly. These bills are listed and explained in Section IV of this report.

This section gives a brief summary of the issues and findings of each formal study conducted by the Commission in 1988. A report was issued on each of the studies and copies are available from the Crime Commission.

A. Court Appearance Waiver Study

Introduction

The Virginia State Crime Commission was directed and authorized by Senate Joint Resolution 56 (1988) to "study the feasibility and desirability of allowing persons involved in motor vehicle accidents which do not involve personal injury or death to waive appearance and plead guilty."

Current law in Virginia, as set forth in §19.2-254.1 of the Code, allows a driver charged with a traffic infraction to enter a written appearance and waive court hearing, except in instances where property damage or personal injury results. Many times, however, when property damage has occurred, a driver who has been charged with a traffic violation does not wish to contest the charge and pleads guilty. Allowing a driver to waive a personal appearance and prepay his fine when no personal injury is involved may reduce inconvenience to the driver, improve the efficiency of the courts and save the Commonwealth and localities some costs in the form of overtime pay for state and local police officers who are required to appear. For these reasons, the 1988 General Assembly passed Senate Joint Resolution 56, which was introduced by Senator Dudley J. Emick of Botetourt.

Subcommittee Members Appointed

Senator Elmon T. Gray appointed Mr. H. Lane Kneedler of the Attorney General's Office to serve as chairman of the subcommittee on court appearance waiver. Members of the Crime Commission who served on the subcommittee were:

Mr. H. Lane Kneedler (Attorney General's Office), Chairman
Senator Elmo G. Cross, Jr., of Hanover
Delegate Robert B. Ball, Sr., of Richmond
Delegate V. Thomas Forehand, Jr, of Chesapeake
Delegate Clifton A. Woodrum of Roanoke
Reverend George F. Ricketts, Sr., of Richmond
The Honorable Robert F. Horan, Jr., of Fairfax

Issues Addressed

The subcommittee heard testimony and considered research supporting waiver, e.g.:

1. inconvenience to out-of-town drivers charged with traffic violations;

2. time lost from work by all parties, witnesses, etc.;

3. the inconvenience of appearance by all parties, witnesses, police officers, etc., when it is the intent of the defendant to enter a plea of guilty and no testimony is required;

4. the possible lack of difference in culpability of the defendant whether or not property damage or injury occurs;

5. the volume of cases in traffic court, many of which could be disposed of without time in court;

6. the reduction in time spent by court clerks in processing court cases if waiver were permitted.

The subcommittee also considered the following factors suggesting waiver to be impractical or potentially unjust:

1. an accident with no apparent injury may actually have resulted in injury not manifest at the accident scene;

2. a victim deserves his "day in court";

3. a notice system, whereby victims and witnesses would be notified of the defendant's waiver, would have to be established;

4. a victim's subsequent civil case could be adversely affected by his lack of opportunity to examine the police officer or the defendant;

5. the police officer will likely not realize any savings in court time since he already has pre-established "court days";

6. the owner of damaged property or an injured person may be able to obtain insurance information, an accurate address, employee information, etc., in court even upon a plea of guilty.

Findings

The subcommittee acknowledged that savings in time and expense to the defendant, victim and witnesses in a non-injury traffic case would be realized by allowing a pre-trial waiver of court appearance for the defendant. It also acknowledged that some savings in time and expense would be realized by court personnel by reduction of the docket. On the whole, however, the subcommittee determined that the uncertainty of the injury to the victim, the preservation of the victim's right to confront the defendant in court, the usefulness of traffic court testimony in subsequent civil litigation and the time and effort involved in creating and maintaining a workable notice program to victims and witnesses if the defendant waived trial all weighed in favor of preserving the current system.

Recommendations

The subcommittee, after holding three public meetings and a public hearing, conducting extensive research, and receiving public comment on the issue, presented its findings and recommendations to the full Crime Commission on October 18, 1988. After careful consideration, the Commission adopted the findings of the subcommittee and the recommendations that no action be taken on the issue and that the law remain the same.

1989 Senate Document No. 5 presents the report of the Virginia State Crime Commission on court apparence waiver to the Governor and the General Assembly. A copy is available upon request from the Commission.

B. Asset Seizure and Forfeiture Study

Introduction

The Virginia State Crime Commission was directed and authorized by House Joint Resolution 40 (1988), patroned by Delegate George F. Allen, to "(i) evaluate the effectiveness of Virginia's asset seizure and forfeiture program in criminal cases, (ii) evaluate methods to improve said program, and (iii) make any recommendations the Commission finds appropriate."

The study arose out of the concern that the demands being placed on law enforcement by ever-increasing commerce in illicit drugs with the concomitant increase in ancillary criminal activity were not being met by Virginia's current seizure and forfeiture laws.

The primary focus of the subcommittee's work was a consideration of the Commonwealth's constitutional requirement that forfeited assets be disposed to the Literary Fund (Section 8 of Article VIII of the Constitution of Virginia). Additionally, the Commission sought to correct deficiencies in the Commonwealth's statutory forfeiture scheme, without regard to the disposition of forfeited assets (Virginia Code Ann. §18.2-249).

Subcommittee Members Appointed

On April 19, 1988, Senator Elmon T. Gray, Chairman of the Virginia State Crime Commission, appointed Speaker of the House of Delegates A. L. Philpott to serve as the chairman of the subcommittee on drug asset seizures and forfeitures. Members of the Crime Commission who served on the subcommittee are:

Speaker A. L. Philpott of Henry, Chairman
Senator Elmon T. Gray of Sussex
Senator Howard P. Anderson of Halifax
Delegate Raymond R. Guest, Jr., of Front Royal
Delegate Warren G. Stambaugh of Arlington
Delegate Clifton A. Woodrum of Roanoke
Mr. Robert F. Horan, Jr., of Fairfax
Mr. H. Lane Kneedler, Attorney General's Office

Issues Addressed

The stated objectives of this study were broad (to evaluate and improve the Commonwealth's forfeiture program). The first task of the study was, therefore, sheer issue identification. Across a broad spectrum of state and federal government personnel the following question was directed: "What, if anything, is wrong with Virginia's forfeiture law?" The answers formed the issues of the study, as follows:

1. What sum of money, represented by total forfeited asset value, is at issue?

2. How much money is the Literary Fund losing as a result of the federal asset sharing program?

3. How widespread is the utilization of federal asset sharing among Virginia's local governments?

4. To what degree is the Virginia forfeiture scheme being utilized?

5. Would a constitutional amendment and a change in forfeiture statutes effect a desirable change in Virginia's drug enforcement program?

6. What controls are currently in force to guarantee audit and accounting of funds received by local governments by virtue of the federal asset sharing system?

7. What are the limits of control Virginia can place on the receipt of shared asset funds? (Assumes no constitutional amendment or continued use of federal asset sharing program pending amendment).

8. What are the features and limitations of the federal asset sharing program and by what authority does it operate?

9. What are the features and limitations of Virginia's drug asset forfeiture law and by what authority does it operate?

Findings

The subcommittee learned through considerable testimony and a mailed survey of twenty-five Virginia counties and cities that the federal forfeiture program is used almost to the exclusion of the Commonwealth's program. The reasons are as follows:

1. The federal government returns as much as ninety percent of forfeited assets to the seizing locality, whereas all forfeited assets other than vehicles must be turned over to the Literary Fund under the state program;

2. The federal program, in over ninety percent of the cases, requires no trial whatsoever, whereas the state program most often requires two trials (one criminal, one civil). The federal system is quicker, more efficient and effective and requires less state manpower. Most important to the localities, however, is that the bulk of the forfeiture is returned to the locality to fund the expensive task of drug enforcement.

The subcommittee also learned that the Literary Fund receives only $150,000 per year from all forfeitures, no matter the source, so that diversion of drug forfeitures to another fund (by constitutional amendment) would have a minimal effect on the Literary Fund. Overall, less than 0.2 of 1% of total annual revenue in the Literary Fund is derived from all forfeitures.

The subcommittee learned that no statutory auditing policy is in place in Virginia, potentially allowing forfeited funds to be spent by the receiving locality without conformity to a mandated scheme and without proper audit. A locality must merely specify to the distributing federal agency that the funds are to be used for "law enforcement purposes."

Finally, the subcommittee was made aware of pending (now enacted) federal legislation (Title VI of HR 5210--the Omnibus Drug Initiative Act of 1988) which could have a significant impact on federal forfeiture asset sharing. Title VI of HR 5210 would, in its unamended form, have denied Virginia federal shared assets by mandating in essence that shared assets be used only for law enforcement and if such use were in contravention of state law, the state would not receive such funds. Inasmuch as Virginia's Constitution mandates that forfeited funds be diverted to the Literary Fund, Virginia's receipt of shared forfeiture assets would be foreclosed and local law enforcement would no longer be refunded its drug enforcement costs.

Recommendations

The subcommittee, after intensive study of the issues, after holding three public meetings and one public hearing, and after receiving significant input from the public and the law enforcement community, presented its findings and recommendations to the full Crime Commission at its October 18, 1988 meeting. After careful consideration, the Commission adopted the above findings of the subcommittee and made the following recommendations:

1. Amend Article VIII, Section 8 of the Virginia Constitution to allow forfeited drug assets to "be distributed by law for the purpose of promoting law enforcement," rather than diverted to the Literary Fund.

2. Amend the Virginia Code by adding a Chapter 22.1 in Title 19 (§19.2-386.1 et seq.) which streamlines current seizure/forfeiture law, makes explicit law now deemed implicit, sets out specific codified exemptions from the forfeiture sanction and eliminates reliance on the illegal liquor statute (§4-56) for drug forfeitures.

3. Amend and expand application of §18.2-249 to include forfeiture of "interest or profits derived from investment of money or property traceable to exchange for drugs."

4. Amend the Code by adding a new §58.1-3127.1 and amending §52-4.3 to provide for stricter audit and control of monies received from the federal government via forfeiture asset sharing.

5. Enlist the aid of Virginia's congressional contingent to delay the enactment of the pertinent provisions of the Omnibus Drug Initiative of 1988 (HR 5210). (Note: Enactment was delayed for one year.)

1989 House Document No. 7 presents the full report of the Virginia State Crime Commission to the Governor and the General Assembly on the study of drug asset seizures and forfeitures. A copy is available from the Commission upon request.

C. Study of Victims and Witnesses of Crime

Introduction

The Virginia State Crime Commission was directed and authorized by House Joint Resolution 48 (1988), patroned by Delegate Clifton A. Woodrum, to continue the study on crime witnesses and victims originally called for by 1987 House Joint Resolution 225. The Commission was specifically directed by House Joint Resolution 48 to "continue its examination of victim impact statements, victim input in the parole process, confidentiality of designated victim counseling, the right of victim's families to be present during the trial and other issues as the Commission deems appropriate." Additionally, House Joint Resolution 184, patroned by Delegate Howard P. Copeland directed JLARC to conduct a study of the Crime Victims Compensation Program and directed the Crime Commission to review the treatment of victims of crime.

The Commonwealth has long recognized the need to guarantee a fair and balanced criminal justice system protecting the rights of victims and witnesses of crime as well as those of criminal defendants.

Subcommittee Members Appointed

Except for Senator William T. Parker, former chairman of the subcommittee, who returned to private business, and Mr. William N. Paxton, Jr. whose death on November 7, 1987, saddened the Commission, all members on the 1987 subcommittee were reappointed to this 1988 study. Three recently appointed Commission members, Mr. Robert C. Bobb, City Manager of Richmond, Delegate V. Thomas Forehand, Jr., and Senator Elmo G. Cross, Jr. were named to the subcommittee. Senator Gray selected Delegate Warren G. Stambaugh as chairman of the subcommittee.

The membership of the subcommittee is as follows:

Delegate Warren G. Stambaugh of Arlington, Chairman
Mr. Robert C. Bobb of Richmond
Senator Elmo G. Cross, Jr., of Mechanicsville
Delegate V. Thomas Forehand, Jr., of Chesapeake
Delegate Raymond R. Guest, Jr., of Front Royal
Mr. H. Lane Kneedler, Attorney General's Office
Reverend George F. Ricketts, Sr., of Richmond
Delegate Clifton A. Woodrum of Roanoke

Issues Addressed

Numerous past studies and legislative enactments dealing with victims and witnesses of crime have, fortunately, narrowed the scope of very pressing issues yet to be addressed. For instance, legislation was enacted in 1988 to increase crime victims compensation, improve the process of informing victims and witnesses of their rights and available services, prevent employers from penalizing employees for attending required court appearances, and allowing two-way closed-circuit testimony.

This study, still very broad in scope, addressed the following issues:

A. Separate waiting areas in courthouses for victims and witnesses to afford them privacy and protection from intimidation;

B. Expansion/modification of §19.2-299.1, Virginia's Victim Impact Statement Law;

C. Expansion of victims' parole input and change in mode of notice to victims of prisoner release;

D. Nondisclosure of victims' and witnesses' addresses in open court;

E. Definition of "counselor" for the purpose of counselor-client (victim) privilege;

F. Right of victims to remain in court during trial;

G. Criminal Injuries Compensation Fund.

Findings and Recommendations

A. Separate Waiting Areas

The subcommittee re-emphasized the recognized need for separate waiting areas to provide a less threatening and more comfortable environment for victims and their families and recommended that the 1989 Session of the General Assembly adopt a resolution reminding local governing bodies "to make all reasonable efforts to furnish a separate waiting area for victims of crime and their families and witnesses."[12]

B. Victim Impact Statements

The subcommittee balanced the demands of proponents of two distinct schools of thought on the issue: one supporting mandatory consideration by the court of a victim impact statement; and one maintaining that its current discretionary character is the reason for its success because it allows the court to weigh the merits of a victim's statement.

The subcommittee recommended amending Virginia's Victim Impact Statement Law (§19.2-299.1) to mandate inclusion of such a statement upon motion by the Commonwealth's attorney in a presentence report, while continuing to allow judicial discretion for its inclusion in the event no such motion is made. The subcommittee also included the definition of "victim" in §19.2-299.1.

C. Parole Input and Notification of Release

The subcommittee found that while §53.1-160 requires the Department of Corrections to notify certain officials of a prisoner's pending release and allows the victim an opportunity to provide parole input, nothing requires notification of the victim of either. The subcommittee determined that both should and could be done and recommended amendments to §53.1-160 (notice of prisoner release) and §19.2-299 (presentence investigations) to accomplish both.

D. Nondisclosure of Address in Open Court

The subcommittee found that despite problems presented to trial attorneys asserting the need to know such information, victim or witness protection is paramount and recommended a new Code section (§19.2-269.2) prohibiting disclosure of a victim or witness address if judicially determined to be immaterial to the case.

E. Counselor Privilege

The subcommittee found that while the defendant should have access to all information that could influence the outcome of his trial, no one should be able to discredit, intimidate or embarrass a victim with irrelevant information. Section 8.01-400.2 establishes a counselor privilege in civil cases and §54-932 defines "professional counselor." The subcommittee delayed a decision on the issue until the profession can settle upon a definition for "counselor."

F. Courtroom Attendance

The subcommittee acknowledged the anguish caused when an innocent victim/witness is excluded from court. In light of the existence of sixteen states with laws on the subject, the subcommittee recommended that those laws be studied and the issue carried over.

G. Criminal Injuries Fund

The Crime Commission, pursuant to House Joint Resolution 184, has assisted JLARC in its study of the Crime Victims' Compensation Division. A separate report was published by JLARC.

1989 House Document No.8 presents the full report of the Virginia State Crime Commission to the Governor and General Assembly on the study of victims and witnesses of crime. A copy is availiable from the Crime Commission upon request.

D. Study of Drug Testing of Arrestees

Introduction

The Virginia State Crime Commission was directed and authorized by House Joint Resolution No. 60, patroned by Delegate Ralph L. Axselle, Jr., to "study a voluntary drug testing program for arrestees awaiting trial or sentencing."

The study was proposed by Attorney General Mary Sue Terry in response to the growing concern about the link between drug abuse and criminal behavior and indications from outside the Commonwealth that drug testing of arrestees is an effective way of identifying those who pose a high risk of pretrial rearrest. Attorney General Terry provided information and substantial support to the Commission's effort.

The Commission focused on such issues as whether there should be such a program, what its components would be and how it would be implemented.

Subcommittee Members Appointed

During the April 19, 1988 meeting of the Crime Commission, Senator Gray appointed Delegate Clifton A. Woodrum of Roanoke to serve as the chairman of the subcommittee on drug testing of arrestees study. Members of the Crime Commission who served on the subcommittee are as follows:

Delegate Clifton A. Woodrum of Roanoke, Chairman
Senator Howard P. Anderson of Halifax
Senator Elmon T. Gray of Sussex
Delegate Raymond R. Guest, Jr., of Front Royal
Mr. Robert F. Horan, Jr., of Fairfax
Mr. H. Lane Kneedler, Attorney General's Office
Speaker A. L. Philpott of Henry
Delegate Warren G. Stambaugh of Arlington

Issues Addressed

The Commission was directed to study a very broad subject (a voluntary drug testing program for arrestees awaiting trial or sentencing) with the possible outcome of recommending such a program. Virginia does not presently conduct any such testing. As such, the subcommittee explored numerous issues related to putting a drug testing program in place. Major among them were:

A. Who should be tested;
B. At what point in criminal proceedings such a test would be made available to the judicial officers;
C. Whether the test results would be used in making the decision to release the subject or only to set conditions of release;
D. Reliablity of the testing device/method;
E. The need to retest a positive result;
F. The proper agency to administer the test;
G. The expense of such a program or pilot program;
H. The types of drugs to test for;
I. The actual link between crime and drugs;
J. Potential effectiveness of such a program in reducing crime.

Findings

The subcommittee considered the findings and testimony from parties from Washington, D.C. jurisdictions where a pre-trial testing program is already in place and concluded that such tests are indeed reliable; that there is a significant statistical correlation between drug use and crime; and that drug use by an arrestee is a factor determinative of his likelihood to return for trial.

The subcommittee determined that the cost of a pilot program in Richmond (as an example) for 1000 initial arrestees to be $91,500, or $203.30 per accused over the course of monitoring. The subcommittee inquired about federal funding and found none to exist. It was concluded that the type of drug which should be tested for largely depends on the "drug of choice" in the locality.

The subcommittee concluded that a great correlation between crime and drug use exists, that periodic testing as a condition of release could reduce crime, and that important statistical information could result from a pilot project.

Recommendations

The subcommittee, after holding three public meetings, one public hearing and considering testimony and research information, presented its findings and recommendations to the full Crime Commission at its October 18, 1988 meeting. After careful consideration the Commission adopted the findings of the subcommittee and its recommendations as follows:

A. Enabling Legislation

Introduce legislation to amend §19.2-123 of the Code to enable any jurisdiction served by a pre-trial services agency to conduct a voluntary drug testing program in agreemeent with the chief judge of the general district court. The amendment should require that the test results only be used to assist the judicial officer in setting the conditions of release. The amendment would also allow the judicial officer to require an arrestee who tested positive on the initial test, and was subsequently released, to refrain from illegal drug use and submit to periodic tests until final disposition of his trial.

B. Coordination of Pilot Program by the Department of Corrections

Contingent upon the passage of the proposed enabling legislation, the General Assembly should request the Department of Corrections, in coordination with its new pre-trial services program, to establish a pilot drug testing program for all accused felons in lock-up.

C. Quarterly Reports From the Department of Corrections

Request that the Department of Corrections report on a quarterly basis to the Virginia State Crime Commission on the results of the drug testing program.

1989 House Document No. 9 presents the full report of the Virginia State Crime Commission to the Governor and the General Assembly on the study of drug testing of arrestees. A copy is available from the Crime Commission upon request.

E. Part-time, Volunteer and Auxiliary Law Enforcement Officers

Introduction

The Virginia State Crime Commission was authorized and directed by House Joint Resolution No. 19 (1988), patroned by Delegate Warren G. Stambaugh, to "(i) determine the current use of part-time deputy sheriffs, and volunteer or auxiliary law enforcement personnel, (ii) evaluate minimum standards as these standards may apply to part-time deputy sheriffs and volunteer personnel, and (iii) determine the level of funding, if any, needed to provide training for these individuals."

The study was undertaken to address (i) the discrepancy between training requirements for auxiliary police officers and full-time police officers although there is ultimately no difference in their powers and (ii) the current lack of minimum training standards for part-time law enforcement officers.

Subcommittee Members Appointed

During the April 19, 1988 meeting of the Crime Commission, Senator Elmon T. Gray of Sussex, selected Delegate Raymond R. Guest, Jr., to serve as chairman of this subcommittee. Members of the Crime Commission who served on the subcommittee are:

Delegate Raymond R. Guest, Jr., of Front Royal, Chairman
Delegate Robert B. Ball, Sr., of Henrico
Mr. Robert C. Bobb of Richmond
Senator Elmo G. Cross, Jr., of Hanover
Delegate V. Thomas Forehand, Jr., of Chesapeake
Senator Elmon T. Gray of Sussex
Mr. H. Lane Kneedler, Attorney General's Office
Delegate Warren G. Stambaugh of Arlington

Issues Addressed

Virginia Code §15.1-159.2A grants auxiliary police all the powers and immunities of constables at common law. Constables at common law are not required to receive training but, according to a 1981 report of the Attorney General, a "constable is by virtue of his office a conservator of the peace, whose duties are similar to those of a sheriff." Thus, subsection A permits an auxiliary policeman to act as a sheriff but without having been trained.

Virginia Code §15.1-159.2B, in apparent conflict with subsection A, empowers localities to establish auxiliary police forces with the powers of full-time police if such forces have been sufficiently trained. Thus, the statutory training requirement is manipulable.

Additionally, there is no training requirement at all for part-time law enforcement officers. Because of the above inequities and conflicts the subcommittee studied the following issues:

1. The responsibility and authority of part-time deputy sheriffs and volunteer or auxiliary law enforcement personnel according to job function.

2. The current use of part-time deputy sheriffs and volunteer or auxiliary law enforcement officers.

3. The desirability of establishing minimum training requirements for part-time deputy sheriffs and auxiliary or volunteer law enforcement personnel.

4. §15.1-159.2A and B, conflicting provisions within the Code of Virginia, regulating the training requirements of auxiliary police.

5. The level of funding, if any, needed to provide training for these individuals.

Findings and Recommendations

A. Auxiliary Officers

The subcommittee determined that each jurisdiction should be authorized to establish the training standards for its auxiliary program, except that no auxiliary police officer should be permitted to carry or use a firearm unless such auxiliary has met the basic and in-service firearms training requirements established by the Criminal Justice Services Board. Each jurisdiction would, therefore, be afforded flexibility to adapt its program to its needs and resources.

B. Part-Time Officers

The subcommittee found that apparent discrepancies in the law indeed needed correction and determined that legislation was needed to require that part-time officers receive the same training as full-time officers.

C. Recommendations

The full Crime Commission met on October 18, 1988, and received the report of the subcommittee, adopting its recommendations that §15.1-159.2 be amended to make it clear that auxiliary law enforcement officers receive, at a minimum, basic and in-service firearms training and that §9-169 and §9-180 be amended to require part-time law enforcement officers to comply with minimum training standards.

House Document No. 10 (1989) presents the full report of the Virginia State Crime Commission to the Governor and the General Assembly on the study of part-time, volunteer and auxiliary law enforcement officers. A copy is available from the Crime Commission upon request.

F. Study of Building Code Security Needs

Introduction

The Crime Commission was directed and authorized by House Joint Resolution No. 64 (1988) to study the security needs of the Commonwealth's building code to ascertain the manner of reduction/prevention of crime by constructing buildings less vulnerable to criminal intrusion. The study legislation was introduced by Delegate James F. Almand of Arlington at the request of the Virginia Crime Prevention Association (VCPA).

Subcommittee Members Appointed

During the April 19, 1988 meeting of the Crime Commission, Senator Gray appointed Delegate Robert B. Ball, Sr., of Richmond to serve as chairman of the subcommittee on building code security needs. Members of the Crime Commission who served on the subcommittee are:

Delegate Robert B. Ball, Sr., of Henrico, Chairman
Mr. Robert C. Bobb of Richmond
Senator Elmo G. Cross, Jr., of Hanover
Delegate V. Thomas Forehand, Jr., of Chesapeake
Reverend George F. Ricketts, Sr., of Richmond

Scope of the Study

This study examines building security needs in Virginia. The study was conducted by the Crime Commission with staff support from the Department of Criminal Justice Services (DCJS) and the Department of Housing and Community Development (DHCD), which administers the building code.

The subcommittee expresses its appreciation to Mr. Patrick Harris, Criminal Justice Analyst of DCJS; Mr. Curtis L. McIver, State Building Code Administrator; and Mr. Harold A. Wright, Executive Director of the Virginia Crime Prevention Association, for their significant contributions to this study.

The Virginia Crime Prevention Association (VCPA) researched methods of crime prevention through improving building security and suggested that security become a part of the Uniform Statewide Building Code's general purpose as described in the Code of Virginia.

In addition, the VCPA has put together a list of security requirements which it recommended be added to the Building Code. The subcommittee evaluated the security needs of the Virginia Statewide Building Code and considered the advantages and disadvantages of the proposals submitted by the VCPA.

Issues, Findings and Recommendations

The full Crime Commission met on October 18, 1988, and received the report of the subcommittee. After careful consideration, the findings and recommendations of the subcommittee were adopted by the Commission. The Crime Commission subcommittee researched numerous studies conducted nationwide and heard testimony on crime prevention through building codes and environmental design. These studies and testimony demonstrated that incorporation of crime prevention into the construction phase of buildings can be very successful.

The Virginia Crime Prevention Association (VCPA) submitted a list of security requirements which it recommended be added to the Building Code. These recommendations included input from both law enforcement and fire safety officials and were influenced greatly by a former Arlington County building security ordinance.

Builders expressed concern over potential increased costs in construction resulting from the additional requirements. Additionally, building inspectors argue that the proposed security requirements would be too difficult to enforce.

After the public hearing, the VCPA revised its recommendations to alleviate some of the concerns raised and presented the revision at the final meeting of the subcommittee on September 1, 1988. Some of those assisting with the study who had expressed concern with the original set of recommendations welcomed the revisions but still had reservations.

After considering the current law, the other studies conducted in Virginia and nationwide, and input from the public hearing and from others assisting with the study, the subcommittee was convinced that crime prevention through environmental design is a very important aspect of public safety. Indeed, research has shown that prevention of residential burglary reduces crimes of violence.

The Board of Housing and Community Development had specific building code proposals from the VCPA currently under consideration pursuant to the Administrative Process Act. The subcommittee strongly encourages the Board to incorporate such crime prevention security requirements, as it deems feasible, into the Uniform Statewide Building Code. The subcommittee concluded that examining the intricacies of construction components was beyond the scope of this legislative study and is properly handled by the Board.

On the second issue, the VCPA requested the amendment of §36-99 of the Code of Virginia to place the word "security" in the provision describing the purpose of the Uniform Statewide Building Code. After careful consideration, the subcommittee was convinced that the current language which includes the word safety already enables crime prevention measures to be placed in the Building Code. Indeed, the Board was considering such measures. Therefore, the subcommittee did not recommend amending §36-99.

House Document No. 12 (1989) presents the full report of the Virginia State Crime Commission to the Governor and General Assembly on the study of building code security needs. A copy is available from the Crime Commission upon request.

G. Study of Private Security

Introduction

The Virginia State Crime Commission was directed and authorized by House Joint Resolution 168 (1988), patroned by Delegate Frederick H. Creekmore, to study the private security profession to determine "(i) what powers of arrest and detention are appropriate for private security guards and (ii) whether private security guards should be granted immunity from civil liability for actions incidental to arrest and, if so, what actions."

Subcommittee Members Appointed

During the April 19, 1988 meeting of the Crime Commission, Senator Elmon T. Gray of Sussex, selected Delegate Raymond R. Guest, Jr., to serve as chairman of this subcommittee. Members of the Crime Commission who served on the subcommittee are:

Delegate Raymond R. Guest, Jr., of Front Royal, Chairman
Delegate Robert B. Ball, Sr., of Henrico
Mr. Robert C. Bobb of Richmond
Senator Elmo G. Cross, Jr., of Hanover
Delegate V. Thomas Forehand, Jr., of Chesapeake
Senator Elmon T. Gray of Sussex
Mr. H. Lane Kneedler, Attorney General's Office
Delegate Warren G. Stambaugh of Arlington

Issues Addressed

From the broad issues set forth in the resolution and in the Introduction above, the subcommittee derived and focused on such specific questions as:

1. Whether unarmed security guards should be granted arrest authority;

2. Whether the arrest authority of armed security guards should be broadened or restricted (currently per §54-729.33 extends authority to offenses committed in the presence of officer or for shoplifting when the merchant has probable cause to believe concealment of goods has occurred);

3. Whether training standards for armed and unarmed security guards are sufficient (currently twelve hours of training for both plus an additional four hours of firearms training for armed guards);

4. Whether civil immunity should apply for acts incidental to arrest.

Findings

The subcommittee acquired data and made its determinations based on considerable testimony and research presented at one public hearing, a subcommittee work session, a staff briefing and an extensive statewide mail survey of the private security industry. The subcommittee found that:

1. Unarmed security guards must receive twelve hours of training; by contrast, armed security guards receive the same training plus four additional hours in use of firearms.

2. Law enforcement officers receive 315 hours of classroom training and sixty hours of field training.

3. As of July 1, 1988, unarmed security service guards are no longer required to register with the Department of Commerce; training is to be ensured now by the private security service's "compliance agent."

4. No training is required for in-house (proprietary) security guards.

5. The arrest authority of armed security guards granted under § 54-729.33 has presented no substantial problems.

6. By a great majority (82%) the survey respondents felt that current training is inadequate.

7. The subcommittee concluded that existing firearms training for armed security guards is inadequate.

Recommendations

The full Crime Commission met on October 18, 1988, and received the report of the subcommittee. After careful consideration, the above findings and the following recommendations of the subcommittee were adopted by the Commission:

Unarmed Contractual Private Security Guards

1. The Commission agreed that no official action regarding the arrest authority of unarmed contractual security guards should be taken at this time; however, the Commission will continue to monitor the unarmed branch of the private security industry.

Armed Contractual Security Guards

1. Section 54-729.33 should be retained in its current form (no amendment recommended).

2. The Virginia State Crime Commission should formally request that the Criminal Justice Services Board reevaluate the firearms training requirements for armed guards.

Civil Immunity for Private Security Guards

1. The subcommittee made no recommendation regarding the issue of civil immunity for private security guards.

House Document No. 11 (1989) presents the full report of the Virginia State Crime Commission to the Governor and the General Assembly on the study of private security. A copy is available from the Crime Commission upon request.

VI. CRIMINAL JUSTICE ISSUES

Introduction

In addition to completing formal studies, developing legislative and administrative recommendations, and conducting specific inquiries, the Commission monitors on behalf of the legislature the on-going operation of the criminal justice system. The Commission uses this section of the report to bring to the attention of the law enforcement community select issues of importance which arose during the year.

A. Forensic Laboratories

Accreditation

The Virginia Bureau of Forensic Science received accreditation by the American Society of Crime Laboratory Directors (ASCLD) on January 11, 1989. This accreditation was earned after an intensive and thorough professional analysis of the Bureau's operation. The Commission congratulates all of the Bureau's employees on a job very well done. The Commission also noted that by virtue of the ASCLD accreditation, Virginia has the first accredited DNA laboratory in the country.

Drug Case Backlog

Despite constantly increasing submissions (a record 2,100 were received in January, 1989), the laboratory is continuing to reduce the backlog (1,651 cases at the end of February 1989) from its previous high of over 2,600 in July, 1988. As the backlog has diminished, the percent of drug cases completed within the goal of ten working days had increased to thirty-seven percent statewide.

Extensive use of overtime and wage personnel, automated equipment and the Drug Item Reduction Program (DIRP) have all contributed to this improvement. The Crime Commission endorsed the Drug Item Reduction Program early in 1988. This program allows the scientists to focus efforts on only the major items submitted in each case (i.e., a large bag of cocaine).

As mentioned in Section IV-D of this report, the budget amendment for additional resources for drug analyses was funded in full and provides eleven additional positions and money to pay for the aforementioned wage and overtime effective April 1, 1989. All eleven of these positions are established and six have already been filled with the remaining five in recruitment. The 1989 General Assembly also passed a Crime Commission bill (SB 587) to amend §19.2-187.1 to alleviate the situation in drug cases requiring chemists and evidence custodians to appear in every case.

DNA Profiling

The major issue regarding the Bureau of Forensic Science involves DNA profiling, which is an innovative scientific identification system. Deoxyribonucleic acid profiling will now enable forensic serologists to positively identify a specific individual by matching his DNA to DNA in blood, semen or other body fluid or tissue found at a crime scene. In contrast, conventional serological techniques do not provide this high degree of specificity.

In the early 1970's the Virginia State Crime Commission recommended legislation which established the state Forensic Science Laboratory to provide services to all law enforcement agencies in the Commonwealth. This was the first state-owned and state-operated laboratory of this type in the country, and it has consistently received praise for its high quality work and progressiveness.

The Commonwealth of Virginia has once again established itself as a leader in forensic science by becoming the first state whose forensic laboratory personnel have learned to perform the revolutionary DNA (deoxyribonucleic acid) print identification test used in criminal investigations. DNA testing may well be to law enforcement at the end of the twentieth century, what fingerprint evidence was at the beginning of the century. The FBI has also recently acquired this technology.

"DNA-profiling" or "DNA-fingerprinting" is a test procedure which involves extracting the DNA from a specimen, such as semen, blood, or tissue, and chemically dividing the DNA into fragments. Because of naturally occurring variations in the DNA molecule from one person to the next, the fragments will form a pattern that serves as an identity profile. This pattern can then be compared with the DNA pattern obtained from suspect's blood specimen. If the patterns match, one can conclude that the biological specimens are from the same individual. If the patterns do not match, investigators can be absolutely assured from the biological evidence that the suspect is not the perpetrator.

As of the writing of this report, the Bureau of Forensic Science has completed the final phases of the DNA technology transfer program and will begin on May 1, 1989, performing analysis on selected suitable evidence which will have been submitted to the laboratory for serological examination. Thus, the Virginia Bureau of Forensic Science will be the first state forensic laboratory in the country to be performing such work.

DNA testing will, on May 1, be available as an additional serological test. Thus, every case submitted to the forensic laboratories for serological examination will be evaluated for applicability of DNA analysis. However, because of the limited capacity to conduct these tests, the laboratory must be selective to ensure that the limited resources are being used most effectively. To that end, guidelines have been established by the Bureau of Forensic Science for evaluating a case for the potential of DNA analysis.

It must be emphasized that DNA analysis is not a technique that can be performed overnight. Under optimum conditions, the process takes approximately six weeks to complete. Therefore, this should be considered when setting trial dates.

Deanne F. Dabbs, forensic serology section chief, can be reached at (804) 786-2343 to answer questions from law enforcement authorities concerning DNA analysis, for a copy of the guidelines or for the status of DNA analysis on a case.

In conclusion, the Commission offers its highest praise to Secretary Carolyn Moss, Dr. Paul Ferrara, and the entire staff of the Bureau of Forensic Science for the excellent service they provide in strengthening Virginia's criminal justice system.

B. Omnibus Drug Initiative Act of 1988

During August, September and October of 1988, Congress was developing the Omnibus Drug Initiative Act, or HR 5210. This Act is an extensive piece of legislation which is directed at preventing the manufacturing, distribution, and use of illegal drugs. The bill addresses money laundering, drug abuse education, foreign assistance programs, and a variety of other areas. However, one provision of the bill, as passed by the House and communicated to the Senate, would potentially have adversly affected Virginia's participation in the federal equity sharing program, which allows the proceeds from seized and forfeited assets of drug dealers to be shared with state and local law enforcement agencies. This program has become a vital component of Virginia's war on drugs.

The troublesome section of the bill, Section 511(e)(3)(B), adds a paragraph which requires that no assets be "transferred to circumvent any requirement of state law that prohibits forfeiture or limits use or disposition of property forfeited to state or local agencies." Virginia constitutional law requires all fines and forfeitures to go to the state Literary Fund. Exclusive of 511(e)(3)(B), this provision of state law does not apply to property forfeited by federal authorities on behalf of the state.

The conflict arises in that the U. S. Attorney General's guidelines on federal equity sharing require the returned proceeds to be used solely for law enforcement, as opposed to being deposited in a literary fund. Thus, one interpretation of state law along with the new federal law would foreclose Virginia's law enforcement authorities from further receiving proceeds from assets seized by the federal authorities on their behalf.

During the course of the Crime Commission's study of asset seizure and forfeiture, the study subcommittee, chaired by House Speaker A. L. Philpott, discovered the problematic language in the proposed federal law. In late September of 1988, Speaker Philpott and other members of the State Crime Commission contacted Senator John W. Warner, Congressman Frederick C. Boucher, and Congressman Owen B. Pickett and requested their assistance in obtaining a delay in the implementation of this one section of the Omnibus Drug Initiative Act. Senator Warner addressed the Senate on this issue on October 14, 1988, and Congressmen Boucher and Pickett made important contacts with the leadership of the House. In addition, John W. Jones of the Virginia State Sheriffs' Association and Col. J. C. Herbert Bryant of ARGUS actively mobilized the support of their organizations and contacts to help convey the Commission's position to Congress. As a result, a one-year delay in the implementation of this one troublesome paragraph (out of the entire bill exceeding 375 pages) was secured, with the effective date of 511(e)(3)(B) beginning October 1, 1989. The entire bill was passed by Congress and signed into law by the President.

This important delay provided the opportunity for Virginia to further examine and respond to the new federal law. As a result of its study on asset seizure and forfeiture, the Crime Commission recommended to the 1989 General Assembly wording for a resolution (SJR 36) which was awaiting action, having been carried over from the 1988 Session for study. Senate Joint Resolution 36, whose chief patron was Senator Joseph V. Gartlan, Jr., was an initiative of Attorney General Mary Sue Terry. Senate Joint Resolution 36 would allow the General Assembly to make an exception to the constitutional requirement that all forfeitures go to the Literary Fund. Under this proposal, proceeds from seized assets related to the sale, manufacture or distribution of illegal drugs, would be paid into the state treasury "distributed by law for the purposes of promoting law enforcement."

An identical measure, HJR 328, whose chief patron was Delegate Ford C. Quillen, was introduced to the 1989 Session and also passed. In order for the exception to the Virginia Constitution to become a reality, at least one of the two resolutions (SJR 36 and HJR 328) must again be passed in identical form by the General Assembly in 1990 and subsequently ratified by Virginia voters at the polls in November of 1990.

As of April 1989, the Crime Commission, Governor Baliles and Attorney General Terry, along with ARGUS, the Virginia Association of Chiefs of Police, the Virginia State Police, Virginia State Sheriffs Association and other state and national organizations had initiated communications with Congressional Senators and Representatives to gain yet another extension to the implementation date; moving it forward from October 1, 1989 to at least December 31, 1990. This further initiative is now feasible due to the General Assembly's passage of SJR 36 and HJR 328.

Attorney General Mary Sue Terry, Chief Deputy Attorney General H. Lane Kneedler, Senator John W. Warner, Congressman Frederick B. Boucher, Congressman Owen B. Pickett, Col. J. C. Herbert Bryant and John W. Jones were invaluable in obtaining the initial one year delay in the federal law. We offer them our sincere gratitude and look forward to further success in this important endeavor.

Following and responding to changes in federal law which have a potential specific impact on Virginia's criminal justice system is but another of the Crime Commission's roles. We will be working this year to secure the necessary congressional action and welcome the support and assistance of law enforcement authorities across Virginia.

VII. SELECTED ORGANIZATIONS IN CRIMINAL JUSTICE

During the year, the Commission worked closely with a variety of individuals and organizations in addition to a host of state and local governmental agencies. Last year we recognized the Sandy Cochran Committee, the Virginia Tactical Association and the Virginia Network for Victims and Witnesses of Crime. During 1988, the Commission interacted with the Virginia Silver Star Foundation, the Virginia Crime Prevention Association, and the Armored Response Group United States (ARGUS), three important organizations which have not previously been highlighted in the Commission's Annual Reports.

A. The Virginia Silver Star Foundation

At the June 21 meeting of the Commission Mr. John B. Werner gave an overview of the Silver Star Foundation. Governor Gerald L. Baliles had arranged for the presentation to the Commission and we were most pleased to learn of the good work of this organization.

The purpose of the Foundation is to raise and administer funds for the benefit of the surviving spouses and children of law enforcement officials, fire fighters, and other public safety personnel who have lost their lives in the line of duty. The deceased must have been employed by the Commonwealth of Virginia or one of its counties, cities, or towns or as a member of any fire company or department or rescue squad that has been recognized by an ordinance or a resolution of the governing body of any county, city, or town of this Commonwealth as an integral part of the official safety program of that county, city, or town. Funds that are raised by the Foundation may be used for scholarships, medical expenses, counseling, summer camp, home mortgage aid, birthday and holiday greetings, and other forms of assistance which must be approved by the board of trustees, subject to limitations set forth in the articles of incorporation. In addition, the Foundation may exercise all powers conferred upon nonstock corporations by §13.1-826 of the Virginia Nonstock Corporation Act.

The Foundation awarded three scholarships totalling $10,000 for the 1988-1989 school year. An additional $10,000 was appropriated for a loan to help the widow of a state trooper, who was killed in the line of duty, to relocate. The Virginia Silver Star Foundation is a nonprofit, tax exempt organization. For additional information contact John B. Werner, Chairman, or John A. Gibney, Jr., Secretary, P. O. Box 527 Richmond, Virginia 23204 (804) 353-8699.

B. Virginia Crime Prevention Association:

The Commission, at its December 20, 1988 meeting, heard from the VCPA director as to the activities of the Association. We commend the members and staff of the VCPA on their many valuable accomplishments.

In the fall of 1977, the Department of Criminal Justice Services began an initiative to create an interest among law enforcement agencies, businesses and community organizations to provide crime prevention services to their constituency. In 1978 the DCJS formed the Virginia Crime Prevention Association, a nonprofit organization comprised of law enforcement officials, citizen volunteers and sixteen law enforcement agencies. Today, over 175 law enforcement agencies are working with community organizations to develop and provide services such as substance abuse programs, home and business security, personal safety, the design of secure communities, neighborhood watch, crime prevention for youth and other valuable crime prevention programs.

The organization also provides a vast majority of its programs and resources to nonmember individuals and organizations. The Association provides training on a variety of crime prevention topics that enables practitioners and volunteers to improve the quality of their service delivery. Youth-related crime prevention handout material is provided by VCPA to local departments and organizations that otherwise would not be able to purchase the material. The VCPA has developed a statewide crime prevention council comprised of representatives of local councils in order to involve citizens in policy-making and leadership. The Association assisted forty jurisdictions in providing on-site assistance to local law enforcement agencies and community organizations to enable them to initiate or improve crime prevention services. There is an annual neighborhood watch conference for program leaders which was attended by 345 people in 1988. The VCPA also conducts seminars for businesses and community organizations. The accomplishments and future goals of the Association are vital to the citizens of Virginia, and the crime fighting efforts of communities and the state. For further information about VCPA contact Harold A. Wright, Executive Director, P.O. Box 6942, Richmond, Virginia (804) 747-9193.

C. Armored Response Group United States (ARGUS)

On December 20, 1988, Col. J.C. Herbert Bryant addressed the full Commission about the work of ARGUS in the law enforcement effort in Virginia and elsewhere. We commend Col. Bryant and ARGUS on the unique and valuable service they provide.

The Armored Response Group United States (ARGUS) is a police task force comprised of state and federal law enforcement officers. ARGUS is a member of the Regional Organized Crime Information Center (R.O.C.I.C.). The mission of ARGUS is to cost efficiently assist multiple law enforcement agencies by providing training and twenty-four-hour access to a pool of ballistically protected vehicles and specialty equipment. When a need arises, ARGUS Task Force personnel will provide the transportation of the equipment to the crisis scene where it is turned over to the requesting agency to use in whatever way the agency determines necessary to resolve the situation.

Colonel Herbert Bryant, Jr., a federal officer with a twenty-nine-year background in state, federal and international law enforcement and Sheriff John R. Isom of Loudoun County, Virginia, a twenty-five-year veteran of the law enforcement community, saw the need for readily available specialized equipment and created the ARGUS Task Force to answer the need. The result is a collection of specially modified, armor-protected vehicles and tactical equipment, made available for emergency, preplanned or protracted operations to any law enforcement agency within the District of Columbia and an eight-state region surrounding the equipment's home base in Northern Virginia. The Task Force, made up of sworn law enforcement personnel provided by their respective state and federal agencies, comprises the operational and training arm of ARGUS. The ARGUS Task Force, under the command of Col. Bryant, a Special Deputy U. S. Marshal, ensures that the equipment is in mechanically sound working order and ready for deployment twenty-four hours a day. The current ARGUS module inventory includes a three-person armored command vehicle which has a twelve foot ram for removing obstacles and an additional five foot "arm" with pick up and delivery capabilities; a fourteen-passenger armored personnel carrier with stretcher and emergency medical equipment; a 250 ton

towmotor; a hydro crane; and an armored fork lift. When appropriate, the vehicles can be transported to the crisis site utilizing an ARGUS tractor/trailer, accompanied by a service vehicle equipped with the necessary repair and service tools such as a generator, flood lights, and fuel. The equipment is intended to provide protection in a purely defensive manner. The first step for any law enforcement agency interested in having this specialized equipment available is to request instruction in the physical operation of the equipment. Training is available only to law enforcement agencies and requires that personnel from the agency go through a course of instruction covering the operation of the vehicles prior to requesting deployment.

The current ARGUS equipment module and training base is located just outside of Washington at the Virginia Army National Guard facilities in Loudoun County, Virginia, and can be deployed to any region within the United States. Future plans call for ARGUS equipment modules to be located in six regions, the second of which will open in 1989, and will cover the southeast region of the United States.

For further information on ARGUS, please contact Colonel J. C. Herbert Bryant, Jr., Commander, or Sgt. Mary Colleen Broderick, Director of Administration, at 1301 Moran Road, Sterling, Virginia 22170 (703) 430-9600 or (703) 777-0410 (24/hour emergency).

VIII. INTO 1989

The major work of the Commission in late 1989 will be undertaking the task force drug-crime study directed by Senate Joint Resolution 144. The drug problem is growing in the Commonwealth. That is no surprise either to public officials or to the public at large. Unfortunately, while growth has been at a steady rate, recent months have in fact seen a large and unexplained burst in illegal drug activity in some of our communities.

The state has been busy cooperating with local police in investigative and enforcement activities. The General Assembly has authorized the creation of new positions for drug law enforcement within the Department of State Police. The General Assembly has also toughened the anti-drug criminal laws.

The Virginia Supreme Court has observed in its continuing study of sentencing patterns, that within the last eighteen months, judges are lengthening sentences for drug dealing. The result is and will be a strain on our Department of Corrections, even after completion of two new major facilities within the next two years.

It is also apparent now to most in the criminal justice community that law enforcement alone cannot manage this problem; education and treatment are important. Drug Abuse Resistance Education (DARE) is a program of law enforcement involvement in the education of our young people that has been professionally recognized for its potential impact in assisting our youth resist the temptations of a drug abusing lifestyle. In the area of treatment, the Department of Mental Health, has injected major new anti-drug funding through its local Community Services Boards. All these efforts take resources, people and time. But we are aware more than ever before that it will take a major cooperative effort to manage this problem and make us safe on our streets and in our homes.

We are also keenly aware that the solutions to the drug problem are not simple or easily found. It is for this reason, and in response to many concerns voiced to the legislature and to the Crime Commission by the public and law enforcement officals across Virginia, that Senate Joint Resolution 144, whose chief patron is Senator Elmon T. Gray, Crime Commission Chairman, was introduced in the 1989 Session of the General Assembly. Senate Joint Resolution 144 directs the Crime Commission to undertake a major two-year task for study of drug trafficking, abuse and related crime. The Commission will seek to develop a comprehensive strategy and plan of attack at the state level coordinating our efforts with all state, local and federal authorities and agencies. The Crime Commission will focus on enforcement, consumption reduction and correctional-rehabilitative issues.

Prior to July 1, substantial preparations will be required to begin the study. The eight additional members must be appointed, the federal grant must be finalized, staff must be selected and retained, and an initial plan of action must be developed. The Commission is looking forward to moving ahead with this important project.

The 1989 General Assembly passed several other joint resolutions directing the Commission to study various matters affecting crime, crime control, criminal procedure, and public safety. The Commission is requested in these cases to research the issue and submit its recommendations to the Governor and the 1990 General Assembly.

House Joint Resolution 283, whose chief patron was Delegate Warren G. Stambaugh of Arlington, Virginia, addresses handicapped inmates in local jails.

The purpose of Public Law 94-142 is to assure that all handicapped children have available to them, within the time periods specified in Section 1412 (2)(B) of Title 20, public education which emphasizes special education and related services designed to meet their unusual needs, to assure that the right of the children and their parents or guardians are protected, to assess and assure the effectiveness of efforts to educate handicapped children, and to provide for the education of all handicapped children. Congress has found that there are more than eight million handicapped children in the United States today and the special education needs of these children are not being fully met. State and local educational agencies have an obligation to provide education for all handicapped persons, but present financial resources are inadequate to meet the special education needs of the handicapped.

The jailed population which may qualify for this special program may approach 1,000 inmates. House Joint Resolution 283 directs the Virginia State Crime Commission to conduct a study of handicapped individuals under the age of twenty-two years in Virginia jails to determine the number of handicapped youth requiring service, the resources required to provide those services, the most efficient method of service delivery and the cost of providing such services.

Delegate Vincent F. Callahan, Jr., of McLean, Virginia, patroned HJR 321, which deals with shock incarceration of inmates. Boot camp prisons, often described as "shock incarceration," provide a highly regimented program involving strict discipline, hard labor, physical training, and some drill and ceremony resembling aspects of military basic training. As of December 1987, seven states operated such programs. These are Georgia, Oklahoma, Mississippi, Florida, Louisiana, New York, and South Carolina. An additional five states --- Kansas, Michigan, Missouri, New Hampshire, and North Carolina are in the process of developing boot camp programs. Most states restrict the requirements for the programs to impressionable young adult felons who are not hardened criminals. Also, states have required that prisoners must volunteer to participate in the programs. The National Institute of Justice defines "shock incarceration" programs as providing a short period of imprisonment followed by community supervision. The programs recruit young adult first time offenders, and provide a highly regimented program. House Joint Resolution 321 requests the Commission to study shock incarceration programs as an alternative to lengthy, costly incarceration for suitable inmates. The Commission is requested to review the shock incarceration programs and other alternative types of incarceration that have been implemented in other states. The Commission will determine how feasible the alternative programs are, the expected benefits and detriments, and identify the type of inmate who can be best served in the shock incarceration program.

Delegate G. Steven Agee of Roanoke, Virginia, sponsored HJR 367, which directs the Crime Commission to study non-detectable firearms and their effect on jail and courtroom security. The Virginia State Crime Commission is requested to evaluate the state of the art of manufacture of non-detectable firearms and firearms or explosives containing materials other than metal, (ii) determine what, if any danger is presented to the Commonwealth by the existence of such weapons, (iii) determine the adequacy and effectiveness of

jail house and courtroom weapons detection devices to detect metallic or non-metallic firearms or explosives, (iv) evaluate the impact on the Commonwealth of recent federal legislation regarding plastic guns and whether or not similar state legislation is appropriate and (v) make any recommendations the Commission finds appropriate including minimum standards, if appropriate, for detection devices.

House Joint Resolution 237, whose chief patron was Delegate A. Victor Thomas, requests the Secretary of Transportation and Public Safety to provide for and improve upon a system of forecasting both state prison and jail inmate populations. The Secretary is to submit her initial report to the Virginia Crime Commission and the 1990 General Assembly. Secretary Watts is scheduled to appear before the Commission on April 18, 1989, to present a work plan for implementing the provisions of HJR 237.

Delegate George H. Heilig, Jr. of Norfolk brought to the attention of the Commission the serious perils faced by individuals working during the night at convenience stores or other all night establishments. Delegate Heilig requested a Commission inquiry into these situations. The Commission shares Delegate Heilig's concern over the safety of such persons. We believe that a large number of robberies occur as a result of drug abuse and drug trafficking. During the Crime Commission's two-year major task force study (SJR 144) of drug-related crime, this issue will be one which receives our attention.

In the 1989 Session of the General Assembly, Senator J. Granger Macfarlane and Delegate Alan A. Diamonstein introduced SB 568 and HB 1251, respectively. Both bills would amend §16.1-254 of the Code, relating to transportation of detained juveniles, to provide that the agency having custody or supervision of the juvenile shall be responsible for any transportation, unless the person is violent or disruptive. Currently, the chief juvenile and domestic relations court judge designates the appropriate agency to handle the transportation. In most cases, this duty is assigned to the sheriff of the jurisdiction in which the detention facility is located. Certain inequities and inefficiencies have arisen as a result of the current requirements.

During hearings on the bills before the General Assembly committees, the Department of Corrections reported a potential $1.2 million fiscal impact to assume the responsibility. Because of this development, Senator Macfarlane concluded it would be in the best interest of the affected young people in custody, the Department of Corrections, and the sheriffs if the Crime Commission would examine the issue in detail during 1989. As a result, neither bill was pursued further and the Commission was formally requested to initiate an inquiry.

During 1989, the Commission will continue its close monitoring of the work of the Bureau of Forensic Science, the crowding of Virginia's jails and prisons, and meaningful programs for our incarcerated population, the Community Diversion Programs, the work of law enforcement officers and prosecutors statewide, and the effectiveness of Virginia's criminal justice system.

In summary, the Commission will continue in 1989 its most important role by keeping its finger on the pulse of criminal justice in Virginia. This will be accomplished by members and staff visiting numerous localities across Virginia, and meeting with the officers on the beat, the correctional officers in prisons, sheriffs and deputies, police chiefs, wardens, judges, prosecutors and especially concerned citizens. Also important is the Commission's contact with the National Association of Attorneys General, National Conference of State Legislatures, federal law enforcement authorities and other organizations which track national and interstate crime trends and related law enforcement initiatives.

In conclusion, as a legislative commission, the Virginia State Crime Commission works closely with all segments of criminal justice and has received the support of different administrations, legislators, citizens, local and state agencies in accomplishing its legislative charge. In this essential role in state government, the Commission has striven to build an environment and spirit of cooperation and confidence. This spirit is manifested in the many individuals and agencies that work with and rely upon the Commission in strengthening the criminal justice system.

During 1989, the Commission will follow up on previous recommendations and will re-examine the implementation and effectiveness of its past accomplishments. In addition to its formal studies, the Commission will undertake new initiatives in addressing methods to solidify and enhance the effectiveness of this Commonwealth's efforts in criminal justice.

IX. ACKNOWLEDGEMENTS

As explained on page two of this report, the thirteen member Commission is staffed by the director, his administrative assistant and a part-time staff attorney. However, substantially more staffing is needed primarily during the period May to October of each year to assist in dealing with the large volume of research, technical analysis and writing and to provide other areas of support for the study subcommittees. In addition, extra staff assistance is needed during sessions of the General Assembly in tracking the large volume of crime-related legislation. Finally, the Commission relies upon the fiscal office of the Division of Legislative Services for accounting support.

In order to meet the research staffing need, the Commission utilizes internship participants from law schools and universities and has employed part-time temporary research associates as funding would allow. The Commission, during 1988, received grant funding from the Department of Criminal Justice Services to employ Vernon E. Rich, Ph.D., of Radford University, as a contracted research associate. Dr. Rich and our part-time attorney, D. Robie Ingram, were the principal staff researchers on the study of asset seizure and forfeiture. In addition, two third-year law students from the College of William and Mary in Williamsburg participated in research internships with the Commission from May of 1988 to October of 1988. Ms. Susan E. Foster and Ms. Elizabeth H. McGrail worked with the Commission staff on the victims of crime, private security, auxiliary police, building code security and court appearance waiver studies. Phyllis H. Price, Ph.D., quality control supervisor with the Division of Legislative Services, Mandie M. Patterson, Victim Services Manager, and John Mahoney, Victims Services Specialist with the Department of Criminal Justice Services contributed significantly to the research effort on victims and witnesses of crime.

Earlier in 1988, Bryan E. Borneisen, a senior studying Administration of Justice at Virginia Commonwealth University, participated in an internship with the Commission. Mr. Borneisen helped the Commission track various pieces of legislation in the 1988 General Assembly. Professor James Hooker has coordinated the selection and placement of interns from Virginia Commonwealth University since 1986 and we appreciate his excellent support.

Barbara (Kris) Ragan worked for the Commission throughout the summer and early fall of 1988 providing much needed additional secretarial and document processing support. We commend Kris on her diligent efforts.

Throughout the year, the Division of Legislative Services handles the accounting and payroll processing functions for the Commission. The agency Director, E. M. Miller, Jr.; Fiscal Officer, Benjamin T. Reese; Accountant Senior, Caryl S. Harris; and Fiscal Technician, Betsy W. Smith all provide an invaluable service to the Commission. In addition, Penny Smithers, office manager, April Pitts, receptionist and Jim Hall, mail and reproduction operator each extend many courtesies to the Commission. Finally, Phyllis H. Price, Ph.D., quality control supervisor was most generous in reviewing various Commission reports to ensure the integrity of the documents. We also wish to commend the Division of Legislative Automated Systems, its Director, Charles M. Hubbard and staff for the excellent technical support provided throughout the year.

While the Commission conducts all of its research in-house, we draw upon individuals with special expertise in the various disciplines for needed information or assistance. Therefore, the Commission extends its sincere appreciation to the many individuals from the following agencies who have lent their support for the Commission, including representatives from the following agencies:

Bureau of Forensic Science
Clerk of the House of Delegates,
Clerk of the Senate
Commonwealth's Attorney's Training and Services Council
Department of Corrections
Department of Criminal Justice Services
Department of Housing and Community Development
Department of State Police
Division of Legislative Automated Systems
Division of Legislative Services
House Appropriations Committee
Joint Legislative Audit and Review Commission
Office of the Attorney General
Office of the Governor
Richmond City Sheriffs Office
Richmond Offender Aid and Restoration
Secretary of Transportation and Public Safety
Senate Finance Committee
Virginia Commonwealth University
Virginia Crime Prevention Association

We also are deeply grateful to the many criminal justice agencies across the Commonwealth who provided us a wealth of information as we undertook our charge.

In conclusion, the Commission enjoys an excellent working relationship with a multitude of individuals and agencies; all of whom are interested in making the Commonwealth a safe and enjoyable place to live and work. The contributions made by each played an important role in the success of the Commission's activities in 1988.

APPENDIX

Sections of the Code of Virginia
Establishing and Directing the
Virginia State Crime Commission
§§9-125 through 138

CHAPTER 20.

VIRGINIA STATE CRIME COMMISSION.

§ 9-125. Commission created; purpose. — There is hereby created the Virginia State Crime Commission, hereinafter referred to as the Commission. The purpose of the Commission shall be, through the exercise of its powers and performance of its duties set forth in this chapter, to study, report and make recommendations on all areas of public safety and protection. In so doing it shall endeavor to ascertain the causes of crime and recommend ways to reduce and prevent it, explore and recommend methods of rehabilitation of convicted criminals, study compensation of persons in law enforcement and related fields and study other related matters including apprehension, trial and punishment of criminal offenders. The Commission shall make such recommendations as it deems appropriate with respect to the foregoing matters, and shall coordinate the proposals and recommendations of all commissions and agencies as to legislation affecting crimes, crime control and criminal procedure. The Commission shall cooperate with the executive branch of government, the Attorney General's office and the judiciary who are in turn encouraged hereby to cooperate with the Commission. The Commission will cooperate with governments and governmental agencies of other states and the United States. (1972, c. 766.)

The numbers of §§ 9-125 through 9-138 were assigned by the Virginia Code Commission, the numbers in the 1972 act having been 9-117 through 9-130.

Law Review. — For survey of Virginia law on criminal law for the year 1971-1972, see 58 Va. L. Rev. 1206 (1972).

§ 9-126. Membership; appointment; terms; vacancies; chairman; expenses. — The Commission shall be composed of thirteen members: six shall be appointed by the Speaker of the House of Delegates from the membership thereof; three shall be appointed by the Privileges and Elections Committee of the Senate from the membership of the Senate; three shall be appointed by the Governor from the State at large; and the Attorney General of Virginia shall serve as an ex officio member with full voting privileges. One-half of the initial appointments made by the Speaker of the House of Delegates, and two-thirds of the initial appointments made by the Governor and by the Privileges and Elections Committee of the Senate shall be members of the Virginia State Crime Commission created by House Joint Resolution No. 113 of the 1966 Regular Session of the General Assembly and continued by subsequent

legislative action. The term of each appointee shall be for four years; with the exception of the Attorney General whose membership on the Commission shall be concurrent with his term as Attorney General of Virginia. Whenever any legislative member fails to retain his membership in the House from which he was appointed, his membership on the Commission shall become vacated and the appointing authority who appointed such vacating member shall make an appointment from his respective House to fulfill the vacated term. The Commission shall elect its own chairman annually. Members of the Commission shall receive compensation as provided in § 14.1-18 of the Code of Virginia and shall be paid their necessary expenses incurred in the performance of their duties. Provided, however, that all such expense payments shall come from existing appropriations to the Virginia Crime Commission. (1972, c. 766; 1974, c. 527; 1979, c. 316.)

§ 9-127. Studies and recommendations generally. — The Commission shall have the duty and power to make studies and to gather information and data in order to accomplish its purposes as set forth in § 9-125, and in connection with the faithful execution and effective enforcement of the laws of the State with particular reference but not limited to organized crime and racketeering, and to formulate its recommendations to the Governor and the General Assembly. (1972, c. 766.)

§ 9-128. Studies of operations, etc., of law-enforcement agencies. — At the direction or request of the legislature by concurrent resolution or of the Governor, the Commission shall, or at the request of any department, board, bureau, commission, authority or other agency created by the State, or to which the State is a party, the Commission may, study the operations, management, jurisdiction, powers and interrelationship of any such department, board, bureau, commission, authority or other agency, which has any direct responsibility for enforcing the criminal laws of the Commonwealth. (1972, c. 766.)

§ 9-129. Cooperation with agencies of other states. — The Commission shall examine matters relating to law enforcement extending across the boundaries of the State into other states; and may consult and exchange information with officers and agencies of other states with respect to law-enforcement problems of mutual concern to this and other states. (1972, c. 766.)

§ 9-130. Commission to refer cases of crime or official misconduct to appropriate authorities. — Whenever it shall appear to the Commission that there is reasonable cause, for official investigation or prosecution for a crime, or for the removal of a public officer for misconduct, the Commission shall refer the matter and such information as has come to its attention to the officials authorized and having the duty and authority to conduct investigations or to prosecute criminal offenses, or to remove such public officer, or to the judge of an appropriate court of record with recommendation that a special grand jury be convened. (1972, c. 766.)

§ 9-131. Executive director, counsel and other personnel. — The Commission shall be authorized to appoint and employ and, at pleasure remove, an executive director, counsel, and such other persons as it may deem necessary; and to determine their duties and fix their salaries or compensation within the amounts appropriated therefor. (1972, c. 766.)

§ 9-132. **Reports to Governor and General Assembly.** — The Commission shall make an annual report to the Governor and the General Assembly, which report shall include its recommendations. The Commission shall make such further interim reports to the Governor and the General Assembly as it shall deem advisable or as shall be required by the Governor or by concurrent resolution of the General Assembly. (1972, c. 766.)

§ 9-133. **Publication of information.** — By such means and to such extent as it shall deem appropriate, the Commission shall keep the public informed as to the operations of organized crime, problems of criminal law enforcement in the State and other activities of the Commission. (1972, c. 766.)

§ 9-134. **Powers enumerated.** — With respect to the performance of its functions, duties and powers subject to limitations contained herein, the Commission shall be authorized as follows:

a. To maintain offices, hold meetings and functions at any place within the Commonwealth that it may deem necessary;

b. To conduct private and public hearings, and to designate a member of the Commission to preside over such hearings;

c. Pursuant to a resolution adopted by a majority of the members of the Commission, witnesses attending before the Commission may be examined privately and the Commission shall not make public the particulars of such examination. The Commission shall not have the power to take testimony at private or public hearings unless at least three of its members are present at such hearings;

d. Witnesses appearing before the Commission at its request shall be entitled to receive the same fees and mileage as persons summoned to testify in the courts of the State, if such witnesses request such fees and mileage. (1972, c. 766.)

§ 9-135. **Construction of chapter.** — Nothing contained in this chapter shall be construed to supersede, repeal or limit any power, duty or function of the Governor or any department or agency of this State, or any political subdivision thereof, as prescribed or defined by law. (1972, c. 766.)

§ 9-136. **Cooperation of other state agencies.** — The Commission may request and shall receive from every department, division, board, bureau, commission, authority or other agency created by this State, or to which the State is a party or any political subdivision thereof, cooperation and assistance in the performance of its duties. (1972, c. 766.)

§ 9-137. **Disclosure of certain information by employee a misdemeanor.** — Any employee of the Commission who shall disclose to any person other than the Commission or an officer having the power to appoint one or more of the Commissioners the name of any witness appearing before the Commission in a private hearing or disclose any information obtained or given in a private hearing except as directed by the Governor, a court of record or the Commission, shall be guilty of a misdemeanor. (1972, c. 766.)

§ 9-138. **Impounding of certain documents.** — Upon the application of the Commission or duly authorized member of its staff, the judge of any court of record may impound any exhibit or document received or obtained in any public or private hearing held in connection with a hearing conducted by the Commission, and may order such exhibit to be retained by, or delivered to and placed in custody of the Commission, provided such order may be rescinded by further order of the court made after five days' notice to the Commission or upon its application or with its consent, all in the discretion of the court. (1972, c. 766.)

140285

REPORT OF THE VIRGINIA STATE CRIME COMMISSION

Private Security

TO THE GOVERNOR AND THE GENERAL ASSEMBLY OF VIRGINIA

House Document No. 11

COMMONWEALTH OF VIRGINIA
RICHMOND
1989

COMMONWEALTH of VIRGINIA

POST OFFICE BOX 3-AG
RICHMOND, VIRGINIA 23208

IN RESPONSE TO
THIS LETTER TELEPHONE
(804) 225-4534

ROBERT E. COLVIN
EXECUTIVE DIRECTOR

VIRGINIA STATE CRIME COMMISSION

General Assembly Building
910 Capitol Street

October 18, 1988

TO: The Honorable Gerald L. Baliles, Governor of Virginia, and Members of the General Assembly:

House Joint Resolution 168, agreed to by the 1988 General Assembly, directed the Virginia State Crime Commission to study the powers of arrest and other matters related to private security officers in Virginia. In fulfilling this directive, a study was conducted by the Virginia State Crime Commission. I have the honor of submitting herewith the study report and recommendations on Virginia's private security officers.

Respectfully submitted,

Elmon T. Gray
Chairman

ETG:tes

ENCLOSURE

MEMBERS OF THE

VIRGINIA STATE CRIME COMMISSION

From the Senate of Virginia:

Elmon T. Gray, Chairman

Howard P. Anderson

Elmo G. Cross, Jr.

From the House of Delegates:

Robert B. Ball, Sr., Vice Chairman

A. L. Philpott

V. Thomas Forehand, Jr.

Raymond R. Guest, Jr.

Warren G. Stambaugh

Clifton A. Woodrum

Appointments by the Governor:

Mr. Robert C. Bobb

Robert F. Horan, Jr.

George F. Ricketts, Sr.

Attorney General's Office:

Mr. H. Lane Kneedler

/kr

Subcommitee

Studying

Private Security

Members:

Delegate Raymond R. Guest, Jr., Chairman
Delegate Robert B. Ball, Sr.
Mr. Robert C. Bobb
Senator Elmo G. Cross, Jr.
Delegate V. Thomas Forehand, Jr.
Senator Elmon T. Gray
Mr. H. Lane Kneedler
Delegate Warren G. Stambaugh

Staff:

Robert E. Colvin, Executive Director
Susan E. Foster, Research Assistant
Tammy E. Sasser, Executive Administrative Assistant
Kris Ragan, Secretary

The subcommittee expresses its sincere appreciation to the Director and staff of the Department of Criminal Justice Services, particularly Mr. Lex Eckenrode, Division Director; Mr. Byrum Childress, Section Chief, and Mr. George Gotschalk, Section Chief, for their technical advice and assistance in conducting this study. Similarly, we want to thank Mr. James S. Goalder, and Mr. C. R. Hormachea of Virginia Commonwealth University for their support and contribution to the study.

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Appendices

I. Authority for Study

House Joint Resolution 168, sponsored by Delegate Frederick H. Creekmore and passed by the 1988 General Assembly, authorized the Virginia State Crime Commission to study the private security profession to determine "(i) what powers of arrest and detention are appropriate for private security guards and (ii) whether private security guards should be granted immunity from civil liability for actions incidental to arrest, and if so, what actions". The Commission was requested to submit its formal legislative and administrative recommendations to the Governor and the 1989 General Assembly.

Section 9-125 of the Code of Virginia establishes and directs the Virginia State Crime Commission (VSCC) "to study, report and make recommendations on all areas of public safety and protection." Section 9-127 of the Code of Virginia provides that "the Commission shall have the duty and the power to make such studies and gather information and data in order to accomplish its purposes as set forth in §9-125..., and to formulate its recommendations to the Governor and the General Assembly." Section 9-134 of the Code of Virginia authorizes the Commission "to conduct private and public hearings, and to designate a member of the Commission to preside over such hearings." The VSCC, in fulfilling its legislative mandate, undertook the private security study as directed by House Joint Resolution 168.

II. Members Appointed to Serve

Also during the April 19, 1988 meeting of the Crime Commission, its chairman, Senator Elmon T. Gray of Sussex, selected Delegate Raymond R. Guest, Jr. to serve as chairman of this subcommittee. Members of the Crime Commission who serve on the subcommittee are:

Delegate Raymond R. Guest, Jr. of Front Royal, Chairman
Delegate Robert B. Ball, Sr. of Henrico
Mr. Robert C. Bobb of Richmond
Senator Elmo G. Cross, Jr. of Hanover
Delegate V. Thomas Forehand, Jr. of Chesapeake
Senator Elmon T. Gray of Sussex
Mr. H. Lane Kneedler (Attorney General's Office)
Delegate Warren G. Stambaugh of Arlington

III. Executive Summary

Under the Code of Virginia, §54-729.33, an armed contractual private security guard has the authority to effect an arrest for an offense (not limited to shoplifting offenses) occurring in his presence while on the premises he was contracted to protect or in the presence of a merchant with probable cause to believe the arrestee has committed willful concealment of goods. This broad grant of authority to armed contractual security guards raised concern on the part of industry personnel and the public due to the guards minimal training. According to the compulsory training standards established by the Criminal Justice Services Board, an armed contractual security guard is required to undergo only 16 hours of training, only 4 of which are in the study of legal authority.

The subcommittee recommends that §54-729.33 be retained in its current form. In addition, the subcommittee recommends that the Virginia State Crime Commission request the Criminal Justice Services Board to reevaluate the firearms training requirements for armed guards.

In contrast, unarmed contractual security guards have no arrest authority under the Code of Virginia. Rather, they have only the arrest authority of an ordinary citizen. According to the training standards established by the Criminal Justice Services Board, unarmed contractual security guards must undergo 12 hours of training. This training is identical to that of armed guards absent the 4 hours of firearms training; nevertheless, unarmed guards are without arrest authority.

The subcommittee recommends that the Commission refrain from taking official action regarding the arrest authority of unarmed contractual security guards, but continue to monitor the industry to determine whether corrective action proves necessary.

IV. Background

Chapter 737 of the 1976 Acts of Assembly provided that a registered employee of a private security services business shall have the power to effect an arrest for offenses occuring on the premises which the service was hired to protect. In 1978, legislation narrowed the scope of this broad grant of arrest authority to include only those offenses on the premises committed in the presence of the security employee or the presence of a merchant, agent or employee of a merchant with probable cause to believe that the person arrested has shoplifted or committed willful concealment of goods.

As a result of legislation which became effective July 1, 1988, the unarmed branch of the private security services industry is deregulated. Specifically, the 1988 legislation inserts "armed" into the statute to describe guards, thereby impliedly excluding unarmed guards from the statutory coverage. Lastly, the statute only addresses contractual security personnel. A "guard", as defined in the statute, refers only to a "person employed by a private security services business..." which does not include within its parameters proprietary or in-house security service personnel. Further, §54-729.28 explicitly states that "regular employees of persons engaged in other than the private security business, where the regular duties of such employees primarily consist of protecting the property of their employers," i.e. proprietary security guards, are exempt from application of the statute.

According to §18.2-105 of the Code of Virginia, a merchant who causes the arrest or detention of any person is immune from civil liability for false imprisonment, false arrest, assault and battery or unlawful detention, if detention does not exceed one hour, provided the merchant acted with probable cause to believe the person has shoplifted or committed willful concealment of goods and merchandise. Although the statute protects a proprietary security guard as an employee of the merchant, the statutory definition of an "agent" of a merchant arguably does not encompass a contractual private security guard. Therefore, it is unclear to what extent, if any, a contractual private security guard is immune from civil liability under the above circumstances.

V. Scope of the Study

The study included the following topics:

1. Arrest authority of private security personnel

2. Minimum training standards for private security guards mandated by the Department of Criminal Justice Services

3. Feasibility of civil immunity for private security personnel

VI. Recommendations

The full Crime Commission met on October 18, 1988 and received the report of the subcommittee. After careful consideration, the findings and recommendations of the subcommittee were adopted by the Commission. Pursuant to HJR 168 (1988) the Law Enforcement Subcommittee studying private security guards met on August 16, 1988 to determine whether private security guards should have arrest authority and whether private security guards should be immune from civil liability. After careful consideration, the subcommittee made the following findings and recommendations:

Unarmed Contractual Private Security Guards

1. Refrain from taking official action regarding the arrest authority of unarmed contractual security guards.

2. Continue to monitor the unarmed branch of the private security industry.

Armed Contractual Security Guards

1. Retain §54-729.33 in its current form.

2. The Virginia State Crime Commission should formally request that the Criminal Justice Services Board reevaluate the firearms training requirements for armed guards.

Civil Immunity for Private Security Guards

1. The subcommittee made no recommendation regarding the issue of civil immunity for private security guards.

VII. Work of the Subcommittee

The subcommittee held one extensive staff briefing on June 21, 1988, one public hearing on July 21, 1988 in Richmond, Virginia to solicit input from concerned individuals and organizations, and one work session in Richmond on August 16, 1988. In addition, the Subcommittee reviewed studies on the private security industry as well as 83 responses to a 12-question survey mailed statewide to private security services companies employing armed and unarmed security guards.

A. Testimony and Survey

Based on the public testimony and the survey results, opinion is divided, even within the industry, as to whether contractual private security guards should have the authority to effect an arrest. However, almost all agreed that the current minimum training standards are inadequate.

B. Parallel or Similar National Studies

Private Police in the United States: Findings and Recommendations is a five-volume report describing a 16-month study of the private security industry conducted by the Rand Corporation in 1971. The purpose of the study was "to describe the nature and extent of the private police industry in the United States, its problems, its present regulation, and how the law impinges on it. And second,... to evaluate the benefits, costs and risks to society of current private security and to develop preliminary policy and statutory guidelines for improving its future operations and regulation."

Among its findings, those of particular interest to the current Crime Commission Study were the following:

> Services provided by private security personnel complement, rather than supplement, those rendered by public law enforcement.
>
> The forecasted continued growth of private security expenditures based, in part, on rising crime rates, high insurance premiums in the absence of guards and anxious businessmen, is 11%.
>
> In general, private security personnel tend to be older, less educated, much lower paid and more transient than their public police counterparts. In addition, private security personnel have minimal, if any, training.
>
> Results of a survey of private security guards in the Southern California area indicate that they misunderstand their role and legal authority. However, the study also indicated that guards are aware of their "incomplete comprehension of their role."
>
> Abuse of authority, such as assault or unnecessary use of force (with and without a gun), false imprisonment and false arrest, improper search and interrogation, impersonation of a public police officer, trespass, illegal bugging and wiretapping, breaking and entering, gaining entry by deception, false reporting, and improper surveillance, were identified as problems, potential or actual, within the private security industry.
>
> Current law has not always provided an adequate remedy for persons injured by private security personnel.
>
> State regulation and licensing of the private security industry is minimal or nonexistent and characterized by a lack of uniformity. At the time this study was conducted, no state had a "model law." In addition, no state had mandatory regulation of in-house guards or investigators.

Based on its findings, the Rand study recommended:

> "state licensing and registration requirements including mandatory job-specific training, mandatory bonding or insurance requirements, certain job-specific personnel background and experience standards."
>
> Provisions imposing sanctions for violations or proscribed conduct.
>
> Establishment of a research center funded by the federal government to continuously evaluate the cost effectiveness of the private security industry.

Report of the Task Force on Private Security is a 400-page study of the private security industry conducted by the National Advisory Committee on Criminal Justice Standards and Goals in 1976. This study constituted the first attempt to codify industry standards. The task force was comprised of experts and practitioners in the private security industry who were to suggest ways to upgrade the quality of private security personnel and increase the overall effectiveness of private security services in crime prevention. The task force

made recommendations "for the selection and training of private security personnel, the development of technology and procedures for crime prevention systems, and the relationship of the private security industry with law enforcement agencies."

The Growing Rate of Private Security was a comprehensive 30-month study of the private security industry conducted by Hallcrest Systems, Inc. The purpose of the study was to gather information regarding the existing private security industry, to describe the contribution to crime prevention and order maintenance made by the private security industry, and to describe the interrelationship between public law enforcement and the private security industry. The private security study was funded by the National Institute of Justice as part of its research on effective use and deployment of police resources. The private security industry was viewed as a possible cost-effective means of meeting the increasing demands on public law enforcement.

The study found:

> Total expenditures for private security currently exceed law enforcement expenditures and will continue to increase while expenditures for public law enforcement will stabilize.
>
> More than $20 billion is spent annually for private security services.
>
> There is little cooperation between public law enforcement and the private security industry in crime prevention and public safety. To the extent cooperative efforts exist, most are initiated by the private sector. Two major obstacles to improved police-private security interaction are police moonlighting within the private security industry and the excessive number of burglary alarms to which the police must respond.
>
> Law enforcement executives who were surveyed rated the overall contribution to crime prevention by private security guards as only "somewhat effective." Of primary concern to law enforcement is the quality of private security personnel, e.g., less than half of the states have provisions for licensing and training security officers.
>
> Both public law enforcement and the private security industry are willing to consider an expanded role for private security -- private security guards responding to minor criminal incidents occurring on the premises the service was hired to protect and performing non-crime-related police tasks.
>
> Within businesses and institutions, there exist "private justice systems," internal mechanisms to resolve many criminal acts thus diverting the task of their resolution from the public justice system.

To promote police-security interaction and cooperation, the Hallcrest study recommended:

> Improve the quality of private security personnel by requiring criminal background checks and establishing minimum training standards.
>
> Increase police awareness of the role of private security.

Increase interaction between public law enforcement and the private security industry, e.g., develop policies for sharing investigative information.

Experiment with transfer of police activities which do not require police authority.

C. Parallel or Similar Virginia Studies

The Private Security Industry in Virginia was prepared in 1972 by the Research Department of the Division of Justice and Crime Prevention. The purpose of the report was to describe the private security industry in Virginia. The results of the study provided further support for the conclusions of the Rand Study. Specifically, the study examined the use of private security agencies and personnel, forecasted future growth of the industry at the national and state level, created a profile of private security personnel, identified abuses within the industry and described the cooperative relationship between police and private security. While much of the statistical data set out in the report is outdated, many of its conclusions remain authoritative. Of particular interest to the Crime Commission study were the following:

In the private sector, contract security employment is increasing whereas employment of in-house security is declining. This trend is largely due to economic conditions. Specifically, in-house security costs approximately 20% more than contract security.

Private security guards were poorly educated, inadequately trained and unmotivated. However, contrary to expectations, the victim of this inadequate service is the consumer of the protective service, not the general public. The user of the service receives little more than a "scarecrow in blue" or a "body". Yet, the consumer is unwilling to pay the greater cost necessary to attract more qualified personnel.

Incidence of complaints in Virginia against private security personnel is likely underestimated because: the existence of local agencies whose purpose is to receive complaints may be unpublicized; the public, unaware of the limited legal authority of private security guards, may not realize that a guard's conduct is unlawful; many abuses causing only insignificant damages are dismissed as trivial.

Battery, assault, intentional infliction of emotional harm, false imprisonment, malicious prosecution, trespass to land, trespass to personal property, negligence, defamation and invasion of privacy were identified as the torts most commonly committed by private security personnel.

Where proprietary security services exist, the user of the service is liable to the victim under the theory of respondeat superior for tortious conduct of a security guard. Where contract security services exist, the user of the service is liable to the victim only if the guard is considered an employee of the user rather than an independent contractor, a question of fact to be determined on a case by-case basis. The report concluded that imposing liability upon the recipient of guard services would provide victims with a solvent defendant and encourage on-premises supervision of guards.

Report of the Virginia State Crime Commission to the Governor and the General Assembly of Virginia on Private Security.

In 1975, the Crime Commission conducted a comprehensive study of the private security industry. The Crime Commission found:

A lack of any uniform statewide regulation

A problem with the caliber of a substantial number of industry personnel

A problem of impersonation of public police officers

A lack of firearms training

An absence of statutory authorization to conduct a criminal records check on personnel from the F.B.I. or other law enforcement agency.

The Commission recommended regulation of contractual private security personnel and those proprietary security personnel who have contact with the public. The suggested regulation would include registration and licensing requirements, bond requirements and certification requirements for armed personnel. These recommendations were subsequently incorporated into House Bill #1581. The General Assembly failed to approve House Bill #1581. However, in 1976 similar legislation was passed.

Report of the Committee on Law Enforcement and Private Security Cooperation was conducted in 1987 by a committee composed of representatives from the private security industry, the Virginia State Sheriff's Association and the Virginia Association of Chiefs of Police. The study examined the negative perception and image of the private security industry, the uncooperative relationship between public law enforcement and the private security industry, the unique problems presented by public law enforcement officers moonlighting as private security guards and the adequacy of private security training. In each area, the Committee made recommendations and analyzed potential impact.

Report of the Virginia Board of Commerce on the Study of the Establishment of a Private Investigator's Board.

The Board of Commerce was requested by the 1987 General Assembly to study the desirability of establishing a Private Investigator's Board. The Board of Commerce determined that the existing regulatory law was sufficient to protect the public health, safety and welfare; therefore, it recommended that no action be taken to enact a Private Investigator's Board.

The Second Decade: A Study on the Regulation of the Private Security Industry in Virginia

In 1988, Carroll Hormachea and James Goalder conducted a study of the private security industry in Virginia on behalf of the Department of Criminal Justice Services. The scope of the study was limited to private security guard firms and private investigators. The purpose of the study was to evaluate the effectiveness of the current regulatory system in Virginia, identify recurring problems and develop a three year plan for the efficient regulation of the industry as well as implementation strategies.

Although the Hormachea/Goalder Study only addressed the arrest authority of private security guards tangentially, several of its findings are of particular interest to the Crime Commission study. According to the results of a telephone survey of 20 private security firm managers, most indicated that unarmed guards, armed guards and security firm owners and managers, respectively, should be trained in "powers of arrest" as part of their minimum training requirements. Seven of the security firm managers surveyed knew of at least one case of mistaken or illegal arrest by private security personnel. Private security training instructors surveyed were confused as to the current arrest authority of private security personnel. Some stated that private security guards lack arrest authority, others stated guards have arrest authority. Others simply admitted they did not know. Instructors suggested additional training in the areas of arrest authority, arrest powers, search and seizure, protection under the 4th, 5th and 6th Amendments, and liability related to arrest.

Only four of 19 managers believed their business would be hurt if they were not allowed to make arrests. Twelve of the firms had made no arrests within the past year. Nevertheless, arrest authority, or the threat of arrest, remained very important to a small percentage of firms.

VIII. Discussion of Issues

A. Qualifications and Training

Current Law and Situation:

The private security industry is currently regulated by two state agencies: the Department of Criminal Justice Services and the Department of Commerce. Specifically, §9-182 of the Code of Virginia authorizes the Criminal Justice Services Board to establish compulsory minumum training standards for private security services business personnel. On the other hand, §54-729.30 authorizes the Department of Commerce to promulgate rules and regulations to secure the public safety and welfare against incompetent, unqualified, unscrupulous or unfit persons engaging in the private security industry.

According to the Department of Commerce records, as of June 3, 1988, 15,989 private security registrations were outstanding. The Department of Commerce has no means to determine how many of this total are guards, as registrations are also issued to private investigators, armored car personnel and guard dog handlers. However, the Commerce Department's past experience indicates that most of this total represents guards.

To be employed as a private security guard, an individual must be at least 18 years old and undergo a background check before the end of the 120 day application period. In addition, according to the compulsory training standards for private security services business personnel established by the Criminal Justice Services Board, an unarmed contractual security guard receives 12 hours of training and an armed contractual security guard receives 18. The training consists of the following standards:

Administration and Security Orientation	3 hours
Legal Authority	4 hours
Emergency and Defensive Procedures	5 hours
Firearms (only applicable to armed guards)	4 hours

However, under §54-729.29(c), an unarmed guard may be employed for up to 120 days without having completed even minimal training. Given the high turnover rate plaguing the industry, it is not uncommon for untrained guards to be employed without training.

In contrast, law enforcement officers must complete approximately 315 hours of classroom training and 60 hours of field training. To qualify, an individual must be a U. S. citizen, undergo a background check prior to employment, possess a high school diploma or its equivalent, possess a Virginia driver's license if required by the duties of the position, and undergo a physical examination.

As of July 1, 1988, unarmed guards are no longer required to register with the Department of Commerce as a condition to employment with a private security services business. The task of ensuring that unarmed security guards have satisfied the compulsory minimum training standards has been relegated to compliance agents, employees of the private security services company. As defined under the Code, a compliance agent is "a natural person who is an owner of or employed by a licensed private security services business."

The Department of Commerce requires a compliance agent to pass an examination on the regulations and laws governing the private security services business, meet the training requirements and hold a registration in at least one registration category in which the firm offers private security services. Neither the Code nor the Department of Commerce requires the compliance agent to be on the premises or an active participant in the daily operations of the private security services business.

The Criminal Justice Services Board does not mandate training for in-house, or proprietary, security guards. At the public hearing, several speakers stated that there was no valid justification for this differential treatment and that in-house guards should be required to complete the same training as contractual security guards.

According to our survey results, 82% of the respondents believe the current training is inadequate and require more than the mandated state minimum for their employees. Areas listed as needing greater emphasis include legal authority (73%), emergency and defensive procedures (51%), firearms (42%), administration and security orientation (34%), first aid, public relations and liability.

B. ARREST AUTHORITY

Current Law and Situation:

Chapter 48 of the 1988 Acts of Assembly provides that a registered armed guard of a private security services business shall have the power to effect an arrest for an offense (not limited to shoplifting offenses) occurring in his presence while on the premises he was contracted to protect or in the presence of a merchant, agent or employee of the merchant the private security business has contracted to protect, if such merchant, agent or employee had probable cause to believe the person arrested had shoplifted or committed willful concealment of goods.

Neither unarmed contractual security guards nor in-house security guards have arrest authority under the Code of Virginia. Rather, they have only the arrest authority of an ordinary citizen. Under Virginia common law, a citizen may effect an arrest for (1) a felony which has been committed provided the citizen has probable cause to believe the suspect committed it or (2) for

breaches of the peace committed in his presence.

In addition, a security guard may seek appointment as a conservator of the peace. Under Sections 19.2-13 and 19.2-81 of the Code of Virginia, the circuit court of any county or city, upon a showing of necessity for the security of property or the peace, may appoint conservators of the peace. A conservator of the peace, within the area and for the time specified, shall have, inter alia, the authority to effect a warrantless arrest for any crimes committed in his presence; a felony not committed in his presence where he has probable cause to believe the suspect committed the offense; misdemeanors not committed in his presence which involve shoplifting, an assault and battery or destruction of property located on premises used for business or commercial purposes when the arrest is based on probable cause upon reasonable complaint of the person who observed the alleged offense.

Testimony revealed that many firm owners misunderstand the statutory arrest authority of armed guards. Several stated that the arrest authority should extend beyond shoplifting offenses to include any act occurring on the protected site. In fact, however, the statutory arrest authority of armed guards is not restricted to shoplifting offenses, but includes any offense committed on the protected premises. Opinions of various Attorneys General have construed the arrest authority of an armed security guard to be the same as a fully-trained law enforcement officer while on the property he is contracted to protect.

81% of the private security companies who responded to our survey believe that armed contractual security guards should have arrest authority. On the other hand, only 59% believed unarmed contractual security guards should have arrest authority. However, according to testimony and our survey results, many of the private security companies, as a matter of policy, prohibit their employees from making arrests. Our survey shows that 37% of the private security companies in Virginia made no arrests within the past year, 34% made less than 10, only 8% made more than 100.

Conclusion

The subcommittee concludes that because the unarmed branch of the industry was deregulated only as of July 1, 1988, the impact of the deregulation is not yet ascertainable. The subcommittee needs to monitor the unarmed branch of the industry to determine whether the deregulation has created problems requiring corrective action.

The subcommittee also concludes that no substantial problems have been caused by §54-729.33 of the Code of Virginia authorizing armed contractual security guards to effect arrests in certain situations. However, the subcommittee believes the existing firearms training requirements are inadequate.

C. CIVIL IMMUNITY:

Current Law and Situation

According to §18.2-105 of the Code of Virginia, a merchant who causes the arrest or detention of any person is immune from civil liability for false imprisonment, false arrest, assault and battery or unlawful detention if the detention does not exceed one hour, provided the merchant acted with probable cause to believe the person has shoplifted or committed willful concealment of goods and merchandise. Although the statute protects a proprietary security guard as an employee of the merchant, the statutory definition of an "agent"

of a merchant does not encompass a contractual private security guard. Therefore, it is unclear to what extent, if any, a contractual private security guard is immune from civil liability under the above circumstances.

There is no consensus within the industry regarding the appropriateness of civil immunity for contractual security guards. Some firm owners, concerned about potential abuses, oppose it. One respondent likened it to "turning the fox loose in the hen house." Others favor certain good faith probable cause protections for contractual security guards.

APPENDICES

APPENDIX A

HJR 168

LD4122306

HOUSE JOINT RESOLUTION NO. 168

Offered January 26, 1988

Requesting the Virginia State Crime Commission to study what arrest powers should be permitted private security guards and whether private security guards should be granted immunity from civil liability for actions incidental to arrest.

Patron–Creekmore

Referred to the Committee on Rules

WHEREAS, private security guards are required to be registered and their profession is regulated by the Department of Commerce; and

WHEREAS, a guard is defined as any person employed by a private security services business to safeguard and protect persons and property or to prevent theft, loss or concealment of any tangible or intangible personal property; and

WHEREAS, some private security guards are armed, meaning they carry or have immediate access to a firearm or other deadly weapon in the performance of their duties; and

WHEREAS, although private security guards have some of the powers of law-enforcement officers they are not required to have the extensive training required of law-enforcement officers; and

WHEREAS, private security guards often work in retail establishments for the purpose of preventing shoplifting; and

WHEREAS, questions have been raised concerning the extent to which private security guards should have the power to arrest and detain individuals; and

WHEREAS, merchants, agents and employees of the merchant who cause the arrest or detention of a person pursuant to certain sections of the Code of Virginia are immune from civil liability for slander, malicious prosecution, false imprisonment, false arrest, assault and battery and unlawful detention, if such detention does not exceed one hour and if the merchant, agent or employee of the merchant causing the arrest or detention had probable cause to believe that the person had shoplifted or committed willful concealment of goods or merchandise; and

WHEREAS, questions have been raised as to whether private security guards should be granted similar immunity from civil liability; now,therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia State Crime Commission is requested to conduct a study of the profession of private security guards to determine (i) what powers of arrest and detention are appropriate for private security guards and (ii) whether private security guards should be granted immunity from civil liability for actions incidental to arrest and, if so, which actions.

The Virginia State Crime Commission shall submit its recommendations to the 1989 General Assembly.

The direct costs of this study are estimated to be $3,820, and such amount shall be allocated to the Virginia State Crime Commission from the general appropriation to the General Assembly.

APPENDIX B

Existing Virginia Legislation

V. Applicable Law

A. Virginia Code §54-729.33. Power of guard to effect an arrest.

B. Virginia Code §54-729.27. **Guard:** person employed by a private security services business who undertakes to safeguard and protect persons and property or undertakes to prevent theft, loss, or concealment of any tangible or intangible personal property.

C. Virginia Code §54-729.28. **Persons exempt from application of this chapter:** A guard who is also a full-time public law enforcement officer.

D. Virginia Code §18.2-105. Merchant exemption from civil liability in connection with arrest or detention of suspect.

E. Virginia Code §18.2-106. **Agents of the merchant defined.**

F. Virginia Code §19.2-13. Special conservators of the peace; authority; jurisdiction; bond; liability of employers.

§ 54-729.33. **Power of armed guard to effect arrest.** — The compliance with the provisions of this chapter shall not of itself authorize any person to carry a concealed weapon or exercise any powers of a conservator of the peace. A registered armed guard of a private security services business while on a location which such business is contracted to protect shall have the power to effect an arrest for an offense occurring in his presence on such premises or in the presence of a merchant, agent, or employee of the merchant the private security business has contracted to protect, if such merchant, agent, or employee had probable cause to believe that the person arrested had shoplifted or committed willful concealment of goods as contemplated by § 18.2-105. For the purposes of § 19.2-74, a registered armed guard of a private security services business shall be considered an arresting officer. (1976, c. 737; 1978, c. 560; 1980, c. 425; 1988, c. 48.)

The 1988 amendment inserted "armed" throughout the section.

§ 54-729.27. Definitions. — For the purposes of this chapter and subsection A of § 9-182 of the Code of Virginia, the following definitions shall apply, unless the context requires a different meaning:

"Armed guard" means a guard, as defined below, who carries or has immediate access to a firearm or other deadly weapon in the performance of his duties.

"Armored car personnel" means persons who transport or offer to transport under armed security from one place to another, money, negotiable instruments, jewelry, art objects, or other valuables in a specially equipped motor vehicle with a high degree of security and certainty of delivery.

"Board" means the Criminal Justice Services Board or any successor, board or agency designated by law to replace the Board.

"Compliance agent" means a natural person who is an owner of or employed by a licensed private security services business. The compliance agent shall assure the compliance of the private security services business with this title.

"Courier" means any armed person who transports or offers to transport from one place to another documents or other papers, negotiable or nonnegotiable instruments, or other small items of value that require expeditious service.

"Department" means the Department of Commerce or the agency designated by law to replace the Department.

"Guard" means any person who is employed by a private security services business who undertakes to safeguard and protect persons and property or undertakes to prevent theft, loss, or concealment of any tangible or intangible personal property.

"Guard dog handler" means any person who is employed by a private security services business and handles dogs in the performance of duty in protection of property or persons.

"License" or *"licensing"* means a method of regulation whereby engaging in a private security services business is unlawful without the issuance of a license by the Department of Commerce pursuant to this title.

"Natural person" means an individual, not a corporation.

"Person" means any individual, group of individuals, firm, company, corporation, partnership, business, trust, association, or other legal entity.

"Private investigator" or *"private detective"* means any person who engages in the business of, or accepts employment to make, investigations for the purpose of obtaining information with reference to (i) crimes or civil wrongs; (ii) [Repealed.] (iii) the location, disposition, or recovery of stolen property; (iv) the cause of responsibility for accidents, fires, damages, or injuries to persons or to property; or (v) securing evidence to be used before any court, board, officer, or investigative committee.

"Private security services business" means any person engaging in the business of providing, or who undertakes to provide, armored car personnel, guards, private investigators, private detectives, couriers, or guard dog handlers, to another person under contract, express or implied.

"Registration" means a method of regulation whereby certain personnel employed by a private security services business are required to obtain a registration from the Department pursuant to this title.

"Unarmed guard" means a guard who does not carry or have immediate access to a firearm or other deadly weapon in the performance of his duties. (1976, c. 737; 1977, c. 376; 1980, c. 425; 1984, cc. 57, 779.)

The 1984 amendments. — The first 1984 amendment, in the first paragraph, substituted "§ 9-152" for "§ 9-111.2"; added the present second paragraph, which defines "armed guard"; in the present fourth paragraph substituted "Board" for "Commission" in three places and inserted "board"; added the present fifth paragraph, which defines "compliance agent"; added "or the agency designated by law to replace the Department" in the present seventh paragraph; deleted "of Professional and Occupational Regulation" following "Department" in the present tenth paragraph; added the present eleventh paragraph, defining "natural person"; added the last paragraph, which defines "unarmed guard"; and deleted the subsection designations A through K from the present third, fourth, sixth through tenth, and twelfth through fifteenth paragraphs, respectively.

The second 1984 amendment substituted "subsection A of § 9-182" for "§ 9-111.2" in the introductory paragraph, substituted "Board" for "Commission" twice in the present fourth paragraph, and substituted "Commerce" for "Professional and Occupational Regulation" in the present tenth paragraph.

§ 54-729.28. Persons exempt from application of chapter. — The provisions of this chapter shall not apply to the following:

A. An officer or employee of the United States of America, or of this Commonwealth or a political subdivision of either, while the employee or officer is engaged in the performance of his official duties.

B. A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons or a person engaged in the business of a consumer reporting agency as defined by the Federal Fair Credit Reporting Act.

C. An attorney-at-law licensed to practice in Virginia or his employees.

D. The legal owner of personal property which has been sold under any security agreement while performing acts relating to the repossession of such property.

E. A person receiving compensation for private employment as a guard who also has full-time employment as a law-enforcement officer employed by the Commonwealth or any political subdivision thereof.

F. Any person appointed under § 56-277.1 or § 56-353 while engaged in the employment contemplated thereunder.

G. Regular employees of any person who are employed to investigate accidents or to adjust claims and who do not carry weapons in the performance of their duties.

H. Regular employees of persons engaged in other than the private security services business, where the regular duties of such employees primarily consist of protecting the property of their employers. Any such employee who carries a firearm and is in direct contact with the general public in the performance of his duties shall possess a valid registration with the Department as provided in § 54-729.29 B. "General public" shall mean individuals who have access to areas open to all and not restricted to any particular class of the community.

I. Persons, sometimes known as "shoppers," employed to purchase goods or services solely for the purpose of determining or assessing the efficiency, loyalty, courtesy, or honesty of the employees of a business establishment.

J. Licensed or registered private investigators from other states entering Virginia during the course of an investigation originating in their state of licensure or registration when the other state offers similar reciprocity to private investigators licensed and registered by the Commonwealth of Virginia.

K. Unarmed regular employees of telephone public service companies where the regular duties of such employees consist of protecting the property of their employers and investigating the usage of telephone services and equipment furnished by their employers, their employers' affiliates, and other communications common carriers. (1976, c. 737; 1977, c. 376; 1981, c. 538; 1983, c. 569; 1984, c. 375.)

The 1983 amendment substituted "Commonwealth" for "State" in subdivisions A and E, deleted "as defined in § 9-108 of the Code of Virginia" at the end of subdivision E, divided the former first sentence of subdivision H into the present first and second sentences, by deleting "provided that" at the beginning of the present second sentence, inserted "where" and substituted "such" for "which" in the present first sentence of subdivision H, and added subdivision J.

The 1984 amendment added subdivision K.

§ 18.2-105. **Exemption from civil liability in connection with arrest or detention of suspected person.** — A merchant, agent or employee of the merchant, who causes the arrest or detention of any person pursuant to the provisions of § 18.2-95 or § 18.2-96 or § 18.2-103, shall not be held civilly liable for unlawful detention, if such detention does not exceed one hour, slander, malicious prosecution, false imprisonment, false arrest, or assault and battery of the person so arrested or detained, whether such arrest or detention takes place on the premises of the merchant, or after close pursuit from such premises by such merchant, his agent or employee, provided that, in causing the arrest or detention of such person, the merchant, agent or employee of the merchant, had at the time of such arrest or detention probable cause to believe that the person had shoplifted or committed willful concealment of goods or merchandise. The activation of an electronic article surveillance device as a result of a person exiting the premises or an area within the premises of a merchant where an electronic article surveillance device is located shall constitute probable cause for the detention of such person by such merchant, his agent or employee, provided such person is detained only in a reasonable manner and only for such time as is necessary for an inquiry into the circumstances surrounding the activation of the device, and provided that clear and visible notice is posted at each exit and location within the premises where such a device is located indicating the presence of an antishoplifting or inventory control device. For purposes of this section, "electronic article surveillance device" means an electronic device designed and operated for the purpose of detecting the removal from the premises, or a protected area within such premises, of specially marked or tagged merchandise. (Code 1950, § 18.1-127; 1960, c. 358; 1975, cc. 14, 15; 1976, c. 515; 1980, c. 149; 1985, c. 275.)

§ 18.2-106. **"Agents of the merchant" defined.** — As used in this article "agents of the merchant" shall include attendants at any parking lot owned or leased by the merchant, or generally used by customers of the merchant through any contract or agreement between the owner of the parking lot and the merchant. (Code 1950, § 18.1-128; 1960, c. 358; 1975, cc. 14, 15.)

§ 19.2-13. Special conservators of the peace; authority; jurisdiction; bond; liability of employers. — Upon the application of any corporation authorized to do business in the Commonwealth or the owner, proprietor or authorized custodian of any place within the Commonwealth and the showing of a necessity for the security of property or the peace, the circuit court of any county or city, in its discretion, may appoint one or more special conservators of the peace, who, within the area and for the time specified in the order of appointment, shall have all of the powers, functions, duties, responsibilities and authority of any other conservator of the peace. The order of appointment may provide that a special conservator of the peace shall have all the powers, functions, duties, responsibilities and authority of any other conservator of the peace throughout the Commonwealth, or within such geographical limitations as the court may deem appropriate, whenever such special conservator of the peace is engaged in the performance of his duties as such. Prior to granting an application for appointment, the circuit court shall order the local law-enforcement agency to investigate the background and character of the prospective appointee and file a report of such investigation with the court.

When the application is made by a corporation, the circuit court shall specify in the order of appointment the geographic jurisdiction of the special conservator of the peace, and this jurisdiction may include any or all counties and cities of the Commonwealth wherein the corporation does business. The clerk of the appointing circuit court shall certify a copy of the order of appointment to the circuit court of every jurisdiction specified in said order, and each special conservator of the peace so appointed on application of a corporation shall present his credentials to the chief of police or sheriff of all such jurisdictions.

Every person appointed as a special conservator of the peace pursuant to the provisions of this section, before entering upon the duties of such office, may be required by the court to enter into a bond with approved surety before the clerk of the circuit court of the county or city wherein such duties are to be performed, in the penalty of such sum as may be fixed by the court, conditioned upon the faithful performance of such duties. Such bond shall be conditioned upon the faithful performance of such duties in any locality in which he is authorized to act pursuant to the order of the court.

If any such special conservator of the peace be the employee, agent or servant of another, his appointment as special conservator of the peace shall not relieve his employer, principal or master, from civil liability to another arising out of any wrongful action or conduct committed by such special conservator of the peace while within the scope of his employment. (Code 1950, § 19.1-28; 1960, c. 366; 1974, cc. 44, 45; 1975, c. 495; 1976, c. 220; 1982, c. 523.)

The 1982 amendment inserted the second sentence of the first paragraph.

APPENDIX C

Private Security Survey

COMMONWEALTH of VIRGINIA

VIRGINIA STATE CRIME COMMISSION

General Assembly Building
910 Capitol Street

POST OFFICE BOX 3-AG
RICHMOND, VIRGINIA 23208

IN RESPONSE TO
THIS LETTER TELEPHONE
(804) 225-4534

ROBERT E. COLVIN
EXECUTIVE DIRECTOR

June 30, 1988

Dear Colleague:

The Virginia State Crime Commission is currently studying the private security industry. Specifically, the Commission is considering whether private security guards should have arrest powers and whether private security guards should be granted immunity from civil liability for actions incidental to arrest. As part of its study, the Commission is conducting a survey to obtain input from private security businesses operating in Virginia. The data collected will be used solely for statistical purposes.

Please take a few minutes to complete the enclosed survey and return it in the enclosed stamped self-addressed envelope no later than July 22, 1988. Your participation is important to the outcome of the study. Thank you for your assistance in this endeavor. If you have any questions, please contact our staff research assistant, Susan Foster, at (804) 225-4534.

Sincerely,

Robert E. Colvin
Executive Director

ENCLOSURE

Private Security Guard Survey

Please answer the following questions based on the experiences within the past year of private security guards employed by your security service.

1. How many registered private security guards does your company employ?

	Armed Guards	Unarmed Guards
Full-Time		
Part-Time		

2. Does your company require a high school education or its equivalent as a precondition to employment with your company?

_____ yes

_____ no

3. Does your private security services Business require its employees to undergo more training than the mandated state minimum?

_____ yes

_____ no

If yes, what area(s) of training do you believe need greater emphasis.

_____ Administrative and Security Orientation
_____ Legal Authority
_____ Emergency and Defensive procedures
_____ Firearms (in case of armed guards)
_____ Other -- Please specify _____

4. Does your company compensate its private security guards for time spent in training?

_____ Yes

_____ No

5. Approximate percentage of private security personnel employed by your company who are also engaged in full-time public law enforcement or who are retired law enforcement officers? _____

6. Please fill in the following chart with the appropriate average hourly wage:

	Armed Guard	Unarmed Guard
Beginning Hourly Wage		
Maximum Hourly Rate		

7. Approximate number of arrests made, within the past year, in the performance of duty by private security guards employed by your company? _____

8. Approximate number of private security guards employed by your company who were required to use force to detain/arrest an individual within the past year? _____

9. Approximate number of private security employees that have sustained injuries requiring medical attention within the past year in the course of detaining/arresting a suspect_____

10. Does your company carry personal liability insurance which will protect the individual security guard from:

    a. false arrest?_____

    b. liability due to negligent actions?_____

11. How do you believe the public perceives the effectiveness of private security guards in loss prevention and crime control?

    _____ ineffective

    _____ somewhat effective

    _____ very effective

12. In your opinion, should Private Security guards have arrest authority?

Armed	Unarmed
_____yes	_____yes
_____no	_____no

Additional Comments: _____

_____

_____

_____

_____

PRIVATE SECURITY SURVEY RESULTS

I. Private Security Profile:

These statistics are based on the 83 surveys we received.

1. 71% of private security companies require a high school education

   29% do not require a high school education

2. 18% of private security companies require only that training mandated by the State (12 hours for unarmed guards, 16 hours for armed guards)

   82% require more training than the mandated State minimum

3. Areas of training private security companies believe need greater emphasis:

   34% - Administrative and Security Orientation

   *73% - Legal Authority

   51% - Emergency and Defensive Procedures

   42% - Firearms

   Other areas mentioned were:

   First Aid

   Public Relations

   Liability

4. 63% of private security companies compensate their employees for training time

   37% do not compensate their employees

5. Approximate percentage of private security guards also engaged in full-time law enforcement:

45% of the private security companies indicated that **NONE** of their employees were engaged in full-time law enforcement.

22% - 1-5% engaged in full-time law enforcement

17% - 6-10% engaged in full-time law enforcement

13% - 11-25% engaged in full-time law enforcement

4% - 26+% engaged in full-time law enforcement

6. Beginning wage of an ARMED guard:

29% - between $3.35 and 4.00

23% - between $4.01 and 5.00

12% - between $5.01 and 6.00

12% - $6.01+

Maximum wage of an ARMED guard:

28% - between $3.50 and 5.00

12% - between $5.01 and 6.00

10% - between $6.01 and 7.50

13% - between $7.51 and 9.00

7% - $9.01+

7. Beginning wage of an UNARMED guard:

38% - between $3.35 and 4.00

30% - between $4.01 and 5.00

7% - between $5.01 and 6.00

7% - $6.01+

Maximum wage of an UNARMED guard:

34% - between $3.50 and 5.00

13% - between $5.01 and 6.00

18% - between $6.01 and 7.50

4% - between $7.51 and 9.00

6% - $9.01+

8. Approximate number of arrests made by Virginia private security firms within the past year:

37% - 0 arrests

24% - 5 or less

10% - 6 to 10

10% - 11 to 25

5% - 26 to 50

6% - 50 to 99

8% - 100+

9. Approximate number of times a private security guard used force to effect an arrest within the past year:

63% - 0 times

25% - less than 5

6% - 6 to 10

6% - 11+

10. Number of security guards injured within the past year:

88% - None of its employees were injured

12% - less than 5% of its employees were injured

11. Percentage of security companies who have insurance in the following areas:

A. False Arrest

78% - yes

22% - no

B. Negligence

83% - yes

17% - no

12. How private security companies believe the industry is perceived by the public:

5% of private security companies indicated the public perceives the industry as ineffective

55% somewhat effective

40% very effective

13. Industry's feeling on Arrest Authority:

A. Armed Guards

81% of private security companies indicated that armed guards should have arrest authority

16% no arrest authority

B. Unarmed Guards

59% should have arrest authority

31% no arrest authority

QUOTES FROM PRIVATE SECURITY SURVEY

1. "I feel it is necessary for guards to have the power of arrest because in major incidents time is of the essence, and in large areas many police forces are extremely busy and an officer is not always close by or available when needed. I feel that there should be instruction available for arrest procedures." (Received from a security quard company with 5 guards who made approximately 107 arrests within the past year)

2. "Until there is a complete school set up for security guards and companies and their customers realize that it takes more than just a gun and badge to enforce the law, only qualified police officers should have that responsibility." (Received from a security guard company with 72 armed guards)

3. "I believe that except for armored car personnel, the industry would be wise to gravitate to a highly trained watchman type service. The clientele at present cannot or will not pay for an effectively trained person empowered to make arrests." (Received from a security guard company with 100 unarmed guards)

4. "I believe private security guards should be trained and given arrest authority for any crime committed in their presence anywhere within the Commonwealth." (Received from private security guard company with 11 guards)

5. "With no arrest power, no one will hire security guards to protect their business." (Received from the owner of a security guard company with 4 unarmed guards)

6. "This is a profession that is growing and will be a very valuable service to the State so I feel it is time for the State of Virginia to look out for its people as well as itself and make private security get on the stick. They do not have proper authority to be able to make arrests and therefore there is no way they can be immune from civil liability. That would be like turning the fox lose in the hen house." (Received from a private security guard company with no employees at this time)

7. "I believe that the armed guard should have the same arrest authority as police officers, but at the same time be required to pass the same training as police officers as it pertains to firearms and arrest authority. Also, the security guard and company he or she works for should be held civilly and criminally responsible for any wrongs that they commit." (Received from a private security company with 6 unarmed guards who have not made any arrests within the past year)

8. "Having arrest authority is very important and needed by security company owners. Our contracts want us to be able to effect an arrest if needed. This power is also a selling point for us and makes the client feel more secure." (Received from the President of a company with 6 armed guards)

9. "In my opinion, larger companies do not want their security personnel to have arrest powers; liability attaches and their insurance is prohibitive. Small companies like mine are solely Virginia owned and operated. To eliminate arrest powers would place them in a non-competitive status, according to their own statements, because clients prefer armed guards and to reduce arrest powers statewide, would reduce their premiums, satisfy their company directives and policies and keep them competitive at the sacrifice of the "little Virginia owned" companies." (Received from an owner of a private security company with 5 armed guards who made approximately 77 arrests within the past year)

10. "A classification should be set up. After an employee meets (time, experience, and training) requirements, he could achieve a second level of unarmed guard and given the power of arrest." (Received from a private security company with 29 guards, armed and unarmed)

11. "The knowledge that on duty security officers are empowered with the ability to effect an arrest on a suspect serves as a psychological deterrent and aids the officers in protecting the client, his property, employees, or tenants." (Received from a private security company with 54 guards, armed and unarmed, who made 77 arrests within the past year)

REPORT OF THE VIRGINIA STATE CRIME COMMISSION

Shock Incarceration

TO THE GOVERNOR AND THE GENERAL ASSEMBLY OF VIRGINIA

HOUSE DOCUMENT NO. 9

COMMONWEALTH OF VIRGINIA
RICHMOND
1990

COMMONWEALTH of VIRGINIA

VIRGINIA STATE CRIME COMMISSION

General Assembly Building
910 Capitol Street

POST OFFICE BOX 3-AG
RICHMOND, VIRGINIA 23208

IN RESPONSE TO
THIS LETTER TELEPHONE
(804) 225-4534

ROBERT E. COLVIN
EXECUTIVE DIRECTOR

October 17, 1989

TO: The Honorable Gerald L. Baliles, Governor of Virginia
and Members of the General Assembly

House Joint Resolution 321, agreed to by the 1989 General Assembly, directed the Virginia State Crime Commission to "study Shock Incarceration Program as an alternative to lengthy, costly incarceration for suitable inmates," and to "determine the feasibility of such an alternate program, the expected benefits or detriments of such a program and identify the type of inmate who can be best served in the Shock Incarceration Program, if one be adopted."

In fulfilling this directive, a study was conducted by the Virginia State Crime Commission. I have the honor of submitting herewith the study report and recommendations on Shock Incarceration

Respectfully submitted,

Elmon T. Gray
Chairman

ETG/sm

MEMBERS OF THE VIRGINIA STATE CRIME COMMISSION 1989

From the Senate of Virginia:

Elmon T. Gray, Chairman
Howard P. Anderson
Elmo G. Cross, Jr.

From the House of Delegates:

Robert B. Ball, Sr., Vice Chairman
V. Thomas Forehand, Jr.
Raymond R. Guest, Jr.
A. L. Philpott
Warren G. Stambaugh
Clifton A. Woodrum

Appointments by the Governor:

Robert C. Bobb
Robert F. Horan, Jr.
George F. Ricketts, Sr.

Attorney General's Office:

H. Lane Kneedler

Corrections Subcommittee Studying

SHOCK INCARCERATION (HJR 321)

Members

Reverend George F. Ricketts, Sr., Chairman
Senator Howard P. Anderson
Delegate Robert B. Ball, Sr.
Mr. Robert C. Bobb
Senator Elmo G. Cross, Jr.
Senator Elmon T. Gray
Delegate Raymond R. Guest, Jr.
Speaker A. L. Philpott

Staff

Robert E. Colvin, Executive Director
D. Robie Ingram, Staff Attorney
Susan A. Bass, Research Assistant
Sylvia A. Coggins, Administrative Assistant

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I. AUTHORITY FOR STUDY

House Joint Resolution 321, sponsored by Delegate Vincent F. Callahan, Jr. and passed by the 1989 General Assembly, authorized the Virginia State Crime Commission to "(i) study the Shock Incarceration Program as an alternative to lengthy, costly incarceration for suitable inmates (ii) review the Shock Incarceration Program and other alternative types of incarceration that have been implemented in other states and (iii) determine the feasibility of such an alternate program, the expected benefits or detriments of such a program and identify the type of inmate who can be best served in the Shock Incarceration Program, if one be adopted."

§9-125 of the Code of Virginia establishes and directs the Virginia State Crime Commission (VSCC) "to study, report, and make recommendations on all areas of public safety and protection." §9-127 of the Code of Virginia provides that "the Commission shall have duty and power to make such studies and gather information in order to accomplish its purpose, as set forth in §9-125, and to formulate its recommendations to the Governor and the General Assembly." §9-134 of the Code of Virginia authorizes the Commission to "conduct private and public hearings, and to designate a member of the Commission to preside over such hearings." The Virginia State Crime Commission, in fulfilling its legislative mandate, undertook the Shock Incarceration Program study as requested by House Joint Resolution 321.

II. MEMBERS APPOINTED TO SERVE

During the April 18, 1989 meeting of the Crime Commission, its Chairman, Senator Elmon T. Gray of Sussex, selected Rev. George F. Ricketts, Sr. to serve as chairman of this subcommittee. Members of the Crime Commission who served on the subcommittee were:

Rev. George F. Ricketts, Sr., of Richmond, Chairman

Senator Howard P. Anderson, of Halifax

Delegate Robert B. Ball, Sr., of Richmond

Mr. Robert C. Bobb, of Richmond

Senator Elmo G. Cross, Jr., of Hanover

Senator Elmon T. Gray, of Waverly

Delegate Raymond R. Guest, Jr., of Front Royal

Speaker A. L. Philpott, of Bassett

III. STUDY DESIGN

The Commission received and reviewed the National Institute of Justice report "Shock Incarceration: An overview of Existing Programs," the Council of

State Governments Backgrounder on Shock Incarceration, and the Briefing Report to the Honorable Lloyd Bentsen of the U. S. Senate on Prison Boot-Camps prepared by the U. S. General Accounting Office. In addition, the Commission maintained a file of current news clippings on Shock Incarceration Programs, including articles from the Richmond Times-Dispatch, Potomac News, USA Today, and Newsweek.

MEETINGS:

1st Subcommittee Meeting:	June 20, 1989
Public Hearing:	July 28, 1989
2nd Subcommittee Meeting:	August 15, 1989
On-site Visit to South Carolina	August 24, 1989
Final Subcommittee Meeting:	September 19, 1989

REPORTS:

Initial Staff Study:	June 20, 1989
Update for Subcommittee Review:	July 28, 1989
2nd Update for Subcommittee Review:	August 15, 1989
3rd Update for Subcommittee Review:	September 19, 1989
Subcommittee's Report to Full Commission:	October 17, 1989

IV. EXECUTIVE SUMMARY

The full Crime Commission met on October 17, 1989, and received the report of the subcommittee. After careful consideration, the findings and recommendations of the subcommittee were adopted by the full Commission.

During the course of the study, the subcommittee met on five occasions, including one meeting held during a visit to the Thames Correction Center (Shock Probation Facility) at Rembert, South Carolina. During the course of those meetings the subcommittee heard testimony from members of the law enforcement community including sheriffs, judges, and the Connecticut Commissioner of Corrections, Mr. Larry Meachum, and was carefully apprised of the status, operation and effectiveness of existing programs in eight other states.

A major purpose of the study was to determine whether or not a shock incarceration program should be instituted in Virginia. The subcommittee voted, after the tour of the South Carolina facility, to institute such a program, closely modeled after South Carolina's.

The boot-camp program has been recommended to occupy the facility currently used for the Youthful Offender Program, located at the Southampton Youthful Offender Center. If the recommendation is put into effect, the cost per bed space in the boot-camp incarceration program is estimated by Corrections officials to be approximately the same as for the Youthful Offender Program. The savings results from the shorter period of stay for the

boot-camp inmate (90 days) as compared to a year or longer. Thus the boot camp program could effectively serve four times the number of offenders for the same cost of the current youthful offender program.

The subcommittee recommended that the "Boot Camp Incarceration Act" be introduced as a pilot project to the 1990 session by Crime Commission members with the legislation to be effective January 1, 1991 and the program to sunset on July 1, 1995. The subcommittee further recommended that the Department of Corrections, Department of Correctional Education and the Parole Board submit their budgetary requirements to the Senate Finance and House Appropriations committees prior to the 1990 session. Finally, the subcommittee recommended that these agencies develop plans based on guidelines for implementing provisions of the proposed legislation with an anticipated on-line date of January 1, 1991.

The major components of the pilot program as approved by the subcommittee are as follows:

A. Participants

- Non-violent felony offenders without prior incarceration
- 18-24 years old
- Physically and mentally healthy

B. Eligibility

- Voluntary participation
- Diagnosis and evaluation of fitness by Department of Corrections and Parole Board prior to sentencing
- May be removed for intractable behavior

C. Sentencing

- Term for years suspended if offender chooses boot camp probation
- Suspended sentence and probation revoked if offender withdraws, is intractable, or violates court's terms

D. Location

- To be determined by Department of Corrections (Southampton projected for males)

E. Capacity

- 100 males
- Females pending results of pilot program

F. Program Length

- 90 days or more (to be established by Department of Corrections)

G. Special Program Elements

- Military drill, ceremony, physical wellness training
- Physical labor
- Drug/Alcohol Education
- Adult Basic Education (ABE)
- General Equivalency Diploma (GED)
- Vocational Assessment

In summary, the pilot program is designed to begin on January 1, 1991 and to sunset on July 1, 1995. The Department of Corrections would have the responsibility to design the program, train employees, and decide its location, and to report periodically to the Governor and General Assembly.

V. BACKGROUND

A. Introduction

Shock incarceration (SI) has emerged as a new trend in the administration of criminal justice. In eight states, an SI program or "boot camp" is offered as an alternative to traditional longer term imprisonment for "youthful offenders." While Virginia does not presently have a shock incarceration program, it does offer alternatives to ordinary imprisonment, including probation and parole, the Community Diversion Incentive Program and the Youthful Offender Program.

In those states utilizing SI, the participants are typically between 17 and 25 years of age, have been convicted of less serious non-violent offenses, and have not been previously imprisoned. Although SI programs were initially for males only; Louisiana, Mississippi, New York, Oklahoma and South Carolina now offer programs for females. SI programs usually last from three to six months (see Appendix B.), during which time participants are exposed to a strict and highly demanding regimen of discipline, military style drilling and marching, physical exercise and physical labor. (See Appendix B-5 for a typical daily schedule at the Florida Boot Camp.) In addition, seven SI programs offer rehabilitative services, with six programs providing drug and alcohol counseling. (See Appendix B.)

B. Location of Facility

Many programs are contained entirely within state prison walls but SI participants are segregated from regular prison inmates throughout their confinement. The objective of segregation within view of ordinary inmates is to give participants insight into the harsh realities of prison life without exposing them to the hazards of abuse, corruption or exploitation by hardened criminals. However, some SI programs operate in separate facilities that are not attached to a larger state prison (e.g.., New York's forestry camp).

C. Selection of Inmates

Selection for SI programs is determined by the state departments of corrections (DOC), courts or a combination of both. In Mississippi and Georgia, judges completely control selection while in New York correction officials have total control. In Florida and South Carolina, judges approve

or veto SI placements selected by correction officials.

D. Consent to Participate

Offenders in all states are required to sign a consent form volunteering to participate in the SI program. Consent forms help protect the state from liability, provide a basis for punishment and reflect offender commitment to the program. Although admission to the program is voluntary, withdrawal may not be. For instance, withdrawal is prohibited in Oklahoma. Officials there emphasize that SI offenders have repeatedly avoided responsibility for their decisions and permitting withdrawal would strengthen that pattern.

E. Existing Programs in Other States

The first shock incarceration programs in state prisons opened in 1983 in Oklahoma and Georgia. On January 1, 1987, only four programs were in operation. However, by the end of that year, thirteen programs were functioning in eight states. At this time, three jurisdictions are developing SI programs and at least nine additional states are considering establishing shock incarceration programs. (See Appendix B.) SI programs are currently operating in Florida, Georgia, Louisiana, Michigan, Mississippi, Oklahoma, New York and South Carolina. Kansas is implementing a program scheduled to open in June, 1989.

F. Support and Opposition

Shock incarceration has received national media attention and has been endorsed by such public figures as William Bennett, Director of the Office of National Drug Control Policy, and Mayor Edward Koch of New York.

Proponents suggest that SI reduces prison overcrowding; acts as a deterrent; rehabilitates participants and thus reduces recidivism; incapacitates offenders; and provides a necessary level of punishment falling between probation and imprisonment. Critics argue that SI programs increase prison overcrowding because those who would ordinarily be placed on probation are instead sent to SI programs. Other criticisms are that programs other than SI can develop more marketable skills, SI programs are expensive to staff and they foster a "Rambo" mentality in offenders.

Mr. Larry Meachum, Connecticut Commissioner of Corrections, addressed the subcommittee at its September 19, 1989 meeting. Mr. Meachum, who started Oklahoma's boot-camp program, advised the subcommittee of the problems associated with such programs. He stressed that staff abuse toward inmates is a major concern with boot-camp programs and he recommended that staff be routinely rotated out of the program. Furthermore, Mr. Meachum stressed that programs should incorporate special programming including education, vocational training and counseling. Finally, Mr. Meachum emphasized that it is presently too early to assess the overall effectiveness of boot-camp programs.

At this time, little or no empirical study has been conducted on shock incarceration. As a result, the arguments proffered by both sides are as yet arguments and without legitimate substantiation. However, in Georgia and New

York, evaluations by departments of corrections are underway; the National Institute of Justice has funded an evaluation of the SI program in Louisiana. Conclusive findings should be available in about two years.

VI. OBJECTIVES/ISSUES

The following were identified as issues for, and objectives of, the study.

A. Determine the effectiveness of SI programs with respect to:

1. deterrence
2. rehabilitation
3. punishment
4. incapacitation
5. reduction of prison overcrowding
6. reduction of costs
7. reduction of recidivism

B. Define the goals of the program (i.e., what is the specific benefit to the Commonwealth?).

C. Determine whether there is an available boot-camp site in Virginia or whether one must be constructed.

D. Establish criteria for eligibility to participate in an SI program.

VII. APPLICABLE LAW

A. Virginia's Existing Alternative Programs

1. Code of Virginia §53.1-180. Community Diversion Incentive Act.

2. Code of Virginia §19.2-311. Youthful Offender Act.

B. Other State SI Programs

Florida, Georgia, Louisiana, Michigan, Mississippi, New York, Oklahoma, and South Carolina all have laws pertaining to shock incarceration.

VIII. PARALLEL STUDIES

Shock Incarceration: An Assessment of Existing Programs is a 110-page National Institute of Justice report describing a study conducted in September and November of 1987 by Abt Associates. The purpose of the study was "to identify and assess existing and proposed SI programs." Phase one of the study involved a review of existing literature and telephone contacts with all 50 state Departments of Corrections. Phase two involved on-site visits and in-depth assessments of shock incarceration programs in the states of Oklahoma, Georgia, Mississippi and New York. (See Appendix C.)

Spit-shine and Double-Time: State Shock Incarceration Programs is a twelve page Backgrounder published by the Council of State Governments (CSG) in February, 1989. The purpose of the study was to evaluate SI programs and goals in the states of Georgia, Florida, Louisiana, Michigan, Mississippi, New York, Oklahoma, and South Carolina. This study concluded that SI programs are too new to have generated any hard data about their effectiveness, but presents preliminary statistics on recidivism rates of SI participants in three states.

Prison Boot Camps: Too Early to Measure Effectiveness is a briefing report to the Honorable Lloyd Bentsen of the U. S. Senate at his request by the United States General Accounting Office in September, 1988. The purpose of the study was "to obtain ... information on the use and advantages of boot camp programs." The study involved on-site visits to Florida and Georgia SI programs, interviews with state corrections officials and a review of available documentation. This study concluded that due to the relatively short period of time that most boot camps have been operating, available data were not sufficient to determine if boot camps reduce costs, overcrowding or recidivism.

IX. DISCUSSION/ANALYSIS

A. Proposed Goals of Shock Incarceration

1. Reduction of Costs

In all four states included in the National Institute of Justice (NIJ) draft study, officials stated that SI program expenditures for food, clothing and consumables are about the same as for regular prisons. However, more intensive demands on custodial and/or rehabilitative staff results in higher daily costs per inmate than standard incarceration. The inmate-to-security staff ratio in Virginia prisons is 2.7 to one. Because the actual method for calculating the ratio is variable and because some SI facilities are within the confines of existing institutions, figures noted in reports for other states are not necessarily indicative of a true ratio and are not necessarily comparable.

It is important to note, however, that officals in all states believe that SI costs considerably less per inmate than standard imprisonment because SI participants are confined for shorter periods. In Virginia, the average cost of standard incarceration per inmate per year is $17,103 whereas the cost per inmate per session (90 days) in Georgia's SI program is $3,317 and the cost per inmate per session (90 days) in Michigan is $5,900.

The NIJ draft study concluded that if SI is to be used to reduce costs, SI programs must admit primarily offenders who would otherwise have received longer prison terms. If that objective is successful, cost savings will more than compensate for increased daily costs per inmate in SI. In addition, the draft report describes other costs to be considered in deciding whether an SI program will reduce overall costs. First, SI dropouts and graduates who fail on supervision receive subsequent prison terms and add to costs. Secondly, construction and financing costs must be considered if a new facility must be

built to house the SI program.

2. Reduction of Recidivism

Recidivism will be an important measure of the effectiveness of SI programs. Recidivism for traditional prison populations nationwide averages 40 to 45 percent. According to the Council of State Governments Backgrounder, some preliminary results from state programs are available. A recent study of the Oklahoma SI program placed recidivism at 15.6 percent. Recidivism data for the 270 participants in the Georgia boot camp program between January 1984 and March 1985 indicated that 39 percent of the graduates had returned to prison within three years of release from the camp. The overall rate during the same period for offenders released from other Georgia prisons was 38 percent. Of the 264 offenders that had completed the South Carolina SI program by August 1988, only eight had returned to prison.

3. Deterrence

The close proximity of most SI boot camps to regular prisons provides participants with a clear and unpleasant view of prison life. Consequently, SI could deter future crime by making the threat of a prison sentence for subsequent crime more credible.

4. Rehabilitation

SI could serve to rehabilitate offenders in two ways. First, the experience of strict discipline could enhance a participants self-control, self-esteem and ability to cope with life's stresses once released. Secondly, additional treatment and vocational components (e.g., education, drug counseling, etc.) might be more effective in addressing problems related to an offender's criminality when offered in a more disciplined and structured environment. (A counter-argument is that more useful rehabilitative (vocational) programs provide a more successful reintegration into society. Another counter-argument is that 90 days (the length of many programs) is not enough time to accomplish legitimate rehabilitation.)

5. Punishment

Under a "just desserts" policy, SI could impose proportional punishments by providing a sanction of punishment more severe than probation but less severe than longer term imprisonment.

6. Incapacitation

In cases where an offender would otherwise have received probation, shock incarceration programs provide a way to reduce an offender's threat to the community. In addition, officials would select participants on the basis of risk. For instance, they might choose offenders at higher risk than those on probation but at lower risk than those who would be imprisoned.

7. Reduction of Overcrowding

SI could be utilized to reduce prison overcrowding only if all or most SI

participants would have otherwise received longer prison sentences. A criticism of SI is that its participants would probably have received mere probation if the program were not available.

B. On-Site Visit to South Carolina/Overview of South Carolina Program

On August 24, 1989, members of the subcommittee studying Shock Incarceration, interested legislators, representatives from the Department of Corrections and the Commission on Prison and Jail Overcrowding and the Crime Commission staff visited the Thames Shock Probation Center at Rembert, South Carolina.

Mr. John Carmichael, Warden of the Thames Shock Probation Center, offered a detailed overview of the program, which is administered by the Department of Probation and Parole. According to Mr. Carmichael, inmates should be kept active and platoons should be systematic. He stressed that education is a strong focal point in the South Carolina Shock Probation program. Inmates spend three hours per day in education. During the 90-day session, inmates achieve an average increase in educational ability of two grade levels. Furthermore, twenty-five percent of those lacking a high school diploma have been able to earn GED's through the Shock Probation program.

The physical training program adopted by the Shock Probation Center was developed by the South Carolina Department of Recreation. In addition to physical exercise, Shock Probation inmates perform approximately seven hours of manual labor each day at various work sites on the prison farm, as well as out in the community.

The South Carolina program includes a drug and alcohol abuse education component, but it does not offer any type of substance abuse treatment or counseling. Inmates with persistent drug problems are removed from Shock Probation and referred through the Department of Probation and Parole to local mental health programs.

The South Carolina system currently houses 14,000 inmates, and the inmate population increases by 3,000 each year. The overall recidivism rate in the South Carolina system is 30% to 35%. The rate of recidivism for the Shock Probation program is said to be less than 5%.

Mr. Carmichael explained that volunteering for the boot camp program is advantageous because the 90-day session replaces the five-year or longer alternative prison sentence, at least twenty-seven months of which would be served.

The sentencing authority rests with the judge. To be eligible for the boot camp program, offenders must be convicted of a crime punishable by five or more years in prison.

Mr. Howard Arden, Deputy Warden of the Thames Shock Probation Center, emphasized the importance of hard work, discipline and education to the boot camp program. When asked whether the program promotes a "macho" mentality in offenders, Mr. Arden explained that the physical fitness and discipline instilled in inmates is marketable in society upon their release. Mr. Arden

added that staff wear regular uniforms and are not permitted to use profanity or violence when dealing with the inmates.

After hearing the presentation and touring the facility, members of the subcommittee held a business meeting and voted unanimously to develop a proposal for a prison boot-camp in Virginia based on the South Carolina model.

C. Meetings to Develop Proposal

On August 30, 1989, Rev. Ricketts, Chairman of the subcommittee studying Shock Incarceration, conducted a meeting among Edward Morris and Michael Leininger of the Department of Corrections, Dan Catley of the Department of Criminal Justice Services, Lin Corbin-Howerton of the Department of Planning and Budget, Richard Hickman of the Senate Finance Committee, James Roberts of the House Appropriations Committee and Crime Commission staff. The group discussed possible program components, eligibility criteria, sentencing structure and location. During this meeting, Rev. Ricketts requested that Commission staff and representatives from interested agencies again meet to devise an outline for a boot-camp prison proposal.

On September 7, 1989, Commission Staff met with Edward Morris, Forrest Powell and James Smith of the Department of Corrections, Clarence Jackson and John Brown of the Parole Board, Osa Coffey of the Department of Correctional Education, and Mary Devine of Legislative Services. After lengthy discussion, the following program outline, modelled significantly upon South Carolina's program, was developed.

D. Pilot Program Proposal

Location: **Southampton (males), Goochland (females)**
Capacity: **Males - 100; females - pending results of pilot program**
Program Length: **90-days (three 30-day cycles)**

Client Base:

- Non-violent felony offenders with no prior sentence to incarceration as an adult
- 18-24 years of age

Eligibility:

- Must volunteer for program and sign informed consent to participate in boot-camp style program
- Mandatory pre-sentence testing (including complete medical examination) limited to 60 days
- Parole and Corrections participate in eligibility assessment
- Eligibility report sent to judge; judge sentences to boot-camp or other sentence at his discretion

Sentencing:

- Offender must volunteer in writing
- Inmate deemed a probationer
- Determinate sentence issued and suspended on the condition that probationer successfully complete boot-camp program
- Suspended sentence imposed if offender is removed from program

Credit for Time Served:

- Given credit for time served if original determinate sentence is imposed upon revocation of suspension

Special Programming:

- Military drill, ceremony, physical training
- Hard labor
- Drug/alcohol education
- Adult Basic Education (ABE)
- General Equivalency Diploma (GED) Program
- Vocational assessment and referral upon release

Probation:

- Intensive supervision for minimum period of one year after boot camp
- Aftercare including provision that graduate will either work or attend school/vocational training full-time or he/she will be in violation of probation

Program Evaluation:

- Established as Pilot Program
- Intensive review of effectiveness by Department of Corrections
- Evaluate and report to Governor and General Assembly

Implementation:

- Legislation - "Boot Camp Incarceration Act" introduced in the 1990 session by VSCC members, with legislation to be effective January 1, 1991, program to sunset July 1, 1995
- Budgeting - Department of Corrections, Department of Correctional Education, Parole Board to submit budgetary requirement to Senate Finance and House Appropriations committees prior to the 1990 session
- Administrative - Department of Corrections, Department of Correctional Education, Parole Board to develop plan on guidelines for implementing provisions of proposed legislation with anticipated on-line date of January 1, 1991

X. FINDINGS

1. With Respect to Rehabilitation and Reduction of Recidivism, There is Very Little Solid Information Currently Available on the Effectiveness of Shock Incarceration.

At this time little or no empirical study has been conducted on shock incarceration. As a result, the arguments proffered by proponents and opponents of SI are largely arguments and without complete substantiation. However, in Georgia and New York, evaluations by departments of corrections are underway; the National Institute of Justice has funded an evaluation of the SI program in Louisiana. Conclusive findings will be available in about two years. However, the South Carolina program, which also emphasizes rehabilitative component, reports encouragingly low recidivism rates.

2. If SI Is to Be Used to Reduce Costs, Programs Must Admit Primarily Offenders Who Would Have Otherwise Received Longer Prison Sentences.

According to the NIJ study, SI program daily expenditures for food, clothing and consumables are about the same as for regular prisons. However, more intensive demands on staff may result in higher costs per inmate than standard incarceration. Notably, officials in all states believe that SI costs considerably less per inmate than standard imprisonment because SI participants are confined for shorter periods.

The NIJ study concluded that programs must target offenders who would have otherwise received longer prison terms if SI is to be used to reduce costs. If that objective is successful, cost savings will more than compensate for increased daily costs per inmate in SI.

3. SI Could Be Utilized to Reduce Prison Overcrowding Only if All or Most SI Participants Would Have Otherwise Received Longer Prison Sentences.

If SI is to be used to reduce overcrowding, programs must admit primarily offenders who would have otherwise received longer prison terms.

4. SI Could Impose Proportional Punishments.

Under a "just desserts" policy, SI could impose proportional punishments by providing a sanction of punishment more severe than probation but less severe than longer term imprisonment.

5. SI Programs Could Provide a Way to Reduce an Offender's Threat to the Community.

In cases where an offender would otherwise have received probation, SI programs provide a way to reduce an offender's threat to the community. A criticism of SI is that its participants would probably have received mere probation if the program were not available. In such cases, SI is considerably more expensive than existing programs.

6. Most SI Boot-Camps Provide Participants with a Realistic View of Prison Life.

The close proximity of most SI boot-camps to regular prisons gives participants insight into the harsh realities of prison life without exposing them to its dangers. The subcommittee found this to be a beneficial aspect.

7. There is an Available Boot-Camp Site in Virginia.

The Southampton Youthful Offender Center is an appropriate site for a pilot boot-camp program. The facility has a capacity of 100 and is adjacent to a regular prison. Its use will not upset the youthful offender program if recommendations of this subcommittee regarding the youthful offender program are adopted. (See Crime Commission Report on Youthful Offender Act, 1990).

8. The Cost Per Bed Space for SI Should Be Approximately the Same As The Cost for the Youthful Offender Program.

The boot-camp program has been recommended to occupy the facility currently used for the Youthful Offender Program, located at the Southampton Youthful Offender Center. If the recommendation is put into effect, the cost per bed space in the boot-camp incarceration program would be approximately the same as for the Youthful Offender Program.

According to the Department of Corrections, there would be some initial, as yet unprojected, start-up costs for training and various modifications; however, the staffing level would be the same for both programs.

The annual cost per inmate in the Youthful Offender program is $24,000. If a 90-day term of incarceration is adopted for the boot-camp program, four times as many inmates could be accommodated for the same annual cost. The approximate cost per inmate per session would, thus, be $6,000 plus the cost of at least one year of intensive supervised probation following release. The current average cost of ordinary probation is $853.00 annually.

The subcommittee recommended the Department of Corrections develop actual implementation costs and felt this was a better approach than merely developing a broad-based estimate itself. In summary, the subcommittee felt that Virginia would realize long-term cost savings as a result of the reduced incarceration time and reduced recidivism among participants.

XI. RECOMMENDATIONS

Pursuant to HJR 321 (1989), the subcommittee studying Shock Incarceration carefully considered the current status of boot-camp prison programs across the nation. At its final meeting on September 19, 1989, the subcommittee adopted the report for presentation to the full Commission on October 17, 1989. On that date the full Commission received the report of the subcommittee and after careful consideration of the findings unanimously adopted the report with the following recommendations:

A. Establish a Pilot Program Located in an Existing Facility.

Because there is very little solid data available on the effectiveness of shock incarceration, the subcommittee recommended that the boot-camp program

be established as a pilot program with a capacity of 100 males and located at the Southampton Youthful Offender Center. The program length would be at least 90 days.

B. Establish Client Base of Youthful Non-Violent Felony Offenders.

The subcommittee recommended that the "Boot-Camp Incarceration" program be designed for non-violent felony offenders between the ages of 18 and 24 years with no prior sentence of incarceration as an adult. This appears to be the group most responsive to a boot-camp style program.

C. The Parole Board and Department of Corrections Participate in Eligibility Assessment; the Judge Imposes Sentence.

The subcommittee recommended that there be a mandatory pre-sentence testing period, limited to 60 days, which includes a complete medical examination. The Parole Board and the Department of Corrections would conduct the pre-testing and the eligibility assessment. The eligibility report would be sent to the judge, who would sentence the offender to boot-camp or other sentence at his discretion.

D. Require Inmates to Volunteer for Program and Issue Suspended Determinate Sentence.

The subcommittee recommended that offenders be required to volunteer and to sign an informed consent to participate in the boot-camp style program. Inmates of the program would be deemed probationers, and a determinate sentence would be issued and suspended on the condition that the probationer successfully complete the program. The suspended sentence would have to be imposed if the offender is removed from the program for cause. The sentencing court would have discretion to re-sentence only in those cases where an offender failed to complete the program through no fault of his own. This recommendation will ensure that only individuals participate who otherwise would have received a longer prison sentence. This will overcome the objection of "widening the net" and ensure cost effectiveness.

E. Calculate Good-Time Credit for Time Served.

The subcommittee recommended that the probationer be given credit for time served in the boot-camp program if the original determinate sentence is imposed upon revocation of suspension.

F. Subject Inmates to Special Programming.

The subcommittee recommended that the boot-camp program include components of military drill and ceremony, physical training and physical labor. In addition, the program would provide substance abuse education, Adult Basic Education, a General Equivalency Diploma (GED) program and vocational assessment with referral upon release. The most successful programs focus on education and vocational assessment.

G. Follow Boot-Camp Program with Intensive Probation and Aftercare.

The subcommittee recommended that the boot-camp program be followed by at least one year of intensive supervision. There should be an aftercare provision that the graduate either work or attend school/vocational training full-time or be in violation of probation. This recommendation was modelled after the South Carolina concept in which follow-up supervision and employment have proven to be an important component of the success of the overall program.

H. Evaluate the Effectiveness of the Pilot Program.

The subcommittee recommended that the boot-camp program be established as a pilot program and that there be an intensive review of its effectiveness by the Department of Corrections.

I. Introduce "Boot-Camp Incarceration Act."

The subcommittee recommended that the "Boot-Camp Incarceration Act" be introduced in the 1990 Session, with the legislation to become effective January 1, 1991 and the program to sunset on July 1, 1995. Because there is currently very little solid information on shock incarceration, evaluation of the program is vital.

J. Recommend Affected Agencies Submit Budgetary Requirements.

The subcommittee recommended that the Department of Corrections, the Department of Correctional Education and the Parole Board submit budgetary requirements to Senate Finance and House Appropriations Committees prior to the 1990 Session. The subcommittee found that the program should prove to be cost effective and determined from testimony that implementation costs would be minimal. In this regard, the subcommittee felt a detailed cost analysis for implementation developed by the affected agencies would be of greater benefit to the General Assembly than a broad-based estimate developed by the Commission.

K. Request that Affected Agencies Develop Plan Based on Guidelines.

The subcommittee recommended that the Department of Corrections, the Department of Correctional Education and the Parole Board develop a plan on guidelines for implementing provisions of proposed legislation with anticipated on-line date of January 1, 1991. Based upon the evaluation of other states' successful programs, an important component is allowing sufficient time for the careful development of an implementation plan and staff training.

XII. RESOURCES/ACKNOWLEDGEMENTS

The Commission greatly appreciates the assistance of the following in the conduct of this study:

National Institute of Justice

U. S. General Accounting Office

The Council of State Governments

Department of Criminal Justice Services
Mr. Dan Catley, Corrections Specialist

Department of Corrections
Ms. Dee Malcan, Chief of Operations for Community Alternatives
Mr. R. Forrest Powell, Chief of Operations for Programs
Mr. Edward C. Morris, Deputy Director
Ms. Ginger R. Leonard, Lead Analyst
Mr. Michael Leininger, Legislative Liaison

Department of Planning and Budget
Ms. Lin Corbin-Howerton, Staff Director for the Governor's Commission on Prison and Jail Overcrowding

Fairfax County Sheriff's Department
Sheriff Wayne Huggins

Prince George Circuit Court
Judge W. P. Lemmond

Florida Department of Corrections
Mr. James O. Mitchell, Director of Basic Training Program

Georgia Department of Corrections
Ms. Billie Irwin, Principal Operation Analyst

Louisiana Department of Public Safety and Corrections
Ms. Jean Wall, Corrections Executive Officer

Michigan Department of Corrections
Mr. Donald Hengesh, Director of Special Alternative Incarceration

Mississippi State Penitentiary
Dr. Mike Whelan, Director of Psychiatry

New York Department of Correctional Services
Ms. Cheryl Clark, Director of Shock Development

William S. Key Correctional Center (Oklahoma)
Ms. Kay Statton, Assistant to the Warden

Wateree River Correctional Institution
Mr. Francis Archibald, Warden

Connecticut Department of Corrections
Mr. Larry Meachum, Commissioner

Thames Shock Probation Center
Mr. Howard Arden, Deputy Warden
Mr. John Carmichael, Warden

APPENDIX A

HP6657428

1989 SESSION
ENGROSSED

HOUSE JOINT RESOLUTION NO. 321

House Amendments [ ] - February 6, 1989

Requesting the [~~Virginia Department of Corrections~~ Virginia State Crime Commission] to study Shock Incarceration Program as an alternative to lengthy, costly incarceration for suitable inmates.

Patron--Callahan

Referred to the Committee on Rules

WHEREAS, the General Assembly is concerned over the escalating costs of the incarceration of inmates, the ever-rising prison population and the expected need for additional prisons and jails; and

WHEREAS, [~~the Departments of Corrections of~~] several states have experienced success with an alternative type of incarceration that has alleviated their prison crowding problem; and

WHEREAS, [~~the Virginia Department of Corrections is~~ from time to time ~~studying alternatives that~~ alternatives are studied which may be implemented in Virginia; now, therefore, be it]

RESOLVED by the House of Delegates, the Senate concurring, That [~~the Virginia Department of Corrections implement a study of the Shock Incarceration Program presently implemented in several states and planned for others. The Department of Corrections shall report to the General Assembly on~~ the Virginia State Crime Commission is requested to study Shock Incarceration Program as an alternative to lengthy, costly incarceration for suitable inmates. The Commission shall review the Shock Incarceration Program and other alternative types of incarceration that have been implemented in other states. The Commission shall determine the feasibility of such an alternate program, the expected benefits or detriments of such a program and identify the type of inmate who can be best served in the Shock Incarceration Program, if one be adopted.]

The [~~Department~~ Commission] shall complete its work in time to submit its findings and recommendations to the Governor and the 1990 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for processing legislative documents.

Official Use By Clerks	
Agreed to By The House of Delegates	**Agreed to By The Senate**
without amendment ☐	without amendment ☐
with amendment ☐	with amendment ☐
substitute ☐	substitute ☐
substitute w/amdt ☐	substitute w/amdt ☐
Date: _____	Date: _____
Clerk of the House of Delegates	Clerk of the Senate

APPENDIX B

Status of Shock Incarceration Programs

• Jurisdictions Operating Shock Incarceration Programs

JURISDICTION	ENABLING LEGISLATION PASSED	USED EXISTING AUTHORITY	DATE PROGRAM OPENED
Georgia	X		12/83
Oklahoma		X	11/83
Mississippi		X	4/85
Orleans (LA) Parish	X		1/87
Louisiana (DOC)	X		3/87.
South Carolina	X		7/87
New York	X		9/87
Florida	X		10/87
Michigan	X		2/88

• Jurisdictions Developing Shock Incarceration Programs

JURISDICTION	EXPECTED START-UP DATE
North Carolina	6/89*
New Hampshire	3/89
Kansas	6/89*

*Contingent on passage of enabling legislation.

• 9 States Express Strong Interest in Shock Incarceration

Alabama	Nevada	Utah
Arizona	Tennessee	Virginia
Colorado	Texas	Wyoming

SHOCK INCARCERATION TREATMENT COMPONENTS

JURISDICTION	Drug/ Alcohol Counseling	Reality Therapy	Relaxation Therapy	Individual Counseling	Recreation Therapy	Therapeutic Community
Georgia						
Oklahoma	X	X	X	X	X	
Mississippi		X	X	X		
Orleans Parish	X			X		
Louisiana	X	X		X		
South Carolina	X				X	
New York	X	X		X	X	X
Florida	X	X	X			

SHOCK INCARCERATION ELIGIBILITY CRITERIA

JURISDICTION	Offender Age Limits	Limit on Type of Current Offense	Must have No Prior Prison Sentence	Limit on Current Sentence	Must have No Physical or Mental Impairment	Offender Must Volunteer	Other
Georgia	17-25	none	yes	1-5 years	yes	yes	
Oklahoma	18-22	non-violent	yes	none	yes	yes	
Mississippi	none	non-violent	yes	none	no	yes	
Orleans Parish	none	non-violent	yes	≤ 7 years	yes	yes	
Louisiana	none	parole eligible	must be first felony conviction	≤ 7 years	yes	yes	Division of Probation and Parole must recommend; court must recommend; DOC must find offender is particularly likely to respond favorably.
South Carolina	17-24	non-violent	yes	≤ 5 years	yes	yes	
New York	16-24	non-violent, non-escape	yes	indeterminate	yes	yes	No prior indeterminate sentence; eligible for parole within 3 years.
Florida	none	none	yes	none	yes	yes	

SOURCE: "Shock Incarceration: An Overview of Existing Programs", June 1989, National Institute of Justice, U.S. Department of Justice

A Comparison of State Shock Incarceration Programs

	DATE PROGRAM OPENED	PROGRAM LENGTH	RECIDIVISM RATE / DATA BASE	STAFFING RATIO (Inmates:Staff)	SHOCK INCARCERATION COSTS/Inmate	STANDARD INCARCERATION COSTS/Inmate
FLORIDA	October 1987	90-120 days	5.59%	2.9 : 1	Slightly higher than standard	$14,133 / year
GEORGIA	December 1983	90 days	21.3% / 12 mos.	8.3 : 1	$3,342 / year	$12,717 / year
LOUISIANA	March 1987	90-180 days	19% / 24 mos. (Based on parole violations and/or subsequent felony behavior)	30 : 1	$1,620-3,240 / session	$9,125 / year
MICHIGAN	February 1988	90 days	8% / 12 mos.	4.4 : 1	$5,900 / session	$22,240 / year
MISSISSIPPI	April 1985	up to 180 days	18% / 30 mos.	8.65 : 1	Same as standard	$8,840 / year
NEW YORK	1987	180 days	15-17%	N/A	$9,000 / session	$20,000 / year
OKLAHOMA	November 1983	8 weeks	N/A	11 : 1	Same as standard	$11,702 / year
SOUTH CAROLINA	July 1987	90 days	< 5% / 24 mos.	4.2 : 1	$2,070 / session	$12,400 / year

Based on return to prison

Indirect costs and construction costs excluded

Construction costs excluded

Employee benefits excluded

Source: Crime Commission Staff Analysis

TYPICAL DAILY SCHEDULE-FLORIDA BOOT CAMP

Hours	Activity
0400-0420	Wake up/prepare for barracks inspection
0420-0430	Personal inspection
0430-0530	Physical training (barracks being inspected)
0545-0625	Breakfast
0625-0635	Flag ceremony/reveille
0635-0655	Repair/fix barracks inspection deficiencies
0700-1100	Drill/counseling/obstacle course
1100-1140	Lunch
1140-1150	Head count
1200-1600	Work detail
1600-1640	Dinner
1640-1730	Drill and ceremony
1730-1745	Flag ceremony/retreat
1745-1845	Extra physical training/clean up detail
1845-2000	Uniform and barracks preparation
2000-2030	Sick call
2030-2100	Quite time/study time
2100	Head count/lights out

APPENDIX C

Oklahoma's Regimented Inmate Discipline (RID) Program

Oklahoma's Regimented Inmate Discipline (RID) program is located in a 145 bed quadrangle at the Lexington Assessment and Reception Center, about 60 miles south of Oklahoma City. It was the first SI program, established in November, 1983. Lexington is Oklahoma's main reception center and also houses about 600 long term general population inmates. The RID living unit is classified as medium security.

The DOC screens offenders received at Lexington for placement in RID. Those who meet statutory criteria may volunteer for RID. Inmates live in single or double-bunked cells.

As in other SI programs, RID emphasizes strict discipline, physical training and drill. However, other than housekeeping and institutional maintenance, there is no formal hard labor component. Rather, inmates spend three to six hours each day in educational and vocational programs. Drug abuse education programs, and individual and group counselling also are provided. Oklahoma gives greater emphasis to education and vocational training than any other existing SI program. RID participants are separated from general population inmates except during vocational training and education programs.

The DOC prepares a resentencing plan for each inmate. When an inmate completes the 120 day SI program, the DOC recommends that the judge resentence them to probation, under supervision requirements outlined in the resentencing plan. If the judge refuses to resentence, the DOC can transfer the offender to "community custody", where he will serve the balance of his prison term in a tightly structured community setting, supervised by a correctional officer and will comply with the supervision requirements established in the resentencing plan. The offender may begin community custody with a six-month stay at a halfway house, followed by home detention and intensive supervision.

Oklahoma officials acknowledge that their RID program costs more than similar living units at Lexington. The RID unit has 17 staff positions, including 9 custody and 6 program staff--about 6 more total positions than a comparable non-Rid unit. It costs about $349,500 to operate RID each year, or about $129,500 more than a comparable living unit at Lexington.

In late 1987 Oklahoma opened a RID program for females at the Mabel Bassett Correctional Facility in Oklahoma City.

Georgia's Special Alternative Incarceration (SAI) Programs

The Georgia Department of Corrections operates two Special Alternative Incarceration (SAI) programs for male offenders. Their basic structure and design are the same, although they differ in minor respects. Judges control SAI selection and impose SAI as a condition of a probation sentence. If offenders complete SAI successfully, there is no need to resentence them to probation.

The first SAI program opened in December 1983 at the Dodge Correctional Institution in South-central Georgia, near Chester. The DOC opened a second program in March 1985 at Burruss Correctional Institution near Forsyth to reduce the backlog of cases waiting for an available SAI slot. Both are relatively new medium security institutions. In both SAI inmates are completely segregated from general population inmates who also reside at the institutions.

Burruss takes cases from northern Georgia, including metropolitan Atlanta. Dodge takes cases from more rural southern Georgia.

Georgia's 90 day SAI programs involve physical training, drill, and hard work. There are two exercise and drill periods each day, with eight hours of hard labor in between. At Dodge, SAI inmates often are transported to other state facilities or prisons to perform labor-intensive tasks. Sometimes they perform community service for nearby municipalities and school districts. At Burruss SAI inmates work on the grounds of the Georgia Public Safety Training Academy, adjacent to the prison. Except when they are doing community service, SAI inmates work under supervision of armed guards.

There is little emphasis on counselling or treatment. Programs are offered on drug abuse education and sexually transmitted diseases. A parole officer assigned to each program coordinates reentry planning. When SAI graduates are released, they go on regular probation supervision.

At Dodge CI, 100 inmates are double-bunked in two 25 cell units connected by a central control room. At Burruss, 100 inmates are single-bunked in four 25-cell units, each two of which share a central control room. Because it takes more staff to cover four units than two, the Burruss SAI program has 20 staff positions, compared with 12 for Dodge. The annual operating budget for Burruss' SAI program is $468,734, compared to $320,729 for Dodge. Georgia officials maintain that it costs no more to operate SAI at Dodge and Burruss than to run other living units at those prisons.

Mississippi's Regimented Inmate Discipline Programs

Mississippi operates its Regimented Inmate Discipline (RID) program in a minimum security camp located about a mile from the nearest other prison facility on its Parchman complex. The camp can hold 140 inmates, who are housed in large open dormitories.

Judges control the selection process. They may sentence any offender to RID who meets very broad statutory criteria. The DOC admits any offender sentenced by the courts (who passes medical screening); if necessary, the SI program will tailor a physical regimen to fit the abilities of older or physically impaired offenders.

Mississippi's RID features physical training, drill and ceremony, hard labor, and treatment. Mississippi officials recently restructured the program to add four hours of hard labor each day to reduce the amount of idle time, and revised and amended a reality therapy curriculum. There is no educational or vocational component to the program.

Mississippi recently shortened the Parchman program from 120 to 90 days, and added a 60 day reentry component, where RID graduates live in a half-way house and perform community service. Thereafter, they are released to regular probation supervision. Initially, RID graduates also were assigned a community volunteer who acted as adviser, mentor, and role model. However, conflict over the roles of the volunteers and probation officers, coupled with concern for liability issues, lead the DOC to scrap the community volunteer component.

The Parchman program has 13 staff members, including 6 custody and 5 program staff, and costs $279,715 to run each year, about the same as other minimum units at Parchman. At the time of our study, cost estimates for the reentry halfway house were not available.

In early 1987 Mississippi opened an RID program for women at its new Rankin County Correctional Institution near Jackson. Inmates share a dormitory living area with a group of non-RID trusties. At the time of our visit, 12 women were in the RID program, down from the maximum of 30. Two custody staff were assigned full time, with a program director and several other staff positions assigned on a part-time basis.

New York's Camp Monterey Shock Incarceration Facility

Camp Monterey Shock Incarceration Facility is operated by the New York State Department of Correctional Services (NYSDOCS), and is located at Beaver Dams, New York, about twenty miles north of Corning. Camp Monterey is a "stand-alone" minimum security institution, and houses 250 SI inmates. The institution has a total of 131 staff (83 custody positions) of which 26 (13 custody positions) were added when the camp was converted to SI. It costs $3,667,562 to operate the camp each year, about $458,470 more than a standard NYSDOCS camp.

NYSDOCS selects inmates who meet statutory criteria from among regular prison admissions, and offers them the chance to volunteer for SI. About half those eligible volunteer. Judges play no role in the selection process. Inmate platoons enter the program once a month and remain together as a unit throughout the six month program. Each platoon lives in a large open dormitory. When inmates complete the program, they are released by the parole board to an intensive form of parole supervision.

In addition to physical training and drill and ceremony, inmates perform eight hours of hard labor each day. Following evening drill and ceremony, inmates participate in therapeutic community meetings, compulsory adult basic education courses, individual counselling and mandatory recreation. Inmates with substance abuse problems must attend Alcohol and Substance Abuse Treatment. The program involves extensive reentry planning and job seeking skills training.

The program features a monthly "graduation" ceremony patterned after those used at the conclusion of military basic training. DOC officials attend and give graduation speeches. Awards are made to the inmate who scored highest on the rating system used by staff, and to the inmate who showed the greatest improvement.

NYSDOCS recently opened a second 250 bed SI facility at Camp Summit, and is considering adding a women's unit to the Camp Summit SI program.

Summary of State Shock Incarceration Programs

Florida:

Title:	Basic Training Program
Location:	Sumter Correctional Institution, Bushnell
Code Citation:	Section 958.04 FS, revision of Chapter 958
Operational Since:	1987
Program length:	90-120 days
Capacity:	100
Number of participants:	190 as of March 1988
Number completing program:	143
Budget Request:	
A.Salaries:	$499,426
B.Expenses:	$96,900
C.Operating Capital Outlay:	$45,002
TOTAL: $641,328	

Sentencing: Inmates sentenced pursuant to Chapter 958, Youthful Offender Act and designated as youthful offenders, i.e. selected first time offenders, age 24 or under serving ten years or less and not a capital or life felon are eligible provided that there are no physical or psychological limitations that would preclude participation in a strenuous physical or intensive regimented program. Judges sentence offenders to prison. Correctional officials, with judges' approval, select from those volunteering for the program. The program is geared, through "skillfully worded" legislation to decrease the prison population by admitting youth offenders who would otherwise have been incarcerated.[23]

Program Goals:

- o Divert selected youthful offenders from long periods of incarceration.
- o Require cooperation and coordination between the Department of Corrections and the Florida Judicial System.
- o Provide the inmate with the opportunity to become involved in the decision making process concerning his future.
- o Instill confidence, self-respect and pride in accomplishments.
- o Place responsibility directly on the inmate for successful completion of the program.
- o Promote the development of self discipline through the military model of treatment.
- o Coordinate with the Court to effect placement on probation upon successful completion of the Program.

Evaluation: Anticipated in 1989

Contact: Florida
Basic Training Program
James G. Mitchell, Director
Youthful Offender Program Office
Florida Department of Corrections
1311 Winewood Boulevard
Tallahassee, FL 32399-2500
Phone: (904) 488-5021

CSG Backgrounder -- Shock Incarceration

Georgia:

Title:	Special Alternative Incarceration (SAI)
Location:	Al Burruss Correctional Training Center, Forsyth Dodge Correctional Institute, Chester
Code Citation:	Statute 42-8-35.1, 1983
Operational Since:	Burrus (1983), Dodge (1985)
Program length:	90 days
Capacity:	100 beds at each facility
Annual diversion capability:	800
Participants:	As of March 1988: 2400
Number completing program:	2160

Cost: $36.85/day ($3317/session) as compared to $13,450 for one year's standard institutionalization.

Sentencing: Judge sends offender to camp as part of a probation sentence. Classes are offered during the last month for job readiness, including twelve hours on job interviewing, job application and communications skills.

Contact: Georgia:
Special Alternative Incarceration
Larry Anderson
Diversion Programs Coordinator
Georgia Department of Corrections
Probation Division
Suite 954, East Tower
Floyd Veterans Memorial Building
Atlanta, GA 30334
Phone: (404) 656-4696

Kansas:

The program will be set up as an alternative under the Community Corrections guidelines. State funds will be channeled through the two counties in which the programs will be operating. Two facilities are being renovated to house a mixed male and female population of one hundred inmates at each center. Programs will be six months in length. They will consist of military discipline with a public works focus and an Outward Bound activity.[24]

Louisiana:

Title:	Intensive Motivational Program of Alternative Correctional Treatment (IMPACT)
Location:	Hunt Correctional Center, Orleans Parish
Code Citation:	Act 185, 1986 - La. R.S. 15:574.4(A) and Art 901.1, C.Cr.P.
Operational Since:	Hunt (March 1987), Orleans Parish (January 1987)
Program length:	90-180 days
Capacity:	120 beds

Cost: Rep. Raymond Jetson estimates that the state could save about $750,000 the first year and about $3 million over five years.

CSG Backgrounder -- Shock Incarceration

Sentencing: Presentence or postsentence investigation report notes offender's eligibility and suitability for IMPACT. The Division of Probation and Parole may also recommend an offender in the process of probation revocation.

Other Instructional Activities:
"DI's Course": two hours a week; exploration of concepts and information related to work and work behavior
"Ventilation" Therapy
"Reeducative" Therapy
"Substance Abuse" Group
"Prerelease" Group

Evaluation: The Louisiana State University, in collaboration with the Louisiana Department of Public Safety and Corrections, is currently studying the IMPACT program for a period of two years beginning in August 1987. The components under study are system changes, cost/benefit analysis, offender changes and comparisons, and program evaluation.

Contact: Louisiana
IMPACT
Jean Wall
Department of Public Safety and Corrections
P.O. Box 94304
Capitol Station
Baton Rouge, LA 70804-9304
Phone: (504) 342-6740

Michigan

Title:	Special Alternative Incarceration (SAI)
Location:	Camp Sauble, Free Soil
Code Citation:	Established by H.B. 691 as amendment to Section 1, Chapter XI of Act No. 175 of the Public Acts of 1927
Operational since:	March, 1988
Program length:	90 days
Capacity:	156

As of December 1988 there had been 350 admissions to the program, 132 of which had successfully completed the program. One hundred probationers were returned to court for reasons of program refusal'(56), medical discharge (19), court rule violation (18), no improvement (5), and not qualifying (2). One hundred eighteen probationers were in the program at the end of the month.[25]
Cost: $5,900 per prisoner as compared to an average cost of $19,225 for conventional incarceration.

Evaluation: Research by Michigan State University is in progress.

Contact: Michigan
Special Alternative Incarceration
Donald Hengesh, Director
Michigan Department of Corrections
Grandview Plaza
P.O. Box 30003
206 E. Michigan Ave.
Lansing, MI 48909
Phone: (517) 373-0287

Mississippi:

Title:	Regimented Inmate Discipline (RID)
Location:	Parchman Prison (men) Rankin County Correctional Institute (women)
Code Citation:	Section 47-7-47 Mississippi Code 1972 Anotated
Operational Since:	1985
Program Length:	Up to 180 days
Capacity:	130 at Parchman; 75 in Community Services Phase

Program Goals: The program is designed to gradually shift participants from "an initially intense, externally mandated system of forced behavioral change" to "internally controlled productive behavior."[26] These phases utilize the facilities at the State Penitentiary (Phase I), Corrective Work Center facilities (Phase II) and Community Services Division (Phase III).

Contact: Mississippi
Regimented Inmate Discipline
Mike Whelan
Mississippi State Penitentiary
Parchman, MS 38738
Phone: (601) 745-6611

New Hampshire:

A 96 bed facility is under construction at the New Hampshire State Prison for a shock incarceration program. Startup date is July 1990. Legislation authorized the formation of a committee to develop the program as part of a major prison expansion project.[27]

New York

Location:	Monterey Shock Incarceration Facility, Schuyler County (men) Summit (men and women) Wayne County Essex County

CSG Backgrounder -- Shock Incarceration

Code Citation:	Correction Law 112.866; Rules and regulations: Chapter XI, Part 1800, 1987
Operational Since:	1987 (Monterey), 1988 (Summit), 1989 (Wayne Co. and Essex Co.)
Program Length:	180 days
Capacity:	250 at each facility

Cost: Estimated at $9,000 per inmate per year, compared to a systemwide cost of $19,400.[28] "For the first 321 releases from shock camps through November 21, 1988, the Department saved an estimated $5.1 million, over what it would have cost to incarcerate each inmate for their full minimum sentences."[29]
Sentencing: Corrections Department selects participants.

Program Goals: The goal of the program is one of "habilitation" rather than rehabilitation which is "to turn out a better class of muggers."[30] Program areas consist of Drill Instruction, Network, Work Squads, Education, ASAT, and Recreation. Inmates are evaluated on six generic indicators: Respect, Positive Effort, Cooperation, Following Instructions, Accepting Criticism and Program Progress. Inmates participate in labor-intensive work projects for seven hours each workday. Projects include community service, cutting trees and clearing brush for the state Department of Environmental Conservation, and construction and maintenance at the camp itself.
Treatment Components:
Network Program: Emphasizes community living and socialization skills
ASAT: Substance abuse education and group counseling
Individual counseling
Structured educational program: A full day each week and week nights
Pre-release

Of 996 inmates selected for SI between July 13, 1987 and November 14, 1988 444 were still active as of December 1988, 321 have graduated and 231 were transferred out without having completed the program.[31] "Of the first 164 inmates at Monterey, 112 graduated, a dropout rate of 32 percent."[32]

Contact: New York
Shock Incarceration
Glenn S. Goord, Deputy Commissioner
Department of Correctional Services
The State Office Building Campus
Building 2
Albany, NY 12226
Phone: (518) 457-2947

CSG Backgrounder -- Shock Incarceration

Oklahoma:

Title:	Regimented Inmate Discipline (RID) Program
Location:	William S. Key Correctional Center, Ft. Supply (after February 15, 1989)
Code Citation:	Nonviolent Intermediate Offender Act 1983, codified in Oklahoma Statutes as Title 22, Section 995 (HB 1395) and O.S.S. 982a (S.B. 127)
Operational Since:	1984
Program length:	8 weeks
Capacity:	80 cells

Cost: The annual operational budget runs about $7.5 million excluding the health staff.

Sentencing: Requires the Department of Corrections to submit a sentence modification and a rehabilitation plan to the sentencing court. Under the delayed sentencing program the Department of Corrections files a Specialized Offender Accountability Plan (SOAP) with the court clerk on each RID participant.

Program Goals: 1) to increase the degree of overall offender accountability in a positive manner, especially with respect to the crime victim and community, and 2) to facilitate improved interaction and functioning of the criminal justice system.

Programs Titles: Daily Living Skills, Narcotics Anonymous, Alcoholics Anonymous, Substance Abuse Education, Stress Management and Relaxation Training, Education (GED, ABE), Vo-tech evaluation, Pre-release, Religious Services, Recreation.

Program Evaluation: Of the first 403 participants 83 percent were high school dropouts; 59 percent were involved with some kind of drug use; 91 percent were unemployed at the time of arrest; 97 percent were living at poverty level.[33] Of the first 291 to complete RID program: 14 percent were program failures that were transferred elsewhere for extended incarceration; 21 percent were transferred to a minimum security facility for skill training or some other program participation prior to release; 25 percent were transferred to a community treatment center for work release; 35 percent were released directly to the streets with intensive supervision.[34]

A study of 50 Nonviolent Intermediate Offender program participants who had not recidivated back into the prison system lists seven critical points that 37 to 46 of the individuals identified as having a positive effect on their ability to remain free: mentoring, discipline, regimentation, exposure to vo-tech skill areas, counseling, vo-tech testing (analysis), and time to think.[35]

Contact: Oklahoma (as of February 15, 1989)
Regimented Inmate Discipline Program
Ron Anderson, Deputy Director
William S. Key Correctional Center
Box 61
Ft. Supply, OK 73841

Backgrounder -- Shock Incarceration

South Carolina

Location:	Males: Thames Shock Probation Center, Wateree River Correctional Institution, Rembert Females: Shock Probation Unit Women's Correctional Center, Columbia
Code Citation:	Omnibus Criminal Justice Improvement Act of 1986
Operational Since:	(Both), 1987
Program length:	(Both) 90 days
Capacity:	Males, 96; 96 additional beds are planned for the end of 1989 Females, accepting 8 per month
Participants:	648 as of February 6, 1989

Sentencing: Corrections officials select those fitting SI eligibility criteria from those admitted to prison. Judges have an approval or veto over placements.

Education is a strong focal point in the SI program. Twenty five percent of those lacking a high school diploma have been able to obtain GEDs through the SI program.[36] Inmates spend three hours per day in education.

Contact: South Carolina
Males:
Thames Shock Probation Center
John H. Carmichael, Warden
Howard Arden, Deputy Warden
Wateree River Correctional Institution
P.O. Box 189
Rembert, SC 29128-0189
Phone: (803) 734-9925

Contact: South Carolina
Females:
Shock Probation Unit
Vannie M. Toy, Warden
Mr. Willie J. Hunt
Women's Correctional Center
4450 Broad River Road
Columbia, SC 29210
Phone: (803) 737-9725

APPENDIX D

D 9/26/89 Ward C 9/29/89 rbc

SENATE BILL NO. ..... HOUSE BILL NO. .....

A BILL to amend the Code of Virginia by adding in Chapter 18 of Title 19.2 an article numbered 3, consisting of a section numbered 19.2-316.1, and in Title 53.1 an article numbered 5, consisting of a section numbered 53.1-67.1, relating to Boot Camp Incarceration.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 18 of Title 19.2 an article numbered 3, consisting of a section numbered 19.2-316.1, and in Title 53.1 an article numbered 5, consisting of a section numbered 53.1-67.1, as follows:

Article 3.

Boot Camp Incarceration Program.

§ 19.2-316.1. Eligibility for participation; evaluation; sentencing; withdrawal or removal from program.--An individual who is (i) convicted on or after January 1, 1991, of a nonviolent felony, (ii) between the ages of eighteen and twenty-four at the time of the commission of the offense, and (iii) has never before been sentenced to incarceration as an adult may be eligible for sentencing as provided herein.

Following conviction and prior to sentencing, upon its own motion or motion of the defendant, the court may order such defendant committed to the Department of Corrections for a period not to exceed sixty days from the date of conviction for evaluation and diagnosis by the Department and the Parole Board to determine suitability for

participation in the pilot Boot Camp Incarceration Program established pursuant to § 53.1-67.1. The evaluation and diagnosis shall include a complete physical and mental examination of the defendant.

The Department of Corrections and the Parole Board shall conduct the evaluation and diagnosis and shall review all aspects of the case within sixty days from the date of conviction and shall recommend that the defendant be committed to the Boot Camp Incarceration Program upon finding that (i) such defendant is physically and emotionally suitable for the program, (ii) such commitment is in the best interest of the Commonwealth and the defendant, and (iii) facilities are available for confinement of the defendant.

Upon receipt of such a recommendation and written consent of the defendant to participate in the program, and a determination by the court that the defendant will benefit from the program and is capable of returning to society as a productive citizen following a reasonable amount of intensive supervision and rehabilitation including program components set forth in § 53.1-67.1, the court shall impose sentence as authorized by law and suspend execution of the sentence and place the defendant on probation. Such probation shall be conditioned upon the defendant's entry into and successful completion of a Boot Camp Incarceration Program established by the Department of Corrections pursuant to § 53.1-67.1. The court may impose such other terms and conditions of probation as it deems appropriate.

Upon the defendant's (i) voluntary withdrawal from the program, (ii) removal from the program by the Department of Corrections for intractable behavior, or (iii) refusal to comply with the terms and conditions of probation imposed by the court, the defendant shall be brought before the court for hearing. Upon a finding that the

defendant voluntarily chooses to withdraw from the program, exhibited intractable behavior as defined herein, or refused to comply with terms and conditions of probation, the court shall revoke the suspended sentence and probation. Upon revocation of the suspension and probation, the provisions of §§ 53.1-191, 53.1-196 and 53.1-198 through 53.1-201 shall apply retroactively to the date of sentencing.

Upon the defendant's failure to complete the program or to comply with the terms and conditions of probation imposed by the court through no fault of his own, the defendant shall be brought before the court for hearing. Notwithstanding the provisions for pronouncement of sentence as set forth in § 19.2-306, the court, after hearing, may pronounce whatever sentence was originally imposed, pronounce a reduced sentence, or impose such other terms and conditions of probation as it deems appropriate.

"Intractable behavior" means that behavior which, in the determination of the Department of Corrections, (i) indicates an inmate's unwillingness or inability to conform his behavior to that necessary to his successful completion of the program or (ii) is so disruptive as to threaten the successful completion of the program by other participants.

"Nonviolent felony" means any felony except those included in Articles 1 through 7 (§§ 18.2-30 through 18.2-67.10) of Chapter 4; Articles 1 and 2 (§§ 18.2-77 through 18.2-94) of Chapter 5; §§ 18.2-279 through 18.2-282 of Article 4, and §§ 18.2-289 and 18.2-290 of Article 5 of Chapter 7; §§ 18.2-370 and 18.2-370.1 of Article 4 of Chapter 8; § 18.2-405 of Article 1 of Chapter 9; and Article 7 (§§ 18.2-473 through 18.2-480.1) of Chapter 10 of Title 18.2 of this Code.

Article 5.

Boot Camp Incarceration Program.

§ 53.1-67.1. Establishment of program; supervision upon completion; report; effective date of provisions.--Beginning January 1, 1991, and continuing until December 31, 1995, the Department shall establish, staff and maintain at any state correctional facility designated by the Board of Corrections a Boot Camp Incarceration Program of intensive supervision for the rehabilitation, training and confinement of individuals committed to the Department under the provisions of § 19.2-316.1. No more than 100 individuals shall be confined pursuant to the program at any one time. The program shall include components for drill and ceremony, physical labor, counseling, remedial education including drug education, and vocational assessment.

Upon completion of the program, the individual shall be released from confinement and remain on probation and subject to intensive supervision for a period of one year or for such other longer period as was specified by the sentencing court. As a condition of such probation following the boot camp component, a probationer's successful participation in employment, vocational education or other educational programs may be required pursuant to policies established by the Board of Corrections.

2. That the provisions of this act shall expire on July 1, 1995.

#

Felonies Ineligible for Boot-Camp Incarceration

Article 1.

Homicide.

Sec.

18.2-30. Murder and manslaughter declared felonies.
18.2-31. Capital murder defined; punishment.
18.2-32. First and second degree murder defined; punishment.
18.2-33. Felony homicide defined; punishment.
18.2-34. [Reserved.]
18.2-35. How voluntary manslaughter punished.
18.2-36. How involuntary manslaughter punished.
18.2-37. How and where homicide prosecuted and punished if death occur without the Commonwealth.

Article 2.

Crimes by Mobs.

18.2-38. "Mob" defined.
18.2-39. "Lynching" defined.
18.2-40. Lynching deemed murder.
18.2-41. Shooting, stabbing, etc., with intent to maim, kill, etc., by mob.
18.2-42. Assault or battery by mob.
18.2-43. Apprehension and prosecution of participants in lynching.
18.2-44. Civil liability for lynching.
18.2-45. Persons suffering death from mob attempting to lynch another person.
18.2-46. Jurisdiction.

Article 3.

Kidnapping and Related Offenses.

18.2-47. Abduction and kidnapping defined; punishment.
18.2-48. Abduction with intent to extort money or for immoral purpose.
18.2-48.1. Abduction by prisoners; penalty.
18.2-49. Threatening, attempting or assisting in such abduction.
18.2-49.1. Parental abduction; penalty.
18.2-50. Disclosure of information and assistance to law-enforcement officers required.
18.2-50.1. Emergency control of telephone service in hostage or barricaded person situations; penalty.

Article 4.

Assaults and Bodily Woundings.

18.2-51. Shooting, stabbing, etc., with intent to maim, kill, etc.
18.2-51.1. Malicious bodily injury to law-enforcement officers; penalty; lesser included offense.
18.2-51.2. Aggravated malicious wounding; penalty.
18.2-52. Malicious bodily injury by means of any caustic substance or agent or use of any explosive.
18.2-53. Shooting, etc., in committing or attempting a felony.
18.2-53.1. Use or display of firearm in committing felony.
18.2-54. Conviction of lesser offenses under certain indictments.
18.2-54.1. Attempts to poison.
18.2-54.2. Adulteration of food, drink, drugs, cosmetics, etc.; penalty.
18.2-55. Bodily injuries caused by prisoners, probationers or parolees.
18.2-56. Hazing unlawful; civil and criminal liability; duty of school, etc., officials.
18.2-56.1. Reckless handling of firearms; reckless handling while hunting.
18.2-57. Assault and battery.
18.2-57.1. Assault and battery against law-enforcement officers; penalty; lesser included offenses.

Article 5.

Robbery.

18.2-58. How punished.

Article 6.

Extortion and Other Threats.

18.2-59. Extorting money, etc., by threats.
18.2-60. Threats of death or bodily injury to a person or member of his family.
18.2-60.1. Threatening the Governor or his immediate family.
18.2-60.2. Members of the Governor's immediate family.

Article 7.

Criminal Sexual Assault.

18.2-61. Rape.
18.2-62. [Reserved.]
18.2-63. Carnal knowledge of child between thirteen and fifteen years of age.
18.2-63.1. Death of victim.
18.2-64. [Repealed.]
18.2-64.1. Carnal knowledge of certain minors.
18.2-65. [Repealed.]
18.2-66. Effect of subsequent marriage to female over fourteen years of age.
18.2-67. Depositions of complaining witnesses in cases of criminal sexual assault and attempted criminal sexual assault.
18.2-67.01. Not in effect.
18.2-67.1. Forcible sodomy.
18.2-67.2. Inanimate object sexual penetration; penalty.
18.2-67.2:1. Marital sexual assault.
18.2-67.3. Aggravated sexual battery.
18.2-67.4. Sexual battery.
18.2-67.5. Attempted rape, forcible sodomy, inanimate object sexual penetration, aggravated sexual battery, and sexual battery.
18.2-67.6. Proof of physical resistance not required.
18.2-67.7. Admission of evidence.
18.2-67.8. Closed preliminary hearings.
18.2-67.9. Testimony by child victims using two-way closed-circuit television.
18.2-67.10. General definitions.

Article 1.

Arson and Related Crimes.

Sec.

Article 2.

Burglary and Related Offenses.

Article 4.

Dangerous Use of Firearms or Other Weapons.

Article 5.

Uniform Machine Gun Act.

Article 4.

Family Offenses; Crimes Against Children, etc.

Article 1.

Riot and Unlawful Assembly.

Article 7.

Escape of, Communications with and Deliveries to Prisoners.

140266

REPORT OF THE VIRGINIA STATE CRIME COMMISSION

Nondetectable Firearms and Court Security

TO THE GOVERNOR AND THE GENERAL ASSEMBLY OF VIRGINIA

HOUSE DOCUMENT NO. 10

COMMONWEALTH OF VIRGINIA
RICHMOND
1990

MEMBERS OF THE VIRGINIA STATE CRIME COMMISSION 1989

From the Senate of Virginia:

Elmon T. Gray, Chairman
Howard P. Anderson
Elmo G. Cross, Jr.

From the House of Delegates:

Robert B. Ball, Sr., Vice Chairman
V. Thomas Forehand, Jr.
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A. L. Philpott
Warren G. Stambaugh
Clifton A. Woodrum

Appointments by the Governor:

Robert C. Bobb
Robert F. Horan, Jr.
George F. Ricketts, Sr.

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COMMONWEALTH of VIRGINIA

VIRGINIA STATE CRIME COMMISSION

General Assembly Building
910 Capitol Street

POST OFFICE BOX 3-AG
RICHMOND, VIRGINIA 23208

IN RESPONSE TO
THIS LETTER TELEPHONE
(804) 225-4534

ROBERT E. COLVIN
EXECUTIVE DIRECTOR

October 17, 1989

TO: The Honorable Gerald L. Baliles, Governor of Virginia
and Members of the General Assembly

House Joint Resolution 367, agreed to by the 1989 General Assembly, directed the Virginia State Crime Commission to "(i) evaluate the state of the art of manufacture of nondetectable firearms and firearms or explosives containing materials other than metal, (ii) determine what, if any, danger is presented to the Commonwealth by the existence of such weapons, (iii) determine the adequacy and effectiveness of jailhouse and courtroom weapons detection devices to detect metallic or nonmetallic firearms and explosives, (iv) evaluate the impact on the Commonwealth of recent federal legislation regarding plastic guns and whether similar state legislation is appropriate and (v) make any recommendations the Commission finds appropriate including minimum standards, if appropriate, for detection devices."

In fulfilling this directive, a study was conducted by the Virginia State Crime Commission. I have the honor of submitting herewith the study report and recommendations on nondetectable firearms and explosives.

Respectfully submitted,

Elmon T. Gray

ETG/sm

Law Enforcement Subcommittee Studying

COURT SECURITY AND PLASTIC FIREARMS (HJR 367)

Members

Delegate Raymond R. Guest, Jr., Chairman
Senator Elmon T. Gray
Senator Elmo G. Cross, Jr.
Delegate Robert B. Ball, Sr.
Delegate Warren G. Stambaugh
Mr. Robert C. Bobb
Mr. Robert F. Horan, Jr.
Mr. H. Lane Kneedler

Staff

Robert E. Colvin, Executive Director
D. Robie Ingram, Staff Attorney
Susan A. Bass, Research Assistant
Sylvia A. Coggins, Administrative Assistant

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I. AUTHORITY FOR STUDY

House Joint Resolution 367, sponsored by Delegate G. Steven Agee and passed by the 1989 General Assembly, authorized the Virginia State Crime Commission to "(i) evaluate the state of the art of manufacture of nondetectable firearms and firearms or explosives containing materials other than metal, (ii) determine what, if any, danger is presented to the Commonwealth by the existence of such weapons, (iii) determine the adequacy and effectiveness of jailhouse and courtroom weapons detection devices to detect metallic or nonmetallic firearms and explosives, (iv) evaluate the impact on the Commonwealth of recent federal legislation regarding plastic guns and whether similar state legislation is appropriate; and (v) make any recommendations the Commission finds appropriate including minimum standards, if appropriate, for detection devices."

§9-125 of the Code of Virginia establishes and directs the Virginia State Crime Commission (VSCC) "to study, report, and make recommendations on all areas of public safety and protection." §9-127 of the Code of Virginia provides that "the Commission shall have duty and power to make such studies and gather information in order to accomplish its purpose, as set forth in §9-125, and to formulate its recommendations to the Governor and the General Assembly." §9-134 of the Code of Virginia authorizes the Commission to "conduct private and public hearings, and to designate a member of the Commission to preside over such hearings." The Virginia State Crime Commission, in fulfilling its legislative mandate, undertook the Court Security and Plastic Firearms Study as requested by House Joint Resolution 367.

II. MEMBERS APPOINTED TO SERVE

During the April 18, 1989 meeting of the Crime Commission, its Chairman, Senator Elmon T. Gray of Sussex, selected Delegate Raymond R. Guest, Jr., to serve as chairman of the Law Enforcement subcommittee. Members of the Crime Commission who served on the subcommittee were:

Delegate Raymond R. Guest, Jr., of Front Royal, Chairman
Senator Elmon T. Gray, of Sussex
Senator Elmo G. Cross, Jr., of Hanover
Delegate Robert B. Ball, Sr., of Henrico
Delegate Warren G. Stambaugh, of Arlington
Mr. Robert C. Bobb, of Richmond
Mr. Robert F. Horan, Jr., of Fairfax County
Mr. H. Lane Kneedler, Attorney General's Office

III. EXECUTIVE SUMMARY

The full Crime Commission met on October 17, 1989, and received the report of the subcommittee. After careful consideration, the findings and recommendations of the Law Enforcement Subcommittee were adopted by the Commission.

The information received by the subcommittee indicated that, at this time, there are no all-plastic firearms in production nor any plans to manufacture such firearms. In addition, results of a survey on courtroom and jailhouse security distributed to all state sheriffs, indicated no outstanding problems overall in Virginia.

A leading gun manufacturer in Virginia, Heckler and Koch, Inc., utilizes plastic component parts to enhance the quality of many of its firearms; however, each firearm still contains a substantial amount of electromagnetic material and can be readily detected by conventional detection equipment.

In 1987, Byron, Inc. proposed a .22 LR plastic pistol with a ceramic barrel liner; however, in June of 1989, Mr. Byron indicated that his company had abandoned the idea of producing an all-plastic firearm.

The Bureau of Alcohol, Tobacco and Firearms Report on Undetectable Firearms evaluated detection equipment and identified existing detectors which have the ability to distinguish a security exemplar from other common metal objects. The BATF report concluded that operational location and routine adjustment affect the performance of walk-through detectors.

A North American Arms .22 caliber 5-shot revolver, weighing approximately 4.0 ounces with grips, was not detected within or without its camouflage plastic "paging device" by the walk-through device at a rural Virginia courtroom. However, at the time of the testing, the walk-through device was not in its normal operational location.

The subcommittee recognized the need to caution law enforcement agencies about the camouflage paging device and mini revolver and to provide these agencies with information from the BATF report concerning detection capabilities. The subcommittee recommended that the Commission notify law enforcement agencies of both problems. Finding that plastic firearms did not present a particular problem otherwise, no further recommendations were made.

IV. STUDY DESIGN

The subcommittee contacted the Bureau of Alcohol, Tobacco and Firearms (BATF) and received a copy of its report on Undetectable Firearms. The subcommittee also conducted a mail survey on Courtroom and Jailhouse Security of all Sheriffs' offices.

The subcommittee staff digested the information in the BATF report and presented its findings to the subcommittee on July 27, 1989. In addition, the subcommittee staff compiled and evaluated the data from the surveys and presented its findings to the subcommittee at the July meeting. Various field studies were done, the results of which were considered by the subcommittee.

MEETINGS

First Subcommittee Meeting:	June 20, 1989
Second Subcommittee Meeting:	July 27, 1989
Final Subcommittee Meeting:	September 18, 1989

REPORTS

Initial Staff Study: June 20, 1989
Second Update for Subcommittee Review: July 27, 1989
Subcommittee's Report to Full Commission: October 17, 1989

V. BACKGROUND

In a 1987 Crime Commission study on firearms and ammunition, the Commission concluded that, at that time, there were no firearms being manufactured which could escape detection by a properly functioning magnetometer or x-ray device. However, the report noted that Byron, Inc. claimed to have developed, and to be about one to two years away from production of, a .22 caliber pistol which is plastic except for seven metal springs.

The 1988 Report of the Joint Subcommittee Studying Courtroom Security in the Commonwealth included the results of a survey conducted by the Sheriffs' Association which indicated that the majority of jurisdictions do not use either hand held or permanent metal detectors in their courts. The survey also revealed that, of the 31 jurisdictions that use these detection devices, a majority indicated that the detectors function properly at least 80% of the time.

The federal government recently enacted the Undetectable Firearms Act of 1988. (See Appendix B.) This provision amends the Gun Control Act of 1968 and makes it unlawful to manufacture, import, sell, ship, deliver, possess, transfer or receive any firearm that is not detectable by walk-through metal detectors or has, as a major component, a part that cannot be accurately depicted by x-ray equipment commonly used at airports. In addition, the Act includes a requirement that the Bureau of Alcohol, Tobacco and Firearms (BATF) evaluate state-of-the-art metal detectors.

BATF has completed its report on a study of plastic firearms and weapon detection devices. The Crime Commission subcommittee obtained and thoroughly reviewed a copy of this report.

The Code of Virginia was amended during the 1989 Session to make it unlawful to manufacture, import, sell, transfer or possess any plastic firearm. (See Appendix B.) Plastic firearm is defined as "any firearm... containing less than 3.7 ounces of electromagnetically detectable metal in the barrel, slide, cylinder, frames or receiver of which, when subjected to inspection by x-ray machines commonly used at airports, does not generate an image that accurately depicts its shape." A violation of this section is punishable as a Class 5 felony.

Of the 43 states responding to a 1988 survey conducted by the Virginia Legislative Research Library, five states had enacted plastic gun laws.

VI. OBJECTIVES/ISSUES

Based upon the explicit requirements of HJR 367 and additional recommendations made by Delegate G. Steven Agee, its sponsor, at the first meeting of the subcommittee, the following issues and objectives were identified by the subcommittee:

1. Determine whether the technology exists to produce plastic firearms or explosives undetectable to conventional x-ray machines and magnetometers.

2. Use survey results to determine whether jailhouses and courtrooms in Virginia are sufficiently protected from the threat of plastic weapons.

3. Determine the implications of the federal Undetectable Firearms Act.

4. Determine the state of readiness of Virginia's current detection systems.

5. Determine and/or recommend minimum standards for detection devices, if appropriate.

VII. ACKNOWLEDGEMENTS

The members extend thanks to the following agencies and individuals for their cooperation and valuable assistance to this study effort.

Armored Response Group United States
Col. J. C. Herbert Bryant, Jr., Commander
Sgt. Colleen Broderick, Director of Administration

Bureau of Alcohol, Tobacco and Firearms
Steve Rubenstein, Staff Attorney
Charles Demski, ITAR Program Manager
Eric A. O'Neal, Disclosure Officer

City of Richmond Sheriff's Office
Major Ron Elliott

Compensation Board
James Matthews, Executive Secretary

Heckler and Koch, Inc.
James P. Cowgill, Vice President
Brett Gunter, Marketing Representative

House Appropriations Committee
James Roberts, Senior Legislative Fiscal Analyst

Senate Finance Committee
Richard Hickman, Deputy Staff Director

Sheriffs' Offices Statewide

Virginia State Sheriffs' Association
John Jones, Executive Director

VIII. APPLICABLE LAW

A. Code of Virginia §18.2-308.5. Manufacture, import, sale, transfer or possession of plastic firearms prohibited. (See Appendix B.)

B. Section 922 of Title 18 U.S.C., Chapter 44. Undetectable Firearms Act of 1988. (See Appendix B.)

IX. PARALLEL STUDIES

A. Report on Firearms and Ammunition:

In 1987, the Virginia State Crime Commission was requested to conduct a study of issues "related to firearms and ammunition which appear to pose extraordinary threats to the safety of law enforcement and the general public." This study concluded that "at the present time there are no firearms being manufactured which can escape detection by a properly functioning magnetometer or x-ray device."

B. Report of the Joint Subcommittee Studying Courtroom Security in the Commonwealth (1988):

In this report, the joint subcommittee discussed the use of magnetometers in the courts. This study included a survey on courtroom security conducted by the Sheriffs' Association which indicated that the majority of jurisdictions do not use either hand-held or permanent metal detectors.

C. Bureau of Alcohol, Tobacco and Firearms Report on Undetectable Firearms.

1. Background

The chief purpose of the Undetectable Firearms Act of 1988 was to establish a minimum Federal standard for the detectability of firearms by walk-through metal detectors and x-ray systems.

In addition, the law requires that a security exemplar be constructed for use in determining if a firearm is as detectable as the security exemplar. Firearms that are as detectable as the exemplar would be lawful to produce for commercial sale, whereas those not as detectable could only be manufactured or imported for use by the U.S. Military or intelligence agencies.

The BATF Report uses data which the Federal Aviation Administration (FAA) was in the process of gathering from Science Applications International Corporation (SAIC).

Due to time constraints, no exemplar was constructed and the North American Arms .22 short revolver (NAA22S) was chosen as a substitute for the security exemplar.

2. Results

SAIC evaluated the following metal detectors for compliance with the Undetectable Firearms Act of 1988:

Del Norte Sentrie AT
Del Norte FS-3W
Del Norte FS 2W
Outokumpu Metor 120
Outokumpu Metor 118
Infinetics Friskem 500
Heimann MDT 8900

The following walk-through metal detectors were able to distinguish the NAA22S revolver from other metal objects commonly carried on one's person:

Sentrie AT (program 4)
Sentrie AT (program 5)
Outokumpu Metor 120 (program 1)
Outokumpu Metor 120 (program 0)
Outokumpu Metor 118
Infinetics Friskem 500
Infinetics Friskem 500 (modified cards)
Heimann MDT 8900

Conclusions

- Testing by SAIC identified existing detectors which have the ability to distinguish a small firearm from other common metal objects.
- During laboratory testing, the Del Norte FS-3W and FS-2W both failed to detect the NAA22S.
- Operational location for any walk-through detector can affect the performance of the detector.
- Walk-through metal detectors must be routinely adjusted to insure proper performance.

X. UPDATE ON CURRENT TECHNOLOGY

A. Introduction

A key issue in this study was to determine whether the technology exists

to produce firearms that cannot be detected by conventional detection devices.

In order to familiarize staff with present technology, Col. J. C. Herbert Bryant, Jr. arranged for staff to visit the Heckler and Koch, Inc. facility in Sterling, Virginia to discuss the use of plastics in firearms. In addition, Commission staff visited a gun distributor to inspect several hand guns utilizing high percentages of plastic parts. These included the 9mm Glock 17 and 19; Heckler and Koch P9S .45 caliber; Intratec 22LR; and AA Arms 9mm. Staff also visited the police range and test fired the two most well-known guns which use high percentages of composite material - the Glock 19 and the Heckler and Koch P9S. Staff also visited a Virginia district court and tested state of the art detection equipment on weapons containing plastic parts.

B. Test Site Detection Capability

At the test site courtroom, the staff found that the Glock 19 and Heckler and Koch P9S were readily detected by the walk-through and hand-held detection devices. A North American Arms .22 caliber 5-shot revolver, weighing, according to the manufacturer, approximately 4.0 ounces with grips, was not detected within or without its camouflage plastic "paging device," with or without ammunition, by the walk-through device; however, it was readily detected by the hand-held device. Both devices readily detected the handgun and rifle magazine using plastic parts. The walk-through device failed to detect the plastic 12-gauge shotgun shell, 12-gauge slug and .44 magnum plastic cartridge; however, they were readily detected by the hand-held device.

C. Heckler and Koch Current Technology

Heckler and Koch, which assisted the subcommittee throughout the study, does not currently manufacture any all-plastic firearms. It does use plastic/composite parts in many of its firearms, but each firearm still contains a substantial amount of electromagnetic material and can be readily detected by conventional detection devices.

Representatives from Heckler and Koch explained that the company is presently developing weapons utilizing more plastic/composite components, stressing, however, that plastic is being used to improve the quality of weapons rather than to prevent the detection of weapons and adding that detectable implants will be inserted to insure detectability.

The rationale for development of plastic/composite parts in firearms is that they are more resilient and less corrosive, they better retain their shape, they better absorb the "kick" when a weapon is fired, they are lighter weight, and they are cheaper to produce once moulds are made.

D. Byron Technology

In 1987, Byron, Inc. of Casselberry, Florida proposed a .22 LR pistol with an all-plastic frame, plastic internal workings and ceramic barrel liner. The total weight would be only 3.5 ounces. In addition, Byron had been working on a special detection system. Every plastic pistol produced would have had a special metal implant so that it could be detected by Byron's detector and

others. (See Appendix D.)

Mr. Dave Byron indicated in June of 1989 that Byron, Inc. had abandoned the idea of manufacturing an all-plastic handgun; the company is now concentrating on developing a military rifle with plastic/composite parts and plastic grips for handguns.

At the time of this report, there are no apparent plans to discontinue the use of metal barrels in the manufacture of firearms. The proposed ceramic barrel is very expensive to produce. Furthermore, the metal barrel is more durable and less affected by temperature than the ceramic version. The average steel barrel weighs 1.5 ounces per inch which would easily place most firearms over the 3.7 ounces required by law.

XI. SUMMARY OF COURT SECURITY/JAIL SECURITY SURVEY

Each Sheriff's office in Virginia was mailed a survey with questions about the type of electronic security system in place in the local jail and courthouse. (A sample questionnaire is included with summarized responses in Appendix C.) Of the 95 surveys mailed:

- 70 questionnaires were returned.
- 22 answered all preliminary questions "no," indicating that no electronic detection devices were in use.
- Four answered "no" to all preliminary questions, except "yes" to plans to get such a device for the courtroom.
- Two answered "no" to all preliminary questions except "yes" to plans to get such a device for the jail.
- The remaining 42 either had a detection device (or devices) in the courtroom or jail or both.

XII. FINDINGS

A. Courtroom and Jailhouse Security Survey Indicates No Outstanding Problems Overall.

- According to the survey, only seven jurisdictions reported using a walk-through device in the courthouse, none in the jail.
- Most reported satisfaction with the device or devices in use, the biggest complaints resulting from dead batteries.
- None reported encountering a plastic firearm; the only plastic weapons were filed-down pens and toothbrushes.
- Jailors rely on pat searches for weapon detection. Of those reporting possession of detection devices, most reported only sparse use, if any.

- Responses indicated no outstanding security problems overall.

B. The Bureau of Alcohol, Tobacco and Firearms Report on Undetectable Firearms Evaluates State-of-the-Art Detectors.

The BATF report identifies existing detectors which have the ability to distinguish a North American Arms .22 short revolver (NAA22S) from other common metal objects. During laboratory testing by Science Applications International Corporation (SAIC), two devices failed to detect the NAA22S; according to survey respondents, neither of these detectors is currently in use in Virginia.

In addition, the BATF report concluded that the operational location for any walk-through detector can affect the performance of the detector. Furthermore, walk-through metal detectors must be routinely adjusted to ensure proper performance.

C. Byron, Inc. Has Abandoned the Idea of Manufacturing an All-Plastic Handgun.

In 1987, Byron, Inc. of Casselberry, Florida proposed a .22 LR pistol with an all-plastic frame, plastic internal workings, ceramic barrel liner and a total weight of only 3.5 ounces. Mr. Byron indicated in June of 1989 that Byron, Inc. had relinquished the idea of producing an all-plastic handgun; the company is now concentrating on developing a military rifle with plastic/component parts and plastic grips for handguns.

D. A North American Arms .22 Caliber 5-shot Revolver (NAA22S) Was Not Detected With a Detection Device at a Rural Courtroom.

Staff found that a NAA22S, weighing approximately 4.0 ounces with grips, was not detected within or without its camouflage plastic "paging device," with or without ammunition, by the walk-through device; however, it was readily detected by the hand-held device. At the time of testing, the walk-through device was in storage and not in its normal setting.

XIII. RECOMMENDATIONS

Pursuant to HJR 367 (1989), the subcommittee studying court security and plastic firearms carefully considered the current status of weapons utilizing plastic/composite parts and detection equipment. In its final meeting on July 27, 1989, the subcommittee approved its report for presentation to the full Commission on October 17, 1989. At that meeting the Crime Commission carefully considered the findings of the subcommittee and unanimously adopted its report and following recommendations:

A. Caution Law Enforcement Agencies About the Camouflage Paging Device and the Mini-Revolver.

The subcommittee recommended informing sheriffs' offices and other law enforcement agencies statewide about the camouflage paging device which houses the North American Arms .22 caliber 5-shot revolver.

B. Provide Law Enforcement Agencies with Information from the BATF Report.

The subcommittee recommended informing sheriffs' offices and other law enforcement agencies statewide about the following conclusions of the BATF report:

1. During laboratory testing, two detectors failed to detect the NAA22S.

2. The operational location for any walk-through detector can affect the performance of the detector.

3. Walk-through metal detectors must be routinely adjusted to insure proper performance.

APPENDIX A

HP9064402

1989 SESSION
ENGROSSED

HOUSE JOINT RESOLUTION NO. 367

House Amendments in [ ] - February 6, 1989

Requesting the Virginia State Crime Commission to study nondetectable firearms and their effect on jail and courtroom security.

Patrons--Agee; Senators: Benedetti and Marye

Referred to the Committee on Rules

WHEREAS, the technology may soon exist to produce firearms or explosives made substantially from materials other than metal (primarily plastic); and

WHEREAS, such firearms or explosives would be undetectable or unidentifiable as such by security screening devices such as those used at courtrooms and jailhouses; and

WHEREAS, the technology to develop such weapons may have advanced significantly since last studied by the Crime Commission in its 1987 study of firearms and ammunition; and

WHEREAS, the federal government recently enacted the Undetectable Firearms Act of 1988, codified at 18 U.S.C. 922(p), which includes a requirement that the Bureau of Alcohol, Tobacco and Firearms evaluate state-of-the-art metal detectors; and

WHEREAS, the report of the Joint Subcommittee Studying Courtroom Security (Senate Document No. 5, 1988) found that most jurisdictions do not use either hand-held or permanent metal detectors; and

WHEREAS, a comprehensive study of the effectiveness and degree of use of such detectors and their effect on courtroom and jail security does not appear to have been done; and

WHEREAS, the General Assembly recognizes the importance of protecting the well-being of our citizens and judicial officials who are present in our courtrooms or jails; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia State Crime Commission is requested to (i) evaluate the state of the art of manufacture of nondetectable firearms and firearms or explosives containing materials other than metal, (ii) determine what, if any, danger is presented to the Commonwealth by the existence of such weapons, (iii) determine the adequacy and [~~readiness~~ effectiveness] of jailhouse and courtroom weapons detection devices to detect [metallic or] nonmetallic firearms and explosives, (iv) evaluate the impact on the Commonwealth of recent federal legislation regarding plastic guns and whether similar state legislation is appropriate and (v) make any recommendations the Commission finds appropriate including minimum standards, if appropriate, for detection devices.

The Commission may employ whatever methods of inquiry it deems appropriate and necessary, including but not limited to the conducting of public hearings throughout the Commonwealth and the employment of additional temporary staff.

The Commission shall complete its study and submit its recommendations, if any, no later than December 1, 1989, as provided in the procedures of the Division of Legislative Automated Systems for processing legislative documents.

The direct costs of this study are estimated to be $5,500, and such amount shall be allocated to the Virginia State Crime Commission from the general appropriation to the General Assembly.

APPENDIX B

UNDETECTABLE FIREARMS ACT

Mr. BYRD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 4445.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 4445) entitled "An Act to amend title 18, United States Code, to prohibit certain firearms especially useful to terrorists", with the following amendment:

In lieu of the matter inserted by said amendment, insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Undetectable Firearms Act of 1988".

SEC. 2. UNDETECTABLE FIREARMS.

(a) PROHIBITIONS.—Section 922 of title 18, United States Code, is amended by adding at the end the following:

"(p)(1) It shall be unlawful for any person to manufacture, import, sell, ship, deliver, possess, transfer, or receive any firearm—

"(A) that, after removal of grips, stocks, and magazines, is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar; or

"(B) any major component of which, when subjected to inspection by the types of x-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the component. Barium sulfate or other compounds may be used in the fabrication of the component.

"(2) For purposes of this subsection—

"(A) the term 'firearm' does not include the frame or receiver of any such weapon;

"(B) the term 'major component' means, with respect to a firearms, the barrel, the slide or cylinder, or the frame or receiver of the firearms; and

"(C) the term 'Security Exemplar' means an object, to be fabricated at the direction of the Secretary, that is—

"(i) constructed of—

"(I) during the 12-month period beginning on the date of the enactment of this subsection, 3.7 ounces of material type 17-4 PH stainless steel in a shape resembling a handgun; and

"(II) after the close of such 12-month period, 3.7 or fewer ounces of such metal (as prescribed by the Secretary in regulations as state-of-the-art in weapons detection technology advances) in such shape, to permit the manufacture, importation, sale, shipment, delivery, possession, transfer, or receipt of firearms that are detectable and contain 3.7 or fewer ounces of such metal; and

"(ii) suitable for testing and calibrating metal detectors.

"(3) Under such rules and regulations as the Secretary shall prescribe, this subsection shall not apply to the manufacture, possession, transfer, receipt, shipment, or delivery of a firearm by a licensed manufacturer or any person acting pursuant to a contract with a licensed manufacturer, for the purpose of examining and testing such firearm to determine whether paragraph (1) applies to such firearms. The Secretary shall ensure that rules and regulations adopted pursuant to this paragraph do not impair the manufacture of prototype firearms or the development of new technology.

"(4) The Secretary shall permit the conditional importation of a firearm by a licensed importer or licensed manufacturer, for examination and testing to determine whether or not the unconditional importation of such firearm would violate this subsection.

"(5) This subsection shall not apply to any firearm which—

"(A) has been certified by the Secretary of Defense or the Director of Central Intelligence, after consultation with the Secretary and the Administrator of the Federal Aviation Administration, as necessary for military or intelligence applications; and

"(B) is manufactured for and sold exclusively to military or intelligence agencies of the United States.

"(6) This subsection shall not apply with respect to any firearm manufactured in, imported into, or possessed in the United States before the date of the enactment of the Undetectable Firearms Act of 1988.".

"(b) PENALTY.—Section 924 of title 18, United States Code, is amended—

(1) in subsection (a)(1), by striking "or (c)" and inserting in lieu thereof ", (c), or (f)"; and

"(2) by adding at the end the following:

"(f) In the case of a person who knowingly violates section 922(p), such person shall be fined under this title, or imprisoned not more than 5 years, or both.".

"(c) CONFORMING AMENDMENTS.—Section 925 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting after "chapter" the following: ", except for provisions relating to firearms subject to the prohibitions of section 922(p),"; and

(2) by adding at the end the following:

"(f) The Secretary shall not authorize, under subsection (d), the importation of any firearms the importation of which is prohibited by section 922(p).".

"(d) RESEARCH AND DEVELOPMENT OF IMPROVED AIRPORT SECURITY SYSTEMS.—The Administrator of the Federal Aviation Administration shall conduct such research and development as may be necessary to improve the effectiveness of airport security metal detectors and airport security x-ray systems in detecting firearms that, during the 10-year period beginning on the effective date of this Act, are subject to the prohibitions of section 922(p) of title 18, United States Code.

"(e) STUDIES TO IDENTIFY EQUIPMENT CAPABLE OF DISTINGUISHING SECURITY EXEMPLAR FROM OTHER METAL OBJECTS LIKELY TO BE CARRIED ON ONE'S PERSON.—The Attorney General, the Secretary of the Treasury, and the Secretary of Transportation shall each conduct studies to identify available state-of-the-art equipment capable of detecting the Security Exemplar (as defined in section 922(p)(2)(C) of title 18, United States Code) and distinguishing the Security Exemplar from innocuous metal objects likely to be carried on one's person. Such studies shall be completed within 6 months after the date of the enactment of this Act and shall include a schedule providing for the installation of such equipment at the earliest practicable time at security checkpoints maintained or regulated by the agency conducting the study. Such equipment shall be installed in accordance with each schedule. In addition, such studies may include recommendations, where appropriate, concerning the use of secondary security equipment and procedures to enhance detection capability at security checkpoints.

(f) EFFECTIVE DATE AND SUNSET PROVISION.—

(1) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect on the 30th day beginning after the date of enactment of this Act.

(2) 10-YEAR SUNSET.—Effective 10 years after the effective date of this Act—

(A) subsection (p) of section 922 of title 18, United States Code, is hereby repealed;

(B) subsection (f) of section 924 of such title is hereby repealed;

(C) subsection (f) of section 925 of such title is hereby repealed;

(D) section 924(a)(1) of such title is amended by striking ", (c), or (f)" and inserting in lieu thereof "or (c)"; and

(E) section 925(a) of such title is amended by striking ", except for provisions relating to firearms subject to the prohibitions of section 922(p)."

AMENDMENT NO. 3767

Mr. BYRD. Mr. President, I move that the Senate concur in the amendment of the House with a further amendment which I send to the desk on behalf of Senator METZENBAUM.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for Mr. METZENBAUM, proposes an amendment numbered 3767.

Mr. BYRD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out paragraph 2(c) of subsection (p) as added by section 2 and insert in lieu thereof the following:

"(C) the term 'Security Exemplar' means an object, to be fabricated at the direction of the Secretary, that is—

"(i) constructed of, during the 12-month period beginning on the date of the enactment of this subsection, 3.7 ounces of material type 17-4 PH stainless steel in a shape resembling a handgun; and

"(i) suitable for testing and calibrating metal detectors;

"Provided, however, That at the close of such 12-month period, and at appropriate times thereafter the Secretary shall promulgate regulations to permit the manufacture, importation, sale, shipment, delivery, possession, transfer, or receipt of firearms previously prohibited under this subparagraph that are as detectable as a 'Security Exemplar' which contains 3.7 ounces of material type 17-4 PH stainless steel, in a shape resembling a handgun, or such lesser amount as is detectable in view of advances in state-of-the-art developments in weapons detection technology;

o Mr. METZENBAUM. Mr. President, I am pleased that once again the Senate is passing legislation banning the sale of plastic and other undetectable guns. This bill originated as S. 465, legislation introduced by myself and cosponsored by Senator THURMOND, The ranking minority member of the Judiciary Committee, as well as several other Senators. When we became convinced that the detectability standard in S. 465 could be reduced if state-of-the-art metal detectors were installed in airports and other Federal facilities, we introduced a revised version of the bill, S. 2180.

From the beginning of our efforts on this legislation, we attempted to persuade the Justice Department to join us in devising an effective and workable bill. Unfortunately, the Justice Department initially decided to endorse a fundamentally different approach embodied in S. 2051, a bill which would have banned only totally plastic guns. This bill would have had no real impact in barring undetectable weapons, and, fortunately, the Justice Department was persuaded to reverse its position and endorse the approach taken by Senator THURMOND and myself.

The credit for the reversal in the Justice Department's position, as well as in the broad public support for this bill, goes first and foremost to the Nation's law enforcement organizations. Every major law enforcement organization in this country, which together constitute the law enforcement steering committee, worked long and hard to make sure this bill became law. I wish to thank again the efforts of these groups, which include the Fraternal Order of Police, the International Association of Chiefs of Police, the International Brotherhood of Police Officers, the Major City Chiefs Organization, the National Association of Police Organizations, the National Organization of Black Law Enforcement Executives, the National Sheriffs Association, the National Troopers Coalition, the Police Executive Research Forum, the Police Foundation, and the Police Management Association.

Over the last few months, my staff has worked with the staff of Congressman HUGHES to resolve the few differences between the House and Senate bills. With a few minor changes, this is the version that has been incorporated into the bill. I wish to commend Congressman HUGHES and this staff for their cooperation and leadership in the House on this issue.

We are amending the House bill for the purpose of making clear that authority granted to the Secretary to revise the exemplar standard extends only to reducing the metal content, and would be exercised in the event that advances in weapons detection technology makes such a reduction practical, consistent with the objectives of this legislation.o

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from West Virginia.

The motion was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

1989 SESSION

VIRGINIA ACTS OF ASSEMBLY - CHAPTER 663

An Act to amend the Code of Virginia by adding a section numbered 18.2-308.5, relating to plastic firearms; penalty.

[H 1390]

Approved MAR 2 7 1989

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 18.2-308.5 as follows:

§ 18.2-308.5. Manufacture, import, sale, transfer or possession of plastic firearm prohibited.—It shall be unlawful for any person to manufacture, import, sell, transfer or possess any plastic firearm. As used in this section "plastic firearm" means any firearm, including machine guns and sawed-off shotguns as defined in this chapter, containing less than 3.7 ounces of electromagnetically detectable metal in the barrel, slide, cylinder, frame or receiver of which, when subjected to inspection by x-ray machines commonly used at airports, does not generate an image that accurately depicts its shape. A violation of this section shall be punishable as a Class 5 felony.

Any firearm manufactured, imported, sold, transferred or possessed in violation of this section shall be forfeited to the Commonwealth and disposed of in accordance with § 18.2-310.

_____

President of the Senate

_____

Speaker of the House of Delegates

Approved:

_____

Governor

APPENDIX C

******CONFIDENTIAL******

SURVEY ON COURTROOM SECURITY

All Respondents

NAME TITLE

OFFICE/DIVISION:

ADDRESS:

TELEPHONE NUMBER: DATE:

Does your county or city employ any type of detection device for courtroom security? YES_____NO_____. Does your jurisdiction employ any type of detection device for jailhouse security? YES_____NO_____. If not, do you have plans to obtain such a device for the courtroom? YES_____NO_____for the jailhouse? YES_____NO_____. Have you ever borrowed a detection device from another locality? YES_____NO_____.

THE QUESTIONS IN PART I OF THIS SURVEY PERTAIN TO COURTROOM SECURITY WHEREAS THE QUESTIONS IN PART II REFER TO JAILHOUSE SECURITY. PLEASE RESPOND ACCORDINGLY.

PART I - COURTROOM SECURITY

1. Excluding court officials, is everyone entering the courtroom subject to screening by a detection device? If "NO," who is not and why?

   No: 20 Yes: 21

2. What kind(s) of device(s) do you have (e.g., walk-through or hand-held)?

   Hand held only: 31 Walk through only: 1 Both: 6

   How many of each kind do you employ?

   Hand held: one: 16
   two: 12
   three: 4
   four: 3
   five: 2

   Walk through: one: 4
   two: 2
   three: 1

3. Who manufactures the device(s)? Provide model no. if known.

Hand held:	Walk through:
Outokumpu: 1	Garrett: 3
Pocket-Redee: 1	Unknown: 2
Sirchie: 8	
Infinetics: 1	
Garrett: 4	
Federal Transfrisker: 12	
Frisk: 1	

What is the approximate cost of each?

Hand held:	Walk through:
$4500: 1	$5500: 1
$600: 1	$4500: 1
$300 to $359: 2	$3750: 2
$200 to $300: 2	$3300: 1
$100 to $200: 9	unknown: 2
$10 to $100: 9	
unknown: 17	

What was the source of funding?

Sheriff: 3	Grant: 7
County: 10	unknown: 7
City: 2	Local: 5
Court: 1	Borrowed (walk through): 1

4. How long have you been using the particular model(s)?

Results not tallied.

Do you find it satisfactory ? Why?

Hand held:	Walk through:
Yes: 28	Yes: 4
No: 8	No: 0
No answer: 3	

5. To your knowledge, exactly what material(s) can be detected by the device(s)?

Metal: 37
Ferrous metal: 2
"Most any kind:" 1

6. To your knowledge how much of the material(s) is required to activate the device(s)?

A small amount: 29
A large amount: 1
unknown: 10

7. Is it possible to adjust the sensitivity of the device(s)?

Hand held:	Walk through:
Yes: 31	Yes: 2
No: 6	No: 2

If so, at what level of sensitivity is it set? Why?

Results not tallied.

8. What percentage of the time do(es) the device(s) work properly?

Hand held and Walk through:

100%: 24
95%: 2
90%: 3
75%: 6
less that 50%: 1
unknown: 2

9. Who usually operates the device(s)? Please indicate title/position.

Courtroom security (deputy): 37
Corrections: 3
Bailiff: 6

10. If you did not have a detection device, would additional staff be necessary to maintain the same level of security? YES_____NO_____. If so, how many additional staff would be needed?

Yes: 19 No: 17

11. How many hours is/are the device(s) in operation each day?

Depends on docket: 8	Depends on threat: 5
Seldom: 6	1 to 4 hours: 7
4 or more hours: 6	8 hours; 2
none: 1	unknown or n/a: 4

12. How much special training do personnel receive on the equipment?

none: 23	4 hours: 3
1 hour: 8	Less than 1 hour: 6

13. What is the approximate cost of this training?

$0:-27 unknown: 10

14. Has a weapon ever passed through the device(s) undetected?

Yes: 1 Malfunction of circuit. No: 32

unknown: 7

15. Have you had any experience with plastic weapons in the courtroom?

Yes: 1 Toy guns. No: 39

PART II - JAILHOUSE SECURITY

1. Is everyone entering the jailhouse subject to screening by a detection device? If "NO," who is not and why?

   Results not tallied.

2. What kind(s) of device(s) do you have (e.g., walk-through or hand-held)?

   Hand held: 14

   How many of each kind do you employ?

   Hand-held:

   one: 7
   two: 4
   three: 1
   four: 1
   twelve: 1

3. Who manufactures the device(s)? Provide model no. if known.

   Hand held:

Garrett: 2	Bob Barker Co.: 1
Transfrisker: 6	Sirchie: 3
Rens Mfg.: 1	Maytronics: 4

   What is the approximate cost of each?

   $100 to 200: 5
   $201 to 300: 1
   unknown: 9

   What was the source of funding?

County: 3	Local: 2
unknown: 3	Grant: 2
Sheriff: 2	Comp. Bd. Funds: 1

4. How long have you been using the particular model(s)?

   Results not tallied.

   Do you find it satisfactory ? Why?

   Yes: 12 No: 3

5. To your knowledge, exactly what material(s) can be detected by the device(s)?

   Metal: 13
   Most metal: 1

6. To your knowledge how much of the material(s) is required to activate the device(s)?

unknown: 3 A small amount: 9

7. Is it possible to adjust the sensitivity of the device(s)?

Yes: 12 No: 2

If so, at what level of sensitivity is it set? Why?

Results not tallied.

8. What percentage of the time do(es) the device(s) work properly?

75%: 4 90 to 100%: 10

9. Who usually operates the device(s)? Please indicate title/position.

Duty officer: 1 Deputy: 7
Jailer: 6 Correctional Officers: 4

10. If you did not have a detection device, would additional staff be necessary to maintain the same level of security? YES_____NO_____. If so, how many additional staff would be needed?

Yes: 3 No: 10

11. How many hours is/are the device(s) in operation each day?

Depends on threat: 2 varies: 2
24 hours/day for inmates: 2 one hour: 2
seldom: 4 zero: 2

12. How much special training do personnel receive on the equipment?

none: 8 one hour or less: 4
four hours: 1 until person understands: 1

13. What is the approximate cost of this training?

$0: 12 unknown: 1

14. Has a weapon ever passed through the device(s) undetected?

Yes: 0 No: 11

unknown - 2

15. Have you had any experience with plastic weapons in the jailhouse?

Yes: 2 Toothbrushes, pens. No: 11

WE SINCERELY APPRECIATE YOUR TAKING THE TIME AND EFFORT TO COMPLETE THIS SURVEY. PLEASE RETURN THIS FORM TO US IN THE ENVELOPE PROVIDED.

140281

REPORT OF THE VIRGINIA STATE CRIME COMMISSION

Court Appearance Waiver

TO THE GOVERNOR AND THE GENERAL ASSEMBLY OF VIRGINIA

Senate Document No. 5

COMMONWEALTH OF VIRGINIA
RICHMOND
1989

COMMONWEALTH of VIRGINIA

VIRGINIA STATE CRIME COMMISSION

General Assembly Building
910 Capitol Street

POST OFFICE BOX 3-AG
RICHMOND, VIRGINIA 23208

IN RESPONSE TO
THIS LETTER TELEPHONE
(804) 225-4534

ROBERT E. COLVIN
EXECUTIVE DIRECTOR

October 18, 1988

TO: The Honorable Gerald L. Baliles, Governor of Virginia, and Members of the General Assembly:

Senate Joint Resolution 56, agreed to by the 1988 General Assembly, directed the Virginia State Crime Commission to study allowing drivers charged with traffic violations resulting from certain motor vehicle accidents to waive a court appearance and plead guilty. In fulfilling this directive, a study was conducted by the Virginia State Crime Commission. I have the honor of submitting herewith the study report and recommendations on Virginia's court appearance waiver.

Respectfully submitted,

Elmon T. Gray
Chairman

ETG:tes

ENCLOSURE

Members of the

Virginia State Crime Commission

From the Senate of Virginia:

Elmon T. Gray, Chairman
Howard P. Anderson
Elmo G. Cross, Jr.

From the House of Delegates:

Robert B. Ball, Sr., Vice Chairman
V. Thomas Forehand, Jr.
Raymond R. Guest, Jr.
A. L. Philpott
Warren G. Stambaugh
Clifton A. Woodrum

Appointments by the Governor:

Robert C. Bobb
Robert F. Horan, Jr.
George F. Ricketts, Sr.

Attorney General's Office:

H. Lane Kneedler

Subcommittee

studying

Court Appearance Waiver

Members:

Mr. H. Lane Kneedler, Chairman
Senator Elmo G. Cross, Jr.
Delegate Robert B. Ball, Sr.
Delegate V. Thomas Forehand, Jr.
Delegate Clifton A. Woodrum
Reverend George F. Ricketts, Sr.
Mr. Robert F. Horan, Jr.

Staff:

Robert E. Colvin, Executive Director
Elizabeth H. McGrail, Research Assistant
Tammy E. Sasser, Executive Administrative Assistant
Kris Ragan, Secretary

Table of Contents

I. Authority for Study

Current law in Virginia, as set forth in §19.2-254.1 of the Code of Virginia, allows a driver charged with a traffic infraction to enter a written appearance and waive court hearing, except in instances where property damage or personal injury result. Many times, however, when property damage has occurred, a driver who has been charged with a traffic violation does not wish to contest the charge and pleads guilty. Allowing a driver to waive a personal appearance and prepay his fine when no personal injury is involved may reduce inconvenience to the driver, improve the efficiency of the courts and save the Commonwealth and localities some costs in the form of overtime pay for state and local police officers who are required to appear. For these reasons, the 1988 General Assembly passed Senate Joint Resolution 56 (Appendix A), which was introduced by Senator Dudley J. Emick of Botetourt. SJR 56 directs the Virginia State Crime Commission to conduct a study to determine the potential benefits and adverse effects of an amendment to the Code of Virginia that would allow drivers charged with a traffic violation to waive court appearance in instances where property damage, but no personal injury, resulted.

Section 9-125 of the Code of Virginia establishes and directs the Virginia State Crime Commission "to study, report and make recommendations on all areas of public safety and protection." Section 9-127 provides that "the Commission shall have the duty and power to make such studies and gather information and data in order to accomplish its purposes as set forth in §9-125..., and to formulate its recommendations to the Governor and General Assembly." Section 9-134 authorizes the Commission to conduct private and public hearings and designate a member of the Commission to preside over such hearings. The Crime Commission, in fulfilling its legislative mandate, undertook this Court Appearance Waiver Study as directed by Senate Joint Resolution 56.

II. Members Appointed to Serve

During the April 19, 1988 meeting of the Crime Commission, Senator Gray appointed Mr. H. Lane Kneedler of the Attorney General's Office to serve as chairman of the subcommittee on Court Appearance Waiver. Members of the Crime Commission who serve on the subcommittee are:

Mr. H. Lane Kneedler (Attorney General's Office), Chairman
Senator Elmo G. Cross, Jr. of Hanover
Delegate Robert B. Ball, Sr. of Richmond
Delegate V. Thomas Forehand, Jr. of Chesapeake
Delegate Clifton A. Woodrum of Roanoke
Reverend George F. Ricketts, Sr. of Richmond
The Honorable Robert F. Horan, Jr. of Fairfax

III. Executive Summary

The full Crime Commission met on October 18, 1988 and received the report of the subcommittee. After careful consideration, the findings and recommendations of the subcommittee were adopted by the Commission. The Crime Commission subcommittee studying court appearance waivers for motor vehicle accidents involving property damage pursuant to SJR 56 held three public meetings, including a public hearing held in conjunction with one of its meetings, conducted research, and received public comment on the issue. This section of the report provides a summary of the findings and recommendations of the subcommittee.

The subcommittee found that there are a substantial number of motor vehicle accidents in the Commonwealth that result in property damage and that a very high percentage of those accidents involve a traffic infraction. The subcommittee also found that general district court clerks and judges devote a substantial amount of time to such cases. Many defendants would prefer to prepay their fine and plead guilty and do not wish to appear for trial for a traffic offense. Indeed, a number of defendants, especially out-of-state defendants, do not appear for such cases and are tried in their absence.

Requiring court appearance can also cause great inconvenience to witnesses, especially when a continuance is granted or the defendant does not appear or appears only to plead guilty. It was not clear to the subcommittee, however, that court appearance waiver for property damage cases would substantially reduce that inconvenience. The subcommittee found that notifying witnesses was a more complicated issue than it might seem at first glance. Such notification would require an early determination that the defendant was eligible for court appearance waiver (i.e., that the accident did not result in personal injury) and the defendant would have to elect to waive court appearance in sufficient time before trial to notify the witnesses. In addition, there was no consensus on who should have the responsibility to notify the witnesses. Suggestions included the general district court clerk or the defendant, or that the witnesses themselves should be required to contact the clerk to determine if it was necessary for them to appear.

The subcommittee also found that there may be some reduction in time police officers must spend in court if court appearance waiver were permitted in property damage cases. Since, however, most police officers already take steps to reduce their time in court -- by, for example, scheduling all their traffic cases on one or more "court days" each week or month -- it was not clear to the subcommittee that the proposed court appearance waiver would substantially reduce the time police officers now spend in court.

The proposed court appearance waiver would be for traffic infraction cases where only property damage, but no personal injury, occurred. The subcommittee concluded that it will be very difficult in many cases to determine that no personal injuries occurred as a result of the accident since such injuries often are not known until some time after the accident.

The subcommittee believes that there is some deterrent effect associated with a required court appearance. Furthermore, a majority of the subcommittee believes that the proposed court appearance waiver could restrict the judge's sentencing discretion. Since the defendant no longer would be required to appear in court, the judge no longer would have the opportunity to determine if the defendant was in need of special training or special restrictions on his use of a motor vehicle.

The proposal also would have an impact on the victim of the defendant's traffic infraction. The victim no longer would have the opportunity to obtain information at the trial of the traffic infraction that could be used against the defendant in a later civil suit. In addition, even though a victim still may sue a defendant civilly, some victims feel strongly that they are entitled to have a "day in court" when the defendant is tried and, if found guilty, is required to answer publicly for the traffic infraction itself.

Finally, concern was expressed that the option of waiving court appearance and avoiding the inconvenience of spending a day in court might be sufficient to persuade a driver to waive appearance and plead guilty to a traffic infraction even when he has a valid defense. This could have a significant negative impact on the defendant in subsequent civil litigation.

Based on the testimony and other information available to it, and on the above findings, the subcommittee recommends that §19.2-254.1 of the Code of Virginia not be amended to permit court appearance waiver in traffic infraction cases that result in property damage but no personal injury.

IV. Legislative History and Background

Chapter 585 of the 1977 Acts of Assembly added §19.2-254.1 to the Code of Virginia. This section provides a procedure for traffic infraction cases and enables a driver charged with an infraction "to enter a written appearance and waive court hearing, except in instances in which property damage or personal injury resulted." The section has remained intact except for a 1978 amendment (Chapter 604 of the 1978 Acts of Assembly) which incorporated the definition of a traffic infraction (§46.1-1(40)) and the Uniform Fine Schedule (Rule 3B:2 of the Rules of the Supreme Court of Virginia as authorized by §16.1-69.40:1) into the section.

During the past three General Assembly sessions, two senators have introduced bills to amend the language in §19.2-254.1. First, Senator Gartlan offered Senate Bill 239 in the 1986 session. (Appendix A). This bill proposed that a waiver of court appearance "be permitted in instances in which property damage or personal injury resulted but only if no criminal offense arising from the incident is charged." This bill was not enacted by the General Assembly.

Subsequently, Senator Mitchell introduced Senate Bill 57 in the 1988 session. (Appendix A). His proposal also seeks to allow waiver of court appearance in traffic infractions that result in property damage or personal injury, but does not include language excepting cases which involve criminal offenses. This bill was passed unanimously by the Senate but was subsequently carried over to the 1989 session by the House.

Also during the 1988 session, the Assembly passed Senate Joint Resolution 56. This resolution requests the Crime Commission to study the feasibility and desirability of an amendment to §19.2-254.1 that would allow drivers to waive court appearance for traffic infractions that involve property damage but no personal injury. This study will be presented to the 1989 session of the General Assembly.

V. Methodology and Research

The subcommittee held three meetings, on June 8, July 20, and September 1, 1988, and one public hearing, which was held in conjunction with the subcommittee's meeting on July 20. The subcommittee reviewed current Virginia law and practice and other available study reports, conducted a survey within the state of general district court judges and clerks, and examined the law of a number of other states.

In addition to the testimony received at its public hearing and public comment at its three meetings, the subcommittee considered the following research and information:

A. Applicable Virginia Laws

1. Va. Code §19.2-254.1 (Appendix B) **Procedure in Traffic Infraction Cases:** A driver charged with a traffic infraction may "enter a written appearance and waive court hearing **except in instances in which property damage or personal injury resulted.**"

2. Va. Code §46.1-1(40) (Appendix B) **Definition of "Traffic Infraction:"** A traffic infraction is a violation of any provision of Chapters 1 through 4 of Title 46.1 of the Code of Virginia or of any rule, regulation or ordinance established under Title 46.1 that is not defined as a felony or misdemeanor, and that is not otherwise punishable by incarceration or by a fine of more than $100.

3. Rule 3B:2 of the Rules of the Supreme Court of Virginia (1988): This rule is a uniform fine schedule. It lists various offenses with corresponding fines.

B. Earlier Study

The National Center for State Courts (NCSC) undertook a study of the traffic adjudication system in Virginia pursuant to a grant from the Virginia Council on Criminal Justice. National Center for State Courts, Traffic Adjudication in Virginia (1977). Many of NCSC's recommendations were incorporated into the Code by the General Assembly in 1977.

Particularly relevant to the current study on court appearance waiver are NCSC's findings and recommendations pertaining to prepayments and court appearance waivers. One noteworthy recommendation was that Virginia should enact a statute "to identify circumstances under which motorists should be allowed to make pre-payment for any nonhazardous offense." (Traffic Adjudication in Virginia, p.53). NCSC's report did not elaborate on the definition of a "nonhazardous" offense; however, it suggested that infractions involving accidents fall outside the purview of "nonhazardous." The addition of §19.2-254.1 to the **Code of Virginia** in 1977 mirrors this proposal. That section permits prepayment of fines and waiver of court appearance where a traffic infraction does not involve property damage or personal injury.

The NCSC's report offered two reasons for requiring court appearance in more serious offenses. First, appearance in court may deter future offenses. Second, closer judicial scrutiny of such violations gives greater assurance to the public that the sanctions imposed are just.

Also relevant is the report's recommendation that Virginia not shift to administrative adjudication of traffic cases. By the time of the publication of the NCSC report in 1977, a few cities in New York (N.Y. Veh. & Traffic Law §155 (McKinney, 1973)) and Rhode Island (R.I.G.L.A. §31-43-1 (1974)) had just implemented administrative systems. NCSC found that the start-up costs in those cities had been very high. It also found that many of the efficiencies achieved by those systems could be achieved in Virginia without shifting to an expensive administrative forum.

NCSC also made the following additional findings:

- For January-June, 1976, almost 55% of dispositions in Virginia general district courts involved traffic cases.
- Traffic cases consume from 40% to 50% of the time of clerks and judges.
- Of 19 general district court judges interviewed, 14 judges stated that they approved of a prepayment system where clerks received fines under a schedule of recommended amounts. Three judges disapproved of such a system because "it limits the ability of their courts to handle problem drivers and it demeans the justice system generally." One judge explained that he accepted prepayments from non-local motorists only because he wanted to confer "special attention to local motorists in court."
- At the time NCSC undertook this study of Virginia traffic adjudication, a driver who paid a fine for a traffic violation was also assessed court costs. (Va. Code §§14.1-123(3a), 14.1-200, 14.1-200.2). Eighteen dollars was the usual assessment.
- Most law enforcement officers who issued traffic summonses set aside a "court day" on which they scheduled a court appearance for all drivers they had charged with infractions. 10% of clerks interviewed stated that they experienced problems with court appearance days set by officers. 10% of law enforcment agencies responding to the NCSC's inquiries reported that they were always notified of continuances or removal of a traffic case from the docket.
- In the general district courts of the judges interviewed by NCSC, an average of 15% of motorists charged with an infraction failed to appear on their scheduled court date.
- 40% of the judges interviewed stated that they tried defaulting motorists in their absence. 25% issued a warrant for the absent driver's arrest and some courts continued the case and notified the driver of the new appearance date.

C. Survey of General District Court Judges and Clerks

The subcommittee surveyed about one hundred district court judges and clerks to determine whether they would be in favor of a court appearance waiver in traffic infraction cases. Copies of the questionnaire are included in Appendix C.

1. Judges:

Of 19 judges who responded, 14 were in favor of a court appearance waiver where the traffic infraction resulted in property damage but no personal injury. Four were against a waiver and one had no opinion. The following reasons were given by individual judges in support of the waiver:

- Many drivers charged with infractions are from out-of-state and are not coming back for trial anyway.
- A person should not be required to disrupt his or her schedule to appear in court to enter a plea of guilty to a traffic infraction.

- The persons most inconvenienced are the witnesses who appear only to find: (1) the defendant pleads guilty or (2) the defendant does not appear. In either case, the testimony of the officer is sufficient to convict without more evidence. There can be a monumental waste of citizens' time where their only fault has been that they have observed an auto accident.
- The degree of culpability may be the same whether an accident happened or not. Whether an accident occured is insufficient to determine whether a case is prepayable or not.
- Traffic courts are inundated with defendants wishing to plead guilty and with witnesses who are not happy to be there.

Two of the judges who favored the use of court waivers suggested that waivers should not be evidence in subsequent civil litigation. One judge suggested that a method be developed to inform witnesses that fines have been prepaid and that their appearance is not required.

Two of the judges offered the following reasons for opposing court waivers in property damage cases:

- In some cases the damage may be major. The owner of property damaged may be able to obtain insurance information from the defendant at the court hearing.
- Allowing drivers to waive court appearance severely restricts the judge's discretion.

Seventeen of the 19 judges described their method for adjudicating traffic infraction cases where the defendant driver fails to appear. Fourteen of the 17 stated that they try drivers in their absence. Two judges issue warrants for the driver's arrest. One judge issues a warrant if the driver is from Virginia, but tries a driver in his absence if he is from out-of-state.

2. Clerks:

Thirty-five general district court clerks responded to surveys or were interviewed over the phone. Twenty-one clerks favored a court appearance waiver in property damage cases, 11 were opposed, and three had no opinion. The following reasons were offered by individual clerks in support of a court appearance waiver in property damage cases:

- It is less time consuming for the court to handle prepayment and waiver of an infraction than to handle cases which are tried in the defendant's absence. Often we receive calls from defendants involved in accidents who would like to prepay and advise this office they will simply wait for a bill in lieu of court appearance.
- It would save a lot of court time.
- Most of the traffic infraction cases are just fender benders and the people want to plead guilty and pay without losing time from work to appear in court. It would help clear court dockets and not only would defendants save work time, but witnesses would also. We get numerous calls trying to pay these cases and it would be less time consuming to give payment information than try to explain to people why they cannot pay. I feel that anything serious enough that the officer would not want it to be prepaid would be a charge of reckless driving, rather than an infraction.

- The officer should have discretion to determine whether or not the defendant should appear. The ability of defendants to prepay minor traffic offenses where the officer has approved it would greatly reduce the amount of waiting time for the defendants and the processing time in court. In the event of injury, of course, the victims have their civil remedies, which is not a part of the criminal hearing.
- A traffic infraction is not a crime of moral turpitude; why force the defendant into court?
- The degree of culpability does not depend on whether a violation involves property damage. Damages can always be recovered in civil litigation.
- This jurisdiction already accepts prepayments and waivers. The system works fine and is pretty efficient. If an infraction resulted in serious damage, the officer usually writes the driver up for reckless driving and forces the driver into court that way.
- Most courts try drivers in their absence when they don't show up. If a driver can be tried in his absence, why not allow him just to prepay?

The following reasons were offered in opposition to a court appearance waiver in property damage cases:

- There could be many factors involved in an infraction resulting in property damage that would not come out if not in court. For instance, it could be a D.U.I.
- If traffic infractions cases go to trial, there is a better chance of restitution.
- There is concern that personal injury is often not discernible at the time of the accident. Additionally, defendant information is frequently copied by the investigating officer from the defendant's operator license which has not been updated with address changes.
- Allowing a driver to waive and prepay without admitting the waiver in civil litigation appears to be allowing the defendant to have his cake and eat it too.
- Court appearance helps victims. When a defendant is not insured, the victim can get the defendant's employer's name and a good address for the defendant at the trial for the infraction. Also, a victim may be able to elicit more information about the accident from the officer or defendant at trial.
- Notifying witnesses will become a problem.

One clerk suggested that court appearance waivers be allowed only in instances where no witnesses have been subpoenaed. Otherwise, notifying witnesses that their case has been prepaid may be too burdensome. Another clerk suggested that drivers be forced to decide at the scene of the accident whether they will waive court appearance. That way the officer will know whether to subpoena witnesses. A third clerk suggested that drivers be allowed to waive court appearance, but not to prepay the fine.

D. Adjudication of Traffic Infractions in Other States

The subcommittee also researched the traffic laws of other states. Appendix D contains a general review of the traffic laws of all 50 states and the District of Columbia. Appendix E contains a more detailed description of

the traffic laws in 13 states, 12 of which permit court appearance waiver in at least some cases. Florida's court appearance waiver provision is similar to the proposal which is the subject of this study and is set forth below as well as in Appendix E. The other 12 states included in Appendix E provide an interesting variety of alternatives. Particularly noteworthy are Maine's administrative adjudication system; Michigan's legislation on the admissibility of a traffic infraction conviction which the state supreme court held was superseded by its rule-making power; and New Hampshire's option of nolo contendere pleas. The Florida court appearance waiver statute provides as follows:

Florida

1. Traffic Infraction:

A violation of Florida's traffic laws is a civil infraction. More serious offenses such as driving under the influence are misdemeanors.

2. Waiver:

A driver charged with an infraction may waive court appearance unless the infraction involved an accident resulting in death or serious bodily injury:

> §318.14. Noncriminal traffic infractions; exception; procedures
>
> (1) Except as provided in ss. 318.17(3)(b), and 322.03(5)(b), any person cited for a violation of chapter 316, s. 320.0605(1), s. 320.07(3)(a)1, s. 322.03(1), s. 322.15(1), s. 322.19, or s. 240.265 shall be deemed to be charged with a noncriminal infraction and shall be cited for such an infraction and cited to appear before an official.
>
> (2) Any person cited for an infraction under this section shall sign and accept a citation indicating a promise to appear. The officer may indicate on the traffic citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty established in §318.18.
>
> * * * *
>
> (4) Any person charged with a noncriminal infraction under this section who does not elect to appear shall pay the civil penalty and delinquent fee, if applicable, either by mail or in person, within 30 days of the date of receiving the citation, unless the citation is for violation of §316.646, in which case payment may be made, either by mail or in person, within 20 days of the date of receiving the citation. If the person cited follows the above procedure, he shall be deemed to have admitted the infraction and to have waived his right to a hearing on the issue of commission of the infraction. Such admission shall not be used as evidence in any other proceedings.
>
> §318.19. Infractions requiring a mandatory hearing
>
> Any person cited for the infractions listed in this section shall not have the provisions of §318.14(2) and (4) available to him but must appear before the designated official at the time and location of the scheduled hearing:
>
> (1) Any infraction which results in an accident that causes the death of another; or
>
> (2) Any infraction which results in an accident that causes "serious bodily injury" of another as defined in §316.1933(1).

3. Adjudication:
Traditional judicial. A modified judicial system is under consideration.

4. Evidence:
A waiver is inadmissible in "any other proceeding." See §318.14(4).

VI. Findings

Based on the public testimony it received and on its research, the subcommittee made the following findings:

1. Number of accidents involving a traffic violation in which property damage occurrs:

In 1985, there were 81,533 accidents in Virginia in which property damage was caused; these accidents resulted in $97.8 million in property damage, or an average of $1,199 per accident. Of those 81,533 accidents, 72,922 (or 89%) involved a traffic violation. In 1986, there were 85,983 accidents totalling $137.5 million in property damage; figures were not available on the number of traffic violations involved. (See Appendix F.)

2. Amount of time general district court clerks and judges devote to processing traffic infraction cases that involve property damage but no personal injury:

Although specific statistics were not available, testimony presented to the subcommittee and its research indicated that a substantial amount of time is devoted by general district court judges and clerks to processing traffic infraction cases that involve property damage but no personal injury.

3. Inconvenience to defendants who would prefer to plead guilty and prepay their fine:

Many defendants in property damage cases would prefer merely to plead guilty and prepay their fine. They have no desire to take the time -- and perhaps to miss work -- to have their day in court.

4. Appearance of out-of-state defendants:

Although specific statistics were not available, the subcommittee was told that many out-of-state defendants do not appear for trial on a traffic infraction where no personal injury occurred in the accident and are tried in their absence. Generally, all that is required by the court in such instances is the police officer's testimony.

5. Inconvenience to witnesses and notification of witnesses:

The subcommittee found that requiring court appearance often causes great inconvenience to witnesses, especially when a continuance is granted or the defendant does not appear or appears only to plead guilty. It was not clear to the subcommittee, however, that permitting court appearance waiver in traffic infraction cases where no personal injury occurred would substantially reduce that inconvenience. In order to reduce the inconvenience, the witness would have to know well before the trial date that it was not necessary for him to appear. This would, in turn, require that (1) a decision be made early in the

process that the defendant is eligible for court appearance waiver (i.e., that the accident did not result in personal injury), and that (2) the defendant elect to waive court appearance in sufficient time before trial to enable the witness to be notified that it will not be necessary for him to appear.

The issue of how a determination is made that the accident did not result in personal injury is addressed in finding #7 below. It was suggested to the subcommittee that the need to notify witnesses well before trial that they do not have to appear could be addressed by requiring that the defendant must notify the clerk's office of his decision to prepay the fine and not appear no later than a specified time (e.g., three days) before trial. There was no consensus, however, on who should be responsible for notifying the witnesses.

One suggestion was that the clerk be required to notify the witnesses. Since such a requirement would be time consuming, the issue then was whether the time required of a clerk to notify the witnesses would be substantially less than the time required to process the case if the defendant were required to appear. The subcommittee concluded that there would be some savings of time but was unable to quantify that savings. Another suggestion was that the defendant should be required to notify the witnesses if he decided not to appear. The issue here was how to ensure that the defendant made a good faith effort to notify the witnesses and what sanction to impose if he failed to do so. A final suggestion was that the witnesses themselves be responsible for contacting the clerk after a certain date (e.g., within three days of the trial) to determine whether it was necessary for them to appear. While witnesses certainly have an incentive to take steps to determine whether they must appear, the subcommittee was concerned that some witnesses might become confused by the process and that it therefore might not achieve its desired objective.

On balance, the subcommittee found that notifying witnesses was a more complicated issue than it might seem at first glance, but that a solution probably could be developed if the subcommittee otherwise decided to recommend that the proposed court appearance waiver be permitted.

6. Potential reduction in time police officers must spend in court:

The subcommittee found that there may be some reduction in time police officers must spend in court if a court appearance waiver is permitted in traffic infraction cases that resulted in property damage but no personal injury. Such a reduction would result in some savings to the Commonwealth and localities in personnel and overtime expenditures. Witnesses testifying before the subcommittee and the subcommittee's research revealed, however, that most police officers already take steps to reduce their time in court, such as by scheduling all traffic cases on one or more "court days" during the week or monthly, and by arranging to have all their cases considered sequentially by the court. Thus, it was not clear to the subcommittee that the time police officers now spend in court would be substantially reduced by permitting defendants in traffic infraction cases involving only property damage to waive court appearance.

7. Determining whether personal injury occurred:

The proposed court appearance waiver requires a determination that no personal injury occurred in the accident. It is not clear how that determination would be made. Personal injuries often are not known until some time after an accident. The subcommittee believes that police officers, defendant drivers, and others involved in an accident generally are not in a position to make that judgment. Indeed, the police officers testifying before the subcommittee indicated that they would be opposed to placing the responsiblity on the investigating police officer to determine whether the accident resulted in personal injury.

8. The deterrent effect of court appearance:

There is some deterrent effect associated with requiring the defendant to appear in court before a judge, even in those cases where the defendant wants to plead guilty. That deterrent effect would be lost in property damage cases if court appearance waiver were permitted.

9. Impact on judge's sentencing discretion:

The subcommittee considered the impact the proposed court appearance waiver might have on the ability of the trial judge to fashion an individualized sanction for a particular problem driver who was in need of special training or special restrictions on the use of a motor vehicle. A judge who appeared before the subcommittee, for example, testified that he uses the court appearance to determine whether the driver may suffer from some disability that would require further testing to decide if the person should be permitted to continue to drive. A majority of the subcommittee agreed that the proposed court appearance waiver could restrict the judge's sentencing discretion.

10. Impact on the victim:

The subcommittee also considered the potential effects of a court appearance waiver on the victim of the driver's traffic infraction, There are at least three such potential effects. First, if the defendant's nonappearance is considered a guilty plea, then, under current rules of evidence, the victim would have evidence of an admission that would be admissible at a subsequent civil trial. Victims probably would consider this to be an advantage. It was suggested to the subcommittee that, since a defendant could still elect to appear on the trial date and be found guilty, and since, under current rules of evidence, such a finding of guilt would not be admissible in a subsequent civil trial, court appearance waiver could be a trap for the unwary defendant who did not know that his nonappearance and accompanying guilty plea would be admissible against him in a later civil trial but an appearance and finding of guilt by the court would not. The subcommittee agrees, but that same problem exists for the defendant under the current system when he appears on the trial date and pleads guilty, unaware that if he had pleaded not guilty and was found guilty by the court, that finding of guilt would not be admissible against him in a later civil suit. The subcommittee concluded that this effect of a court appearance waiver was a function of the admissibility of the accompanying guilty plea in a later civil suit and not a function of the court appearance waiver itself.

Second, requiring a defendant to appear in court may provide the victim with additional information that could be used against the defendant in a later civil suit. That is, the court appearance serves as an opportunity for informal discovery that would be lost if court appearance waiver were permitted.

Third, the subcommittee was told that some victims feel strongly that they are entitled to their "day in court" at which time the defendant will be tried for the infraction and, if found guilty, will be required to answer publicly for his wrongdoing. Even though these victims still may sue the defendant civilly, a court appearance waiver in property damage cases will deprive victims of their "day in court" for the traffic infraction itself.

11. Impact on subsequent civil litigation:

Concern was expressed to the subcommittee that the option of waiving court appearance and avoiding the inconvenience of spending a day in court might be sufficient to persuade a driver to waive appearance and plead guilty to a traffic infraction even when he has a valid defense. This could have a significant negative impact on the defendant in subsequent civil litigation.

VII. Recommendations

Pursuant to SJR 56 (1988), the subcommittee studying court appearance waiver examined the feasibility and desirability of amending §19.2-254.1 of the Code of Virginia to allow a driver to waive court appearance when charged with a traffic infraction that resulted in property damage but no personal injury.

The subcommittee recommends that §19.2-254.1 of the Code of Virginia not be amended to permit such a waiver. The subcommittee has thoroughly researched the possible effects of allowing drivers to waive court appearance when a violation results in property damage but no personal injury. In addition, the subcommittee has discussed the legal ramifications of such a waiver and has listened to comments from numerous interested parties. After thoughtful deliberation, and based on the testimony it received and other information available, the subcommittee determined that the disadvantages of permitting a court appearance waiver in these circumstances outweigh the advantages of such a waiver.

VIII. Acknowledgments

The following groups and agencies made substantial and valuable contributions to this study. Their input and support is greatly appreciated.

Virginia State Police
Local police organizations
General District Court Clerks
General District Court Judges
Department of Motor Vehicles
Office of the Attorney General of Virginia
Other states' Offices of the Attorney General
Counsel for insurance agencies
Virginia Trial Lawyers Association

APPENDICES

APPENDIX A

RELEVANT BILLS AND RESOLUTIONS

OF THE GENERAL ASSEMBLY

LD4285114

SENATE JOINT RESOLUTION NO. 56

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Rules
on March 4, 1988)

(Patron Prior to Substitute–Senator Emick)

Requesting the Crime Commission to study the feasibility and desirability of allowing persons involved in certain motor vehicle accidents to waive appearance.

WHEREAS, current law requires drivers involved in motor vehicle accidents and charged with an offense to personally appear in court on the charge; and

WHEREAS, in many instances the driver does not wish to contest the charge and pleads guilty; and

WHEREAS, allowing such drivers to waive a personal appearance and prepay their fine when no personal injury results from the accident would reduce the inconvenience to the driver, improve the efficiency of the courts and result in a cost savings to the Commonwealth in the form of reduced overtime pay for state and local police officers who are also required to appear; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Virginia State Crime Commission is requested to study the feasibility and desirability of allowing persons involved in motor vehicle accidents which do not result in personal injury or death to waive appearance and plead guilty.

The Commission shall complete its study and submit its recommendations to the 1989 Session of the General Assembly.

The direct costs of this study are estimated to be $4,460 and such amount shall be allocated to the Virginia State Crime Commission from the general appropriation to the General Assembly.

Official Use By Clerks

Agreed to By The Senate		Agreed to By The House of Delegates	
without amendment	☐	without amendment	☐
with amendment	☐	with amendment	☐
substitute	☐	substitute	☐
substitute w/amdt	☐	substitute w/amdt	☐

Date: _____ Date: _____

Clerk of the Senate | Clerk of the House of Delegates

1988 SESSION

LD1105127

SENATE BILL NO. 57

Offered January 15, 1988

A BILL to amend and reenact § 19.2-254.1 of the Code of Virginia, relating to procedure in traffic infraction cases.

Patron–Mitchell

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-254.1 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-254.1. Procedure in traffic infraction cases.–In a traffic infraction case, as defined in § 46.1-1(40), and for which offense has been included in the uniform fine schedule established by Rule 3B:2 of the Rules of the Supreme Court of Virginia as authorized by § 16.1-69.40:1, a defendant may elect to enter a written appearance and waive court hearing ~~, except in instances in which property damage or personal injury resulted~~ . Arraignment is not necessary when waived by the accused or his counsel, when the accused fails to appear, or when such written appearance has been elected.

An accused may plead not guilty, guilty, or nolo contendere; and the court shall not refuse to accept a plea of nolo contendere. A plea of guilty may be entered in writing without court appearance.

When an accused tenders payment by mail without executing a written waiver of court hearing and entry of guilty plea, such tender of payment shall itself be deemed a waiver of court hearing and entry of guilty plea.

In districts with traffic violations bureaus on July 1, 1977, the chief judge of the district may designate the traffic violations bureau for the receipt of a written appearance, waiver of court hearing and guilty plea.

Official Use By Clerks	
Passed By The Senate	**Passed By The House of Delegates**
without amendment ☐	without amendment ☐
with amendment ☐	with amendment ☐
substitute ☐	substitute ☐
substitute w/amdt ☐	substitute w/amdt ☐
Date: _____	Date: _____
Clerk of the Senate	Clerk of the House of Delegates

LD1605118

SENATE BILL NO. 239

Offered January 21, 1986

A BILL to amend and reenact §§ 16.1-69.40:1 and 19.2-254.1 of the Code of Virginia, relating to procedures for appearance and waiver in traffic cases.

Patron–Gartlan

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-69.40:1 and 19.2-254.1 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-69.40:1. Traffic infractions within authority of traffic violations clerk; schedule of fines.–The Supreme Court shall by rule, which may from time to time be amended, supplemented or repealed, but which shall be uniform in its application throughout the Commonwealth, designate the traffic infractions for which a pretrial waiver of appearance, plea of guilty and fine payment may be accepted. Such infractions shall not include:

(a) Indictable offenses;

(b) ~~Infractions~~ *Offenses* resulting in ~~an~~ *a motor vehicle* accident *involving personal injury or property damage which are punishable as crimes* ;

(c) Operation of a motor vehicle while under the influence of intoxicating liquor or a narcotic or habit-producing drug, or permitting another person, who is under the influence of intoxicating liquor or a narcotic or habit-producing drug, to operate a motor vehicle owned by the defendant or in his custody or control;

(d) Reckless driving;

(e) Leaving the scene of an accident;

(f) Driving while under suspension or revocation of driver's license;

(g) Driving without being licensed to drive.

(h) [Repealed.]

An appearance may be made in person or in writing by mail to a clerk of court or in person before a magistrate, prior to any date fixed for trial in court. Any person so appearing may enter a waiver of trial and a plea of guilty and pay the fine and any civil penalties established for the offense charged, with costs. He shall, prior to the plea, waiver, and payment, be informed of his right to stand trial, that his signature to a plea of guilty will have the same force and effect as a judgment of court, and that the record of conviction will be sent to the Commissioner of the Department of Motor Vehicles or the appropriate offices of the ~~State~~ *Commonwealth* where he received his license to drive.

The Supreme Court, upon the recommendation of the Committee on District Courts, shall establish a schedule, within the limits prescribed by law, of the amounts of fines and any civil penalties to be imposed, designating each infraction specifically. The schedule, which may from time to time be amended, supplemented or repealed, shall be uniform in its application throughout the Commonwealth. Such schedule shall not be construed or interpreted so as to limit the discretion of any trial judge trying individual cases at the time fixed for trial. The rule of the Supreme Court establishing the schedule shall be prominently posted in the place where the fines are paid. Fines and costs shall be paid in accordance with the provisions of this Code or any rules or regulations promulgated thereunder.

§ 19.2-254.1. Procedure in traffic infraction cases.–In a traffic infraction case, as defined in § 46.1-1(40), and for which offense has been included in the uniform fine schedule established by Rule 3B:2 of the Rules of the Supreme Court of Virginia as authorized by § 16.1-69.40:1, a defendant may elect to enter a written appearance and waive court hearing ~~, except in instances in which property damage or personal injury resulted~~ . *However, such appearance and waiver shall be permitted in instances in which property damage or personal injury resulted only if no criminal offense arising from the incident is charged.*

Arraignment is not necessary when waived by the accused or his counsel, when the accused fails to appear, or when such written appearance has been elected.

An accused may plead not guilty, guilty, or nolo contendere; and the court shall not refuse to accept a plea of nolo contendere. A plea of guilty may be entered in writing without court appearance.

When an accused tenders payment by mail without executing a written waiver of court hearing and entry of guilty plea, such tender of payment shall itself be deemed a waiver of court hearing and entry of guilty plea.

In districts with traffic violations bureaus on July 1, 1977, the chief judge of the district may designate the traffic violations bureau for the receipt of a written appearance, waiver of court hearing and guilty plea.

Official Use By Clerks	
Passed By The Senate	**Passed By The House of Delegates**
without amendment ☐	without amendment ☐
with amendment ☐	with amendment ☐
substitute ☐	substitute ☐
substitute w/amdt ☐	substitute w/amdt ☐
Date: _____	Date: _____
_____	_____
Clerk of the Senate	Clerk of the House of Delegates

APPENDIX B

CURRENT Virginia Statutes

§ 19.2-254.1. **Procedure in traffic infraction cases.** — In a traffic infraction case, as defined in § 46.1-1(40), and for which offense has been included in the uniform fine schedule established by Rule 3B:2 of the Rules of the Supreme Court of Virginia as authorized by § 16.1-69.40:1, a defendant may elect to enter a written appearance and waive court hearing, except in instances in which property damage or personal injury resulted. Arraignment is not necessary when waived by the accused or his counsel, when the accused fails to appear, or when such written appearance has been elected.

An accused may plead not guilty, guilty, or nolo contendere; and the court shall not refuse to accept a plea of nolo contendere. A plea of guilty may be entered in writing without court appearance.

When an accused tenders payment by mail without executing a written waiver of court hearing and entry of guilty plea, such tender of payment shall itself be deemed a waiver of court hearing and entry of guilty plea.

In districts with traffic violations bureaus on July 1, 1977, the chief judge of the district may designate the traffic violations bureau for the receipt of a written appearance, waiver of court hearing and guilty plea. (1977, c. 585; 1978, c. 605.)

(40) *"Traffic infraction".* — "Traffic infraction" shall mean any violation of any provision of Chapters 1 (§ 46.1-1 et seq.) through 4 (§ 46.1-168 et seq.) of this title, or of any ordinances, rules or regulations established thereunder, not expressly defined as a felony or misdemeanor, and otherwise not punishable by incarceration or by a fine of more than $100.

The term "traffic infraction" as used in any other title of this Code, or in any ordinance, rule or regulation adopted pursuant to any provision of this Code, shall have this same meaning and effect.

APPENDIX C

SAMPLE SURVEYS SENT TO

DISTRICT COURT JUDGES AND CLERKS

COMMONWEALTH of VIRGINIA

VIRGINIA STATE CRIME COMMISSION

General Assembly Building
910 Capitol Street

POST OFFICE BOX 3-AG
RICHMOND, VIRGINIA 23208

IN RESPONSE TO
THIS LETTER TELEPHONE
(804) 225-4534

ROBERT E. COLVIN
EXECUTIVE DIRECTOR

July 7, 1988

Dear General District Court Clerk/Judge:

The Virginia State Crime Commission is conducting a study on court appearance waiver for traffic infractions. Present law in Virginia allows a driver to waive court appearance if the infraction with which he is charged did not result in property damage or personal injury. (Virginia Code, §19.2-254.1). The Commission would like to know whether a statutory amendment which would allow a waiver when the infraction involves property damage only, would be preferable.

Because such an amendment may have its greatest impact on general district courts, the Commission is soliciting input from various general district courts in Virginia. The enclosed survey contains a few basic questions. Your complete answers will be very helpful to the Commission. Please elaborate when necessary and add any relevant comments or opinions. Completed surveys should be returned to staff research assistant, Liz McGrail at the Virginia State Crime Commission by August 12, 1988.

If you have any questions, please contact Ms. McGrail at (804) 225-4534. Thank you for your help.

Sincerely,

Robert E. Colvin
Executive Director
Virginia State Crime Commission

REC:kr

Enclosure

VIRGINIA STATE CRIME COMMISSION
COURT APPEARANCE WAIVER
JUDGES QUESTIONNAIRE

COURT NAME:_____

The focus of this study is prepayment of traffic fines for violations resulting in property damage. Please answer the following questions concerning that issue.

1. If a motorist charged with a traffic infraction involving property damage (but no personal injury) fails to appear in court on the scheduled hearing date, do you

   ☐ try the driver in his absence ? (if so , do you assess court costs? how much?_____)

   ☐ issue a warrant for the absent driver's arrest?

   ☐ continue the case and notify the driver of a new appearance date?

   ☐ other _____
   _____
   _____
   _____
   _____

2. Do you think a driver charged with a traffic infraction which results in property damage (but no personal injury) should be allowed to waive court appearance? Please explain.

   _____
   _____
   _____
   _____
   _____

VIRGINIA STATE CRIME COMMISSION
COURT APPEARANCE WAIVER
GENERAL DISTRICT COURT CLERKS QUESTIONNAIRE

COURT NAME:_____

The focus of this study is prepayment of traffic fines for violations resulting in property damage only. Please answer the following questions concerning that issue.

1. What portion of drivers who are charged with traffic violations and are permitted to prepay the fine choose to prepay?

   _____

2. What portion of drivers charged with an infraction involving property damage only plead guilty?

   _____

3. On the average, how much time does one traffic infraction disposition take?

   _____

4. Approximately, what percent of your work time is spent on traffic cases?

   _____

5. How does your court notify a subpoenaed witness for a traffic case that his or her case will not be heard on the scheduled date?

   _____

6. Do you think that a driver charged with an infraction which results in property damage only should be allowed to waive court appearance? Please explain.

_____

_____

_____

Additional Comments:

APPENDIX D

ADJUDICATION OF

TRAFFIC OFFENSES IN OTHER STATES

Method of Adjudication by State

State	Classification of Lesser Traffic Offenses*	Method of Adjudication
Alabama	Misdemeanor	Traditional judicial
Alaska	Infraction, no jail penalty	Traditional judicial
Arizona	Misdemeanor	Traditional judicial
Arkansas	Misdemeanor	Traditional judicial
California	Infraction, no jail penalty	In 1980, the Traffic Adjudication Board will test an administrative approach in a 3-county pilot project. However, the motorist will have the option to request traditional judicial processing. (In the past, modified systems have operated at the discretion of selected judges.)
Colorado	Misdemeanor, no jail penalty	Traditional judicial
Connecticut	Infraction, no jail penalty	Traditional judicial
Delaware	Misdemeanor	Traditional judicial
District of Columbia	Infraction, no jail penalty	As of February, 1979, administrative adjudication will be the responsibility of the Department of Transportation.
Florida	Infraction, no jail penalty	Traditional judicial; a modified judicial system is under consideration.
Georgia	Misdemeanor	Traditional judicial
Hawaii	Misdemeanor	Traditional judicial
Idaho	Misdemeanor	Traditional judicial
Illinois	Misdemeanor	Traditional judicial
Indiana	Misdemeanor	Traditional judicial
Iowa	Misdemeanor	Traditioanl judicial
Kansas	Misdemeanor	Traditional judicial
Kentucky	Misdemeanor, no jail penalty	Traditional judicial
Louisiana	Misdemeanor	Traditional judicial
Maine	Infraction, no jail penalty non-criminal proceeding	Traditional judicial
Maryland	Misdemeanor, no jail penalty	Traditional judicial
Massachusetts	Infraction, no jail penalty	Modified judicial: A motorist may choose to pay by mail, have a non-criminal hearing before a clerk-magistrate or go through the traditional judicial process.
Michigan	Infraction and no jail penalty as of May 1, 1979	Traditional judicial, but modified judicial system used in Detroit Recorders Court, Traffic and Ordinance Division: Motorist may appeal any referee-imposed sentence and obtain trial de novo. Statewide modified judicial system is under consideration.

*"Infraction" is used as a generic term to indicate offenses given less-than-misdemeanor status. In most states, infractions exclude reckless driving, driving while under the influence and homicide by vehicle. The term generally includes such lesser offenses as violations of the basic speed rule, stopping, standing or parking where prohibited, stop sign violations etc. For a comparative analysis of selected offenses across all states, see reference # 15.

Method of Adjudication by State (continued)

State	Classification of Lesser Traffic Offenses*	Method of Adjudication
Minnesota	Infraction, no jail penalty	Traditional judicial
Mississippi	Misdemeanor	Traditional judicial
Missouri	Misdemeanor	Traditional judicial
Montana	Misdemeanor	Traditional judicial
Nebraska	Infraction, no jail penalty non-criminal proceeding	Traditional judicial
Nevada	Misdemeanor	Traditional judicial
New Hampshire	Infraction, no jail penalty, non-criminal proceeding	Traditional judicial
New Jersey	Misdemeanor	Traditional judicial
New Mexico	Misdemeanor	Traditional judicial
New York	Infraction, no jail penalty, non-criminal proceeding	Since 1970, an administrative adjudication system has operated under the Department of Motor Vehicles serving New York City, Rochester, Buffalo and Suffolk County. Further expansion may occur in 1979.
North Carolina	Misdemeanor	Traditional judicial; the state legislature has authorized a feasibility study of administrative adjudication.
North Dakota	Infraction, no jail penalty	Modified judicial
Ohio	Infraction, no jail penalty	Traditional judicial
Oklahoma	Misdemeanor	Traditional judicial
Oregon	Infraction, no jail penalty	Traditional judicial
Pennsylvania	Infraction, no jail penalty	Traditional judicial
Rhode Island	Infraction, no jail penalty, non-criminal proceeding	Since 1975, a statewide system of administrative adjudication has operated under the Department of Transportation.
South Carolina	Misdemeanor	Traditional judicial
South Dakota	Infraction, no jail penalty, non-criminal proceeding	Traditional judicial
Tennessee	Misdemeanor	Traditional judicial
Texas	Misdemeanor, no jail penalty	Traditional judicial
Utah	Misdemeanor	Traditional judicial
Vermont	Infraction, no jail penalty	Traditional judicial
Virginia	Infraction, no jail penalty	Traditional judicial; Fairfax County is considering a modified judicial system.
Washington	Misdemeanor (Infraction in City of Seattle only), no jail penalty	Modified judicial in some courts in King County (Seattle).
West Virginia	Misdemeanor	Traditional judicial
Wisconsin	Misdemeanor	Traditional judicial
Wyoming	Misdemeanor	Traditional judicial

*"Infraction" is used as a generic term to indicate offenses given less-than-misdemeanor status. In most states, infractions exclude reckless driving, driving while under the influence and homicide by vehicle. The term generally includes such lesser offenses as violations of the basic speed rule, stopping, standing or parking where prohibited, stop sign violations etc. For a comparative analysis of selected offenses across all states, see reference #15.

APPENDIX E

DETAILED EXAMINATION OF TRAFFIC LAWS OF SELECTED STATES

Alabama:

Traffic Infraction:

An infraction is a misdemeanor including all violations of Alabama's traffic laws. No distinction is made for those resulting in accidents.

Waiver:

Drivers charged with a misdemeanor traffic infraction must appear in court. For traffic offenses "causing or contributing to an accident resulting in injury or death to any person," or offenses involving driving under the influence, or a felony, the driver must appear before a magistrate at arrest. (Alabama Code §32-1-4) Other offenses require appearance at a later date specified by the summons. A failure to appear results in a misdemeanor conviction regardless of the disposition of the original charge.

Adjudication:

Traditional judicial.

Evidence:

The rules of evidence render evidence of a conviction of a misdemeanor punishable by less than one year inadmissible in subsequent civil litigation. A plea of guilty, however, may be admissible as an admission against interest.

Connecticut:

Traffic Infraction:

An infraction is a non-criminal offense. No distinction is made for those offenses resulting in accidents.

Waiver:

A driver charged with an infraction is issued an infraction ticket. The driver may plead guilty by mail and send his ticket in with a payment of the fine. A driver charged with a more serious offense is issued a summons ticket and must appear in court on the scheduled date. The issuance of a summons or infraction ticket depends on variables such as the driver's record and the offense; it does not depend on whether an accident was involved.

Adjudication:

Traditional judicial.

Evidence:

A plea of guilty is admissible as an admission against interest.

Delaware:

Traffic Infraction:

Violations of Delaware's traffic laws are considered misdemeanors. No distinction is made for offenses resulting in accidents.

Waiver:

Delaware's Code - 21 Del. Code §709 - specifically sets forth the types of violations for which court appearance can be waived and fines prepaid. No distinction is made for violations involving accidents.

Adjudication:

Traditional judicial.

Evidence:

Waivers are considered admissions of guilt and may be admissible in civil litigation as an admission against interest.

Florida:

1. Traffic Infraction:

A violation of Florida's traffic laws is a civil infraction. More serious offenses such as driving under the influence are misdemeanors.

2. Waiver:

A driver charged with an infraction may waive court appearance unless the infraction involved an accident resulting in death or serious bodily injury:

§318.14. Noncriminal traffic infractions; exception; procedures

(1) Except as provided in ss. 318.17(3)(b), and 322.03(5)(b), any person cited for a violation of chapter 316, s. 320.0605(1), s. 320.07(3)(a)1, s. 322.03(1), s. 322.15(1), s. 322.19, or s. 240.265 shall be deemed to be charged with a noncriminal infraction and shall be cited for such an infraction and cited to appear before an official.

(2) Any person cited for an infraction under this section shall sign and accept a citation indicating a promise to appear. The officer may indicate on the traffic citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty established in §318.18.

* * * *

(4) Any person charged with a noncriminal infraction under this section who does not elect to appear shall pay the civil penalty and delinquent fee, if applicable, either by mail or in person, within 30 days of the date of receiving the citation, unless the citation is for violation of §316.646, in which case payment may be made, either by mail or in person, within 20 days of the date of receiving the citation. If the person cited follows the above procedure, he shall be deemed to have admitted the infraction and to have waived his right to a hearing on the issue of commission of the infraction. Such admission shall not be used as evidence in any other proceedings.

§318.19. Infractions requiring a mandatory hearing

Any person cited for the infractions listed in this section shall not have the provisions of §318.14(2) and (4) available to him but must appear before the designated official at the time and location of the scheduled hearing:

(1) Any infraction which results in an accident that causes the death of another; or

(2) Any infraction which results in an accident that causes "serious bodily injury" of another as defined in §316.1933(1).

3. Adjudication:

Traditional judicial. A modified judicial system is under consideration.

4. Evidence:

A waiver is inadmissible in "any other proceeding." See §318.14(4).

Maine:

Traffic Infraction:
An infraction is a civil offense including all violations of Maine's traffic laws. No distinction is made for those resulting in accidents.

Waiver:
Drivers charged with an infraction may waive court appearance except in some circumstances (e.g. repeat offenders, driving under the influence). No distinction is made for drivers involved in accidents. Drivers are permitted to prepay fines according to a standard fine schedule.

Adjudication:
In 1987, the Maine legislature amended its motor vehicles code, effective in 1990. The amendment authorizes the Secretary of State (via the Division of Motor Vehicles) to accept waivers and collect fines in traffic infraction cases where the defendant wishes to admit to the charge, waive trial and pay the fine. Prior to 1990 that authority is restricted to the District Court pursuant to 4 MRSA §164. The amendment establishes a simplified waiver system for traffic infractions by allowing payment of traffic fines directly to the Secretary of State. The new method will streamline the collection of traffic fines and will reduce administrative costs now incurred by the state in processing of waivers and collecting fines.

Note: Maine's Committee to Study the Processing of Traffic Fines proposed the use of administrative adjudication for traffic infraction waivers. In its 1986 Final Report it listed the advantages of the proposed change:

- Centralize in a straightforward way the administration of the largest volume of court cited violations.
- Reduce the workload for court clerk administration.
- Enable citizens to deal with a single licensing agency rather than two separate departments.
- Reduce opportunity for confusion as to which official or which one of the thirty-three courts is responsible.
- Improve record control and insure more rapid administration: emphasize highway safety.

Evidence:
Maine does not expressly preclude or permit the use of traffic infraction waivers in civil litigation.

Michigan:

Traffic Infraction:
An infraction is a civil offense including all violations of Michigan's traffic laws. No distinction is made for those resulting in accidents.

Waiver:
Drivers charged with an infraction may waive court appearance except in some circumstances (e.g. repeat offenders, driving under the influence). No distinction is made for drivers involved in accidents.

Adjudication:
Traditional judical. Modified judicial system in some cities.

Evidence:

Michigan expressly bars use of traffic infraction admissions from use in civil litigation. The language states:

> Evidence of the conviction or civil infraction determination of a person for a violation of this chapter or of a local ordinance pertaining to use of motor vehicles shall not be admissible in a court in a civil action. (MI. COMP. LAWS ANN. §257.731).

The Supreme Court of Michigan decided in Kirby vs. Larson 256 N.W. 2d. 400 (1977) that contrary to Michigan's statute, evidence of a traffic infraction conviction is admissible to impeach the creditibility of a witness. The legislature had failed to express, "a clear legislative policy reflecting considerations other than judicial dispatch of litigation." Because the Court's rule making power is constitutionally supreme in matters of practice and procedure, the courts Rule 607 governing admissibility of traffic tickets superseded the statute.

New Hampshire:

Traffic Infraction:

An infraction is a non-criminal offense. No distinction is made for infractions involving accidents.

Waiver:

Drivers charged with an infraction may waive court appearance and enter a plea of guilty or nolo contendere by mail. Certain offenses are excluded from the waiver option (e.g. reckless driving, driving under influence).

Adjudication:

Traditional judicial.

Evidence:

A plea of guilty may be admissible in civil litigation as an admission against interest. A nolo contendere plea is inadmissible.

New York:

Traffic Infraction:

An infraction is a civil offense. It includes all violations of New York's traffic laws and no distinction is made for those resulting in accidents.

Waiver:

Drivers charged with an infraction are permitted to waive court appearance except in some circumstances. No distinctions are made for violations resulting in accidents.

Adjudications:

Traffic violations are adjudicated administratively through the state traffic violations bureaus.

Evidence:

A waiver is a plea of guilty and is admissible as an admission against interest.

North Carolina:

Traffic Infraction:
A violation of North Carolina's traffic laws is a civil infraction. More serious offenses such as driving under the influence are misdemeanors. No distinction is made for offenses resulting in accidents.

Waiver:
Court appearance may be waived for all infractions and some misdemeanors. No distinction is made for offenses resulting in accidents.

Adjudication:
Traditional judicial.

Evidence:
A plea of guilty by waiver may be admissible in civil litigation as an admission against interest.

Rhode Island:

Traffic Infraction:
An infraction is a misdemeanor. However, the adjudications of traffic offenses are performed administratively by the Division of Administrative Adjudication and are civil in nature. An infraction includes all violations of Rhode Island's laws and no distinction is made for violations involving accidents.

Waiver:
A driver charged with a violation may submit an admission of the charge with a payment of the fine within 30 days of the violation. Some offenses are excluded from the waiver option (e.g. repeat offenders, driving under the influence). No exceptions are made for violations involving accidents. (R. ISLAND GEN. LAWS §31-43-1).

Adjudication:
Statewide administrative adjudication.

Evidence:
The General Laws of Rhode Island do not expressly bar or allow use of traffic violation determinations in civil litigation.

The Supreme Court of Rhode Island ruled in Cannon vs. New England Telephone and Telegraph Co., 471 A.2d 211 (R.I. 1984); that evidence of the Division of Administrative Adjudication's dismissal of a traffic violation was inadmissible in the related civil suit. The court reasoned that because the burden of proof before the administrative division (clear and convincing evidence) was higher than that in the civil case (preponderance of the evidence), the dismissal of the charge could have meant that the state failed to satisfy the rigorous burden rather than that the specific act did not occur. Id. at 214.

South Carolina:

Traffic Infraction:
Violations of South Carolina's traffic laws are considered misdemeanors. No distinction is made for offenses resulting in accidents.

Waiver:

Traffic violation fines are prepayable. The charged driver can waive court appearance except in certain cases (e.g. driving under the influence). No distinction is made for violations resulting in accidents.

Adjudication:

Traditional judicial.

Evidence:

A waiver is considered a guilty plea and may be admissible in civil litigation as an admission against interest.

Tennessee:

Traffic Infraction:

An infraction is a misdemeanor. It includes all violations of Tennessee's traffic laws and no distinction is made for those resulting in accidents.

Waiver:

When a driver is issued a traffic citation he has the option of prepaying his fine and court costs before the scheduled court appearance date, except in special circumstances (e.g. repeat offenders and driving under the influence). It remains in the court's discretion whether to accept the prepayment or compel appearance. (TENN. CODE ANN. §55-10-207). No distinction is made for violations involving accidents.

Adjudication:

Traditional judical.

Evidence:

Tennessee expressly bars traffic violation determinations from use as evidence in civil litigation. The language states:

> Neither the reports required by this chapter, the action taken by the Commissioner pursuant to this chapter, the findings of the Commissioner upon which such action is based, nor the security filed as provided in this chapter shall be referred to in any way, nor constitute any evidence of the negligence or case of either party at the trial of an action at law to recover damages. (TENN. CODE ANN. §55-12-128).

Vermont:

Traffic Infraction:

An infraction is a non-criminal offense. No distinction is made for infractions resulting in accidents.

Waiver:

Drivers charged with an infraction may waive court appearance if the fine for the offense is less than $100. No distinction is made for offenses involving accidents.

Adjudication:

Traditional judicial.

Evidence:

A waiver is considered a plea of guilty and is admissible in civil litigation as an admission against interest.

APPENDIX F

COST ESTIMATES AND NUMBER OF TRAFFIC VIOLATIONS

ACCIDENTS INVOLVING PROPERTY DAMAGE ONLY

Data collected by the Department of Motor Vehicles

Costs:

1986: $137.5 million total
for 85,983 property damage crashes
average: $1,600 per crash

1985: $97.8 million total
for 81,533 property damage crashes
average: $1,199.51 per crash

1984: $89.4 million total
for 75,161 property damage crashes
average: $1,189.45 per crash

1983: $79.9 million total
for 69,511 property damage crashes
average: $1,150 per crash

1982: $77.6 million total
for 71,212 property damage crashes
average: $1,090 per crash

1981: $77.8 million total
for 76,289 property damage crashes
average: $1,020 per crash

Violations:

1985: 72,922 or 89% of property damage crashes involved violations

1984: 67,539 or 90% of property damage crashes involved violations

1983: 62,680 or 90% of property damage crashes involved violations

1982: 63,735 or 89.5% of property damage crashes involved violations

1981: 68,853 or 90% of property damage crashes involved violations.

REPORT OF THE
STATE COUNCIL OF HIGHER EDUCATION AND
THE TASK FORCE ON CAMPUS RAPE ON

Sexual Assault on Virginia's Campuses

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

SENATE DOCUMENT NO. 17

COMMONWEALTH OF VIRGINIA
RICHMOND
1992

PREFACE

House Joint Resolution 194 requested the Council of Higher Education to study sexual assualt and rape on Virginia's college and university campuses. This report, in response to the resolution, consists of four parts: the results of a survey administered to 5,000 students, a description of programs and services on Virginia's campuses, guidance to institutions in revising or developing sexual assualt prevention and treatment programs, and a description of the work the task force feels still needs to be accomplished.

Task Force on Campus Rape

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FIRST REPORT ON SEXUAL ASSAULT AND RAPE ON VIRGINIA'S CAMPUSES

In response to SJR 194, the Council of Higher Education submits to the Governor and General Assembly the appended document. It consists of four parts: the results of a survey administered to over 5,000 students, a description of programs and services on Virginia's campuses, guidance to institutions in revising or developing sexual-assault prevention and treatment programs, and a description of the work yet to be done.

In brief, the conclusions of the report are as follows:

I. The Student Survey

o The great majority of men and women students in Virginia exhibit attitudes and behaviors that bode well for responsible relationships. But there remains a need for educational programs designed to deal with sexual violence.

o Women in the sample reported that 15 percent of them had given in to unwanted sexual activity because of emotional pressure, seven percent had experienced sexual assault, five percent had been the victims of attempted rape, and two percent had experienced a rape. Most of their assaulters were men whom they knew. Alcohol was a factor in most of these incidents.

o Very few of these women reported their experiences to anyone in authority.

o Women and men have different perceptions about the frequency of the various forms of sexual assault, suggesting important differences in perception and definition that should be addressed in educational programs and further studies.

II. Programs and Services

o Statistics kept by law-enforcement officials and counseling centers do not accurately reflect the numbers of sexual assaults and rapes on campus. Students need to be encouraged and informed how to report such incidents, and on- and off-campus agencies need to cooperate in recording and reporting incidence data.

o Specific policies and procedures dealing with sexual assault and rape are not as pervasive on Virginia's campuses as they should be. Most campuses are addressing this problem through the creation of sexual-assault task forces.

o The most common educational programs are those offered at new-student orientation and resident-assistant training. Various groups on campus and among campuses need to be better aware of each other's educational activities. The effectiveness of programs should be monitored.

o The professionals who deal with sexual assault victims, while well credentialed, are often not specifically trained in sexual-assault counseling. The general strain on professional psychological counseling staff is acute, with only 249 full-time counselors to serve 350,000 students. This situation can only be aggravated by the current fiscal situation of colleges and universities.

o Consequently, many campuses look to the local communities for help in providing services. Such cooperation is essential, but care is needed to avoid putting undue strain on community resources.

o Security on campus consists primarily of safety lighting, security offices, and, on residential campuses, controlled access to dormitories. Other services -- like night security, escort services, emergency telephones and hotlines -- are currently available at some institutions.

III. Program Guidance

Campuses are offered the following recommendations for improving their programs and services:

o Recommendations about policies and procedures

By September 1992, all colleges and universities should have completed their review of existing policies on sexual assault and rape. If necessary, a separate policy should be adopted and widely distributed. All students, faculty, and staff should receive a copy of the policy each academic year.

By September 1992, each campus should designate a single office or individual employee as the "sexual assault coordinator" for the campus. This individual should draw upon campus and community resources for program delivery and services.

o Recommendations about physical security

By September 1992, all campuses should incorporate crime prevention through environment design into the campus master plan and architectural design of new facilities and planned renovations. Campuses should incorporate such concepts into facilities currently being planned.

Each campus should examine services currently being provided

by other campuses and those already implemented to determine if new or changed services could be provided in a cost-effective manner.

All residential facilities should provide necessary entry, security systems, internal and external lighting, and routine security coverage to establilsh a safe environment for students and their guests. Institutions should have maximum flexibility in determining how to pay for such systems.

o Recommendation about information

By fall 1993 each campus should provide information to each student annually on campus policies, procedures, and services available on and off the campus. Informational posters and other materials should be used immediately to maintain awareness of the potential risk of sexual assault.

o Recommendation about reporting

Each campus should implement appropriate data collection procedures and systems for incidents of sexual assault and rape on campus, in conjunction with the annual crime and student right-to-know reporting requirements. Provisions should be made to protect confidentiality of accused and accusers.

o Recommendation about judicial systems

By September 1992, each campus should have examined its judicial system to be sure that it addresses sexual assault and rape in the ways suggested in this section.

o Recommendation about educational programs

By fall 1993, each campus should develop a plan for campus educational programs related to sexual assault that reflects the institutional mission and includes specific goals and measurable objectives for each major component of the program. The plan should include an evaluation component.

o Recommendations about treatment and support

All colleges should have plans for providing treatment and support services to victims of sexual assault or rape who are students, employees of the institution, or guests on campus. Institutions should decide if these services should be provided by institutional staff, volunteers, community-based organizations or groups, or through a combination of providers.

IV. Next Steps

In the remainder of the study year, the task force working with the Council staff proposes to

o Further refine the student survey information by conducting a series of focus groups on campuses, and

o Hold a conference in the spring to present the results of the student and program surveys and to discuss elements of good programming.

If funded to do so, the Council will

o Continue the study in 1992-93 by working with campuses as they develop their programs.

o Work with the Department of Education in an effort to ensure that the problem of sexual violence is addressed throughout the curriculum.

o Coordinate training and information-sharing among institutions to use institutional resources most effectively.

o Report to the Governor and 1993 General Assembly on the further analysis of the student survey, coordination among institutions, and what campuses are doing to strengthen their programs.

Introduction

FIRST REPORT TO THE GOVERNOR AND GENERAL ASSEMBLY ON SEXUAL ASSAULT AND RAPE ON VIRGINIA'S CAMPUSES

> Although I do not. . . believe that the human condition will ever advance to such a state of perfection as that there shall no longer be pain or vice in the world, yet I believe it susceptible of much improvement. . . and that the diffusion of knowledge among the people is to be the instrument by which it is to be effected.
>
> Thomas Jefferson

Senate Joint Resolution 194, passed by the 1991 General Assembly, charged the State Council of Higher Education to study sexual assault and rape on the campuses of Virginia. Specifically, it asked the Council to examine

> (i) ways in which to encourage the reporting of rape and sexual assault by student victims, (ii) methods of providing education on rape awareness to both female and male students, (iii) measures to better provide security against rape on campuses, and (iv) other issues which the joint subcommittee considers are related to the issue of rape on Virginia's campuses.

The legislature's concern echoed similar interest on the federal level, as evidenced in the Student Right-To-Know and Campus Security Act, which requires colleges and universities whose students receive federal student aid to make available certain crime statistics and campus security policies, as well as permitting them to disclose information regarding the outcome of disciplinary hearings to the victims of violent crimes. Institutions are required to begin compiling their statistics as of September 1, 1991, for initial reporting in 1992.

Although nothing in the federal legislation prescribes the content of the required campus security policies, it does not prevent states from describing the characteristics of exemplary programs that campuses could adopt or adapt to their own purposes. Thus the federal regulations are compatible with the General Assembly's charge to the Council to examine state-wide approaches to the reporting on, education about, and protection against sexual assault and rape on campus.

Within Virginia, political leaders seem very much in agreement about the saliency of this issue. One of the first requests Governor Wilder made of higher education institutions after taking office was that they develop plans to improve civility on campus. Those reports, submitted in November 1990, addressed, among other things, increasing the physical safety of students. The Governor has continued to reiterate that as "high-risk" communities, colleges and universities have a particular responsibility to protect students from threats to their physical and emotional well-being. In fact, as the study below suggests, Virginia's campuses are just about as safe as campuses everywhere -- that is, women students in Virginia and in the nation are not living in a protected environment, but instead in one that contains many of the social problems that exist outside the campus boundaries.

As part of his commitment to trying to make campuses better and safer places in which to live and learn, the Governor established a task force to address issues of substance abuse and sexual assault on campus. The Governor's task force and the one established by the Council to address the legislature's charge have proceeded in full cooperation, with as little duplication of effort as possible.

Of all the crimes covered by the federal legislation, rape is perhaps the most difficult for campuses to deal with. First, there is strong suspicion that it is seriously underreported. One study by Mary P. Koss, for instance, reports that of the college women surveyed, 15% had, since the age of 14, been raped "according to strict legal standards" for the crime (Smith, 120). Yet in Virginia, with almost 160,000 women students, only 15 rapes were reported to the Department of Criminal Justice Services in 1990 and 229 rapes or sexual assaults to campus counseling centers in 1990-91.

Second, while aggravated assault is a crime that most people have no trouble identifying, rape is one where often it is clear neither to the perpetrator nor to the victim that a crime has been committed, even in the face of considerable physical and mental harm. Thus, education programs are critical and must begin with the development of an awareness that non-consensual sexual intercourse is a form of assault. And issues such as male/female communication and substance abuse must be a part of any education program that will be effective.

Finally, protection against a crime which is not only perpetrated by strangers but often by "friends" poses certain special challenges when institutions try to develop physical safety programs. Good lighting on campus may help prevent stranger rape but will do nothing to prevent date rape.

The Department of Criminal Justice Services awarded the Council a grant to do the legislatively mandated study as thorough-

ly as possible. With the help of the resources provided by this federal grant, the Council

1) Established a state-wide task force comprised of educators and scholars, social-service personnel, college student-affairs administrators, students, lawyers, crime-prevention specialists, substance-abuse specialists, and police officers (see Appendix 1 for a list of members).

2) Surveyed over 5,000 students in the Virginia system of higher education to determine their attitudes towards sexual behavior; their experiences with sexual assault and rape while college students in Virginia; and their opinions about campus services designed to educate about, prevent, and deal with the survivors of sexual assault. This survey provided information about the extent of the problem on Virginia's campuses; it and the student-attitude information will be useful in designing rape-prevention programs.

3) Surveyed public and private institutions of higher education to determine what kinds of sexual-assault education, prevention, and treatment services are now available on Virginia's campuses.

4) Studied the results of the two surveys and relevant literature in order to develop a description of the characteristics of good sexual assault and rape policies and procedures, as well as security, information, reporting, judicial, education, and treatment programs.

In completing this study, the task force had the full cooperation of all the public institutions of higher education and many of the private ones, who completed surveys and compiled mailing lists for the student survey. The Council wishes to thank the staffs of those institutions for all the work that they have done.

Thomas Jefferson, with his customary realism, was probably right to acknowledge the persistence of pain and vice in the world. But we can only hope that he was also right that these can be diminished by what colleges and universities do best, the "diffusion of knowledge." Sexual violence is so explosive because it involves issues very close to the nerves: power, violence, sex, and communication. But if it is possible anywhere to dismantle that bomb, colleges and universities ought to be able to do so, given all the intellectual and educative tools at their command.

The results of the two surveys and guidance to the institutions in establishing comprehensive sexual assault programs are given below.

PART I: THE STUDENT SURVEY

PURPOSE AND SCOPE

The purpose of the student survey was threefold: to learn about 1) student attitudes and beliefs concerning sexual behavior and sexual assault; 2) student perceptions concerning current campus sexual-assault programs and services, as well as those that are needed; and 3) incidents of and student reactions to sexual violence at Virginia's colleges and universities.

There were four different versions of the student survey questionnaire. One was addressed to a random sample of first-year women students at all the public and a sample of private Virginia institutions; a second, only slightly different, to other undergraduate and graduate and professional-school women; a third to first-year men; and a final survey to other undergraduate and graduate and professional-school men.[1] The women's surveys sought to determine 1) how many women had experienced sexual violence during their entire time as students in Virginia's colleges and 2) how many such incidents could be estimated to have occurred during one 12-month period, from August 1, 1990 through July 31, 1991.

First, women students were asked if they had had experiences described in such a way as to conform to Virginia legal definitions of sexual assault, attempted rape, or rape, as well as experiences of sexual coercion, <u>while attending college in Virginia.</u> Then, women who were enrolled during the period from August 1990 to July 1991 were asked how many times they had experienced sexual coercion or assault during that time. First-year women were asked how many incidents they had experienced during the first six to eight weeks of the fall 1991 semester, prior to receiving the questionnaires. And men students were asked parallel questions about how many times they had perpetrated coercion, assault, attempted rape, or rape.

It is important to note that this survey, unlike others, did not seek sexual-assault data about the student's experience <u>over a lifetime</u>. Rather, because the Council of Higher Education was charged with developing policy related to sexual experiences on campus, the survey was designed to estimate the incidence of sexual assaults committed against women students in Virginia colleges and universities by asking them to report on experiences during one specific 12-month period (August 1, 1990 - July 31, 1991). No other survey of which the task force is aware has attempted to measure the incidence of sexual assault with such stringent restrictions on student status and time. But this period reflects the time when the institutions had responsibility for the students and their behavior.

Of those other studies, the one by Mary Koss and colleagues (Koss, Gidycz, & Wisniewski, 1987) is perhaps the best known. Koss

and her associates asked ten sexual-victimization questions to a nationwide sample of 3,187 women college students at 32 colleges and universities selected to represent the higher-education community in the United States. Fifteen percent of women respondents indicated that they had had experiences corresponding to legal definitions of rape and an additional 12 percent corresponding to attempted rape since the age of 14 (hence with much looser restrictions than the Council survey on both student status and time). Koss estimates that in any 12-month period, roughly 5% of college women will experience one or more attempted or completed rapes, defined according to the strict Uniform Crime Reports definition.

Several other studies have been done of students on one or several campuses. The slight differences in the figures generated by the different studies can be attributed to differences in question wording, populations surveyed, survey timing, and sampling techniques. But all reinforce the findings of the Council survey (discussed below) that, considering the number of people represented by these percentages, sexual assault and rape by acquaintances are a significant problem on campuses in Virginia, to about the same degree as they are elsewhere in the country.

Moreover, students come to college with experiences of and attitudes about sexual violence. One college reported that of the 13.7 percent of women who answered "Yes" to the question "Have you ever been physically forced by a dating partner to have sexual intercourse," one-third said the most recent incident had occurred in college, one-third in high school and one-third in junior high. These data suggest that education about sexual violence should not begin during the college years but instead much earlier. They also suggest that colleges may have to provide support not only to those who have these experiences while in college but to those who are struggling to come to terms with their pain and confusion about earlier experiences.

In addition to seeking incidence data and information about specific experiences, the task force wanted to know how students view campus educational programs and student services concerning sexual assault. The survey listed possible campus resources and asked the respondent if they were available on campus, if they were important to have, if the student had used the resources, and if they had been helpful. This information has been compared with similar information requested in the institutional survey and used in developing guidance to the institutions about services they should provide.

The other major area the survey addressed concerned student attitudes and beliefs about sexual assault. Students were asked to strongly agree, agree, disagree, or strongly disagree with several statements about sexual behavior, from "These days there is too much peer pressure on college students to have sex" to "A woman who

goes to a man's dorm room or apartment on their first date implies that she's willing to have sex" to "Many men secretly want to rape a woman." The data gathered from these questions inform the guidance given to the institutions in the third part of this report and will shape the questions pursued when the task force meets with student focus groups in the winter.

FINDINGS

Attitudes

Survey respondents were asked to indicate their level of agreement with a list of 25 statements about rape and sexual assault, by assigning each statement a score of from 1 (strongly agree) to 4 (strongly disagree). Most statements evoked strong consensus responses among the students -- a large majority either agreed or disagreed (see Table 1). Reassuringly, for example, about 95 percent of both men and women agreed that "For most women, rape is a very upsetting experience" and "A man's being drunk is no excuse for raping a woman." Similar consensus was found on questions like "Women should expect to pay a man back with sex if he spends a lot of money on a date," or "If a woman knows she is going to be raped, she might as well relax and enjoy it," with which only one or two percent of both the men and women agreed.

Other statements did not evoke consensus. Indeed, differences between the responses of women and men were statistically significant on all but five of the statements. For seven key statements, divergence of opinion was very substantial. For instance, more women feel pressure to have sex than men: while a majority of respondents agreed that "these days there is too much peer pressure on college students to have sex," nearly two-thirds of women agreed, compared to slightly fewer than half of the men. Interestingly, men were more apt than women to assign men responsibility for preventing rape: nearly half the men agreed with the statement, "The responsibility for preventing rape lies with men," while only 39 percent of women agreed.

Two other statements also evoked widely discrepant reactions among men and women:

"Many women cause their own rape by the way they act and the clothes they wear around men " (with which 15 percent of women and 35 percent of men agreed), and
"Women often use the charge of rape vindictively" (15 percent of women, 32 percent of men agreed).

Overall an unsettling 22 percent and 24 percent of all respondents agreed with these two statements. The differences between men's and women's agreement with the following statements was less

dramatic but quite substantial:

> "In order to protect men, judicial procedures should make it very difficult for a woman to prove she was raped" (four percent of women agreed, and 15 percent of men);
> "If a man doesn't have sex with a woman when she wants to, his masculinity may be questioned" (13 percent of women, 30 percent of men); and
> "A woman will pretend she does not want sex because she doesn't want to seem loose, but she hopes men will insist" (12 percent of women, 20 percent of men).

These divergent responses of men and women to these statements underscore the need for on-going education of students about some beliefs that may promote sexual violence, particularly attitudes about implied consent, masculinity, and male and female sexuality.

TABLE 1

ATTITUDES TOWARD SEXUAL ASSAULT

(Average Score and Percentage Who Agree)

	Average Score [1]	All Students	Women	Men
For most women, rape is a very upsetting experience	1.23	96%	95%	96%
A man's being drunk is no excuse for raping a woman	1.35	95%	95%	94%
Men who rape women are probably emotionally sick	2.02	72%	73%	72%
These days there is too much peer pressure on college students to have sex *	2.32	58%	66%	48%
The responsibility for preventing rape lies with men *	2.62	43%	39%	47%
Many men secretly want to rape a woman*	2.98	23%	22%	26%
Women often use the charge of rape vindictively *	3.00	22%	15%	32%
Many women cause their own rape by the way they act and the clothes they wear around men *	3.12	24%	15%	35%
If a woman drinks to the point of helplessness and has sex, it isn't rape *	3.21	22%	17%	28%
A woman will pretend she does not want sex because she doesn't want to seem loose, but she hopes men will insist *	3.22	16%	12%	20%
If a man doesn't have sex with a woman who wants to, his masculinity may be questioned *	3.23	20%	13%	30%
A woman who initiates a sexual encounter will probably have sex with anybody*	3.31	10%	9%	13%
A woman going to a man's dorm room or apartment on the first date implies she's willing to have sex*	3.35	10%	12%	9%
Most men accused of rape are really innocent*	3.35	3%	2%	5%
In order to protect men, judicial procedures should make it very difficult for a woman to prove she was raped *	3.42	9%	4%	15%
If a woman engages in necking and she lets it get out of hand, it's her fault if her partner forces sex on her *	3.44	11%	8%	13%
When a woman says she has been raped by a man she knows, it is probably because she changed her mind afterwards *	3.51	4%	2%	8%
When a woman says 'no' to sex, if a man goes ahead she usually changes her mind later and enjoys it *	3.54	5%	3%	8%
Women who get raped while hitchhiking get what they deserve	3.53	6%	6%	7%
A man can't be guilty of rape if he has previously had uncoerced sex with her	3.55	6%	6%	6%
Many women secretly want to be raped*	3.61	4%	3%	7%
A raped woman is at least partially responsible if she is raped *	3.68	5%	2%	8%
A woman can't be raped if she doesn't want to be*	3.71	3%	2%	4%
Women should expect to pay a man back with sex if he spends a lot of money on a date*	3.78	1%	0%	2%
If a woman knows she is going to be raped, she might as well relax and enjoy it*	3.79	2%	2%	3%

* Statistically significant difference between attitudes of women and men. Probability of difference between men and women being due to sampling error is less than 5 in 100 ($p < .05$)

[1] Average score is based on a range from 1 = Strongly Agree to 4 = Strongly Disagree.

Availability and importance of campus resources

Survey respondents were asked a series of questions about various resources to educate students about sexual assault and to provide support to students who experience assault or rape. Six resources were reported by approximately half or more of students to be available on their campuses -- campus security offices (by 74 percent), college rules or guidelines (63 percent), emergency telephone numbers (60 percent), escort services (51 percent), and campus judicial processes (49 percent). A third or more reported that medical treatment (45 percent), speakers on sexual assault (41 percent), hotlines (41 percent), and support groups (35 percent) were available on their campuses. Perceived available by less than a third of respondents were peer advocates (by 29 percent), campus rape-crisis counselors (28 percent), community rape-crisis centers (25 percent), and class presentations on sexual aggression (19 percent).

Educational programs at new student orientation and educational programs in dorms were thought to be available by 49 and 32 percent of students respectively, but of course these services would not be accessible to many students at certain types of campuses -- for instance where transfer students constituted a large percentage of the student body or where there were no residence halls. Yet to be done is an analysis which brings together, by institutional type, information about what students think is available and what institutional officers say is available.

Whether or not they were thought to exist, all listed resources were considered important by approximately two-thirds or more of respondents, regardless of gender. Dramatic discrepancies were found between the importance and perceived availability of campus support services such as support groups, peer advocates, campus rape-crisis counselors, and sexual-assault advocates. None of these services was believed to be available by more than 36 percent of students, yet all of them were believed to be important by at least 63 percent. Similarly, educational programs in dorms and class presentations on sexual aggression were believed to be important by 71 percent and 65 percent of women and men students respectively, yet they were perceived to be available by 33 percent (educational programs in dorms) and only 19 percent (class presentations on sexual aggression).

Both male and female students want campuses to have clear policies or guidelines about sexual assault and rape. There was a strong consensus about the importance of educational activities, both during orientation and later in dormitories and classes, as well as about the importance of security measures, such as campus security offices, escort services, and emergency telephone numbers. Men and women also wanted help to be accessible to students who experience assault and rape.

Use and helpfulness of campus resources

Relatively small proportions of students had actually made use of campus resources, with women more likely to have used them than men (see Table 2). Most resources which had been used were rated as helpful by two-thirds or more of those who used them. An exception was the campus judiciary process, used by 28 individuals in the sample (fewer than one percent) and found helpful by 16 individuals (57 percent of those who had used it). Most likely to have been used by students were educational programs at new-student orientation (by 14 percent of women, 11 percent of men), college rules or guidelines (by 10 percent of women and 7 percent of men), educational programs in dorms (by 10 percent of women, 6 percent of men), and escort services (by 10 percent of women, fewer than one percent of men). Small percentages of men and women were equally likely to have made use of emergency telephone numbers, the campus security office, and class presentations on sexual assault.

TABLE 2

AVAILABILITY AND IMPORTANCE OF CAMPUS RESOURCES

SEXUAL ASSAULT RESOURCES	AVAILABLE	IMPORTANT	USED (W, M)	HELPFUL?
Campus security office	74%	66%	5%, 4%	76%
College rules or guidelines	63%	71%	10%, 7%	75%
Emergency telephone numbers	60%	75%	2%, 2%	81%
Escort services	51%	73%	10%, 1%	82%
Educational programs at new-student orientation	49%	73%	14%, 11%	68%
Campus judiciary process	49%	67%	1%, 1%	57%
Medical treatment	45%	76%	4%, 2%	75%
Speakers on sexual assault	41%	70%	9%, 6%	77%
Hotlines	41%	74%	1%, *	80%
Support groups	35%	75%	1%, 1%	65%
Educational programs in dorms	32%	71%	10%, 5%	74%
Peer advocates	29%	67%	2%, 1%	75%
Campus rape crisis counselor	28%	77%	*, *	77%
Community rape crisis center	27%	76%	1%, 1%	67%
Sexual assault advocates	25%	63%	1%, 1%	69%
Class presentations on sexual aggression	19%	65%	4%, 3%	71%

* Less than one percent.

Family-life education

Nearly three-fourths (70 percent) of all student respondents thought it was important to have family-life education classes in high school, with females somewhat more likely than males to rate these as important (73 percent of females, 66 percent of males). A higher proportion of graduate students than undergraduates believed family-life education to be important. A slightly larger proportion of respondents had actually had these classes -- 74 percent of all students, 65 percent of men compared with 78 percent of women. The Lieutenant Governor's Task Force on Sexual Assault may recommend the evaluation of these programs, a recommendation with which this task force would agree.

Perceived safety of campuses

Ten percent of all student respondents (8 percent of men and 11 percent of women) reported personal knowledge of a student who had been raped on campus during the previous year. Approximately a third (36 percent) of these students believed the raped student had reported this to someone on campus; 45 percent believed the rape had not been reported, and 19 percent did not know. Three percent of the men and five percent of the women (4 percent overall) reported personal knowledge of a male student who had raped a woman on campus during the previous year.

On a scale of 1 to 10 (from not safe at all to very safe), Virginia students rated their campuses at an average of 6.1. Males rated campuses as safer than females -- 6.6 as opposed to 5.8. For both men and women, the perceived safety of campuses was associated with length of the college experience. Freshmen perceived campuses to be safer than did other undergraduates; graduate students were most concerned. Students at coeducational colleges and universities felt less safe than those at single-sex schools. Students also felt safer at two-year colleges (doctoral institutions were rated least safe), non-urban locations, and smaller colleges (schools with enrollments under 3,000 were considered safest.)

Asked what one thing they would change to improve how their college or university deals with rape and sexual assault, students most frequently identified improved security (29 percent) and education (21 percent). The emphasis on security suggests that students do not realize that the greatest danger of sexual assault comes from acquaintances, not strangers. Seven percent suggested educating women about prevention. These three changes were most frequently mentioned by both male and female students, although women recommended all three slightly more highly.

Occurrence of sexual assault and rape

One-year numbers of sexual assaults and rapes

The women's questionnaires were designed to elicit information that could be used to estimate the overall numbers of sexual assaults and rapes on campuses in two ways. A series of four scenarios was presented. The first involved a woman's giving in to sex because of emotional pressure brought to bear by the man; the second, corresponding to legal definitions of sexual assault, described a situation in which the woman felt physically intimidated or threatened into sex play; the third, again keyed to Virginia Code, described an attempted or completed rape; and the last, a gang rape.

To estimate the number of incidents of these experiences occurring to Virginia women students, upperclass and graduate and professional-school women were first asked about any experiences corresponding to the various scenarios that they had had during the 12 months from August 1, 1990, through July 31, 1991. The Survey Research Laboratory extrapolated from the percentages of the respondents who reported them an estimate of the number of women in the study population who would have reported such incidents had they all been surveyed.[2] In surveys using a random sample of the population under investigation, in this case college students in Virginia, it is statistically responsible to generalize from the responses received to the general population. Some sampling error is always introduced by the procedure, however, the range of which is indicated in Table 3.

That table shows that 15% of women respondents (234 individuals) reported incidents of unwanted sexual activity as a result of emotional pressure brought to bear on them during their college careers in Virginia. Using these reports and correcting for sampling error, the Research Laboratory estimates that last year's women college students in Virginia would have had a conservative estimated total of about 18,461 such incidents.

The experiences of upperclass women and graduate students were used to estimate last year's occurrences. Fifteen percent (117) of those women reported such an experience during their Virginia college career. Of these, 76 percent reported at least one such experience during the 12 months used to estimate annual incidence (August 1990 through July 1991). Half of those who reported an experience during the period reported one incident, 23 percent reported two incidents, and 13 percent reported three. The remaining 13 percent reported four or more. Again, extrapolating from the percentages of respondents who reported these incidents and the reported number of incidents per woman, last year's women students would have had about 8,148 experiences of sexual assault (7%), 1,467 attempted rapes (5%), and 1,395 completed rapes (2%).

These figures are very much in line with Mary Koss's estimate that in any given year, about five percent of college women in America experience one or more attempted or completed rapes. Moreover, the results correspond to those of a study of working women in Ohio, which found that 2.8% of these women reported having been raped during a 12-month period (Women and Violence, pages 36-38). In other words, sexual assault on Virginia's campuses is typical of the nation as a whole.[3]

Since first-year women were not on campus 1990-91, the survey only picked up those incidents which had happened to them during the first six to eight weeks of the fall 1991 semester. Again, extrapolating from the percentages of first-year women respondents who reported such incidents, about 6,524 first-year women on Virginia campuses would have reported giving in to sex play or intercourse as a result of a man's emotional pressure during that time. About 1,729 first-year women would have felt physically intimidated into sex play, and about 1,314 would have considered themselves the targets of attempted rape. First-year women seem particularly at risk during the first few months of their college experience even though, ironically, they perceive the campus as being safer than do older students.

Experiences while a student on a Virginia campus

The women's questionnaires also elicited descriptive information from students about the most recent experiences they had had while they were students in Virginia. Thus, the information cannot be generalized to all incidents reported by respondents. The descriptive information provides a snapshot of the recent experiences rather than a full picture of sexual violence as it has been experienced by Virginia's women students.

Results of each of the scenarios follow. Overall, many more women students believe that they were sexually coerced or assaulted by male students than can be explained by the reports of male student respondents. This discrepancy suggests differences in perception or definition that will be pursued in the focus groups that are the next phase in this project. These differences must also form the basis of any educational program that hopes to deal successfully with these forms of violence.

TABLE 3

OCCURRENCE OF SEXUAL ASSAULT AND RAPE

Among Women Students in Virginia Colleges and Universities

	% (N) WOMEN IN SAMPLE WHO HAVE ...	% (N) SAMPLED FRESHMEN WHO HAVE ...	% (N) SAMPLED UPPERCLASS-WOMEN WHO HAVE ...	% (N) SAMPLED GRADUATE STUDENTS WHO HAVE ...	ESTIMATED OCCURRENCES AMONG FRESHMEN FALL 1991	ESTIMATED OCCURRENCES TO OTHER WOMEN STUDENTS 1990-1991
... given in to unwanted sex play or intercourse because of man's emotional pressure	15% (234)	14% (57)	15% (117)	16% (60)	6,524 (± 1,697)	18.461 (± 3,154)
... given in to sex play because of physical threat or inability to resist	7% (98)	4% (16)	8% (60)	6% (22)	1,729 (± 931)	8.148 (± 2.143)
... had a man attempt to have sexual intercourse by intimidation or when she was unable to resist	5% (67)	3% (11)	5% (36)	6% (20)	1.314 (± 812)	1.467 (± 670)
... had a man complete intercourse by using intimidation or when she was unable to resist	2% (30)	1% (4)	2% (18)	2% (8)	number too small to calculate sampling error	1.395 (± 720)
... had a group of men attempt to have sexual intercourse with her against her will, when at least one man completed intercourse	* (3)	*	* (3)	*	number too small to calculate sampling error	number too small to calculate sampling error

Emotionally coerced sex

Emotionally coerced sex is not a crime. The line between coercion and force, however, is blurred. Coercion is also an experience which can be extremely upsetting to the individuals involved and to some degree impinges on individual autonomy in arguably unethical ways. Hence it is behavior that campuses may want to discourage in students as they define inappropriate behaviors in their sexual assault policies. It may also be an appropriate subject for campus educational programs. If, as seems to be the case from the differing responses of men and women students to the scenarios, some men and women differ in their perceptions of physical threat or intimidation, even more are likely to do so in their perceptions of emotional coercion. Frank discussion of these attitudes should be part of any educational program that addresses sexual violence. These perceptual differences will also be one of the topics pursued in the focus groups that are the next phase of this study.

Fifteen percent of women in the sample (a total of 234) reported having given in to unwanted sex play or intercourse as a result of a man's emotional pressure while they were students in Virginia colleges and universities. Fourteen percent of first-year women in the sample (57 individuals) had this experience during their first six to eight weeks on campus in fall 1991.

Most incidents reported by women occurred at parties, on individual dates, or in the context of casual interaction, and they tended to occur during the first two months of the fall semester (September and October). Most women students felt emotionally coerced by students from their own colleges or universities (60 percent or 142 individuals) or from another institution (21 percent, 45 women). Emotional coercion by faculty and staff members was reported by four women in the sample; in two of these cases, the man who coerced them was a current instructor or supervisor. Most of the women had felt emotionally coerced by an acquaintance (31 percent, 73 women) or a friend (27 percent, 47 women). Twenty-two percent (47 individuals) had been coerced by a boyfriend. Only six percent (15) of the women had had emotionally coerced sex with a stranger.

The women reported that 16 percent (26 of the men described) of those who coerced them were members of a college athletic team, 33 percent (59 men) were members of a fraternity, and seven percent (11 men) were members of a campus military organization. Some of the men belonged to more than one of these organizations. Overall, among male students reported to have coerced these women, 45 percent were thought to be members of a fraternity, athletic team, or a campus military organization.

Reported incidents of emotional coercion were most likely to have happened in the man's residence (26 percent in his private

residence and 18 percent in his dorm room or apartment). However, many incidents occurred in the woman's dorm room or apartment (13 percent) or in her private residence (15 percent). Nine percent took place in a fraternity house. Eight percent occurred outside: in a car (5 percent), in a parking lot (2 percent), or walking on campus (1 percent). Overall, 41 percent of these incidents (a total of 98) took place on a campus or other campus-controlled property.

The use of alcohol and other drugs was reported in two-thirds of these incidents of emotionally coerced sex -- a total of 133 of the 208 experiences for which this information was provided. Fifty-three percent of these women reported that the men who coerced them had been drinking, five percent that the men had been drinking and using other drugs. Nearly as many reported having used drugs themselves -- 51 percent of the women had been drinking before the incident, and two percent had been drinking and using other drugs.

Women who reported emotionally coerced sex were about evenly divided in their opinions about whether they were personally responsible or not. On a scale of 1 to 5, where 1 means not at all responsible and 5 very responsible, over a third of the women (37 percent) rated themselves as 3. Thirty-six percent rated themselves as 1 or 2 -- not at all or not very responsible. Twenty-six percent rated themselves as 4 or 5, moderately or very responsible. Overall, these women placed more of the responsibility for what happened upon the men who coerced them. Only 5 percent rated the men's responsibility as 1 or 2; most (82 percent) rated the men's degree of responsibility as 4 or 5.

Overall, 74 percent of women who had been emotionally coerced had discussed the incident with at least one other person. They were most likely to have discussed it with their friends (69 percent had done so); 84 percent of those who had talked with friends felt this had been helpful. Very few had discussed the experience with anyone else. Only six percent had talked with family about what happened; of those who did, the great majority (81 percent) found them helpful. Three percent had discussed what happened with a doctor or someone at a medical clinic or in a women's group; two percent with someone in student affairs or on the counseling staff; two percent with an off-campus therapist; and one percent each with a campus rape-crisis counselor, a peer assistant, campus police, or local police. Generally, respondents reported that discussing the incidents with these resource individuals had been helpful.

Men have a different perception. Only twenty-six male students (3 percent of the sample) reported engaging in sex play with a woman by emotionally coercing her, approximately two-thirds within the previous year. A majority of these men had coerced women more than once, 29 percent five times or more. All of the men who admitted coercion assigned equal or almost equal responsibility for

what happened to themselves and to the women. Although none of the men reported feeling proud about what they had done, they reported little remorse.

Interestingly, a number of men in the sample -- 13 percent of freshmen (20 men), 18 percent of upperclassmen (68 men), and 17 percent of graduate students (37 men), for a total of 17 percent (125 men) -- reported having engaged in sex play or intercourse because they thought it would be inappropriate to refuse. Clearly a substantial number of men as well as women feel under indirect and direct pressure to have sex when they do not want to.

Sexual assault

Seven percent of women students (98 individuals) reported having given in to sex play because a man physically forced them to do so or when they were unable to resist -- the definition of sexual assault. Freshmen women were somewhat less likely than others to report this experience: four percent of first-time freshmen (16 women in the sample) reported having had this experience during the first six to eight weeks of the fall 1991 semester, while eight percent of the "other undergraduate" sample (60 individuals) and six percent of the graduate-student sample (22 individuals) had experienced this while they were students in Virginia. Most of these incidents occurred during casual interaction or at parties, and most occurred during the fall months.

A large majority of the women had been physically forced or intimidated by other students, from their own college (58 percent) or another college (18 percent). Thirty-seven percent of the aggressors were reported to be members of a college athletic team, a fraternity, and/or a campus military organization. Twenty-nine percent were fraternity members. Seven women in the sample had been physically threatened or intimidated by a member of the faculty or staff at their schools, two by their current instructors.

Women who had had this experience usually knew the men who had assaulted them. Thirty-four percent of the men had been acquaintances, 27 percent friends, 16 percent boyfriends, and five percent lovers. Only 13 percent of the women reported that the men who assaulted them were strangers. Thirty-seven percent of the most recent incidents were reported to have occurred in college-controlled buildings, 12 percent in fraternity houses.

Substance use was a factor in two-thirds (65 percent) of the reported incidents. More than half the women (59 percent) were forced by men who had been drinking and/or using other drugs. Fifty-one percent of the women were drinking and/or using drugs themselves. Half of these women (54 percent) thought their use of alcohol and drugs had left them unable to resist the advances made to them.

Overall, these women assigned most of the responsibility for what happened to the men rather than to themselves. Fifteen percent of the women felt they were at least moderately responsible; most felt they were only slightly, if at all, responsible. Only five percent felt the men were no more than slightly responsible for what happened; 86 percent felt the men were moderately or very responsible.

Most women (83 percent, or 81 individuals) who had experienced physical coercion had talked with someone about what had happened. A very large proportion of the women (81 percent, or 79 individuals) had discussed it with friends. Most (83 percent of those who had talked with friends, or 66 individuals) had found this helpful. Sixteen percent had discussed the experience with family. Six percent had discussed the incident with off-campus therapists, five percent with a woman's group or residence-hall assistant, and four percent with a peer assistant. These individuals had been helpful in virtually all situations.

Among the 98 women who had been physically coerced, only two reported what happened to someone in authority. Reasons given by those who did not report their experiences included thinking it would do no good (39 percent); not wanting family to know (36 percent); being ashamed and not wanting anyone to know (35 percent); or feeling confused (33 percent), guilty (31 percent), or scared (19 percent). Thirty percent did not realize what happened was sexual assault, 22 percent thought they would be blamed or get into trouble, and 21 percent were concerned about confidentiality. Twenty-one percent didn't report the incident because they felt they had not communicated clearly. Seven percent had not known where to go.

Two women did report the incidents to someone in authority. One of the women was advised about legal options open to her and as a result an action was brought in court. However, the student dropped the charges because she was advised to do so by college administrators, who didn't think she could win the case. This student didn't want anyone else to know what had happened and felt she would be blamed if others found out. The second incident happened to a freshman and was handled within the college. The man was found innocent, which was not considered to be an appropriate outcome by the woman.

Again, men have a different perception. Only three of the 752 men in the sample reported using physical threat or intimidation to engage a woman in sex play while they were students in a Virginia college or university, two of them repeatedly. This small number of reports is perhaps not surprising, since men were being asked to report on illegal behavior. But this discrepancy may also reveal a deep disagreement in male and female definitions of intimidation or in interpretation of fact. Indeed, though they report being intimidated, many women do not think of these behaviors as

assaults. This suggests need for the education of both men and women students. It suggests as well questions that should be pursued in the focus-group interviews.

Attempted or completed rape

It is in the category of attempted or completed rapes that men and women are in strongest disagreement. Only one man in the sample acknowledged an attempted rape, whereas five percent of women in the sample (67 individuals) reported having men attempt to have sexual intercourse with them through intimidation or when the women were unable to resist (47 percent by students at the same college). Three percent of the freshmen sample (11 women) reported this experience during the first six to eight weeks of the fall 1991 semester. Five percent of other undergraduates (36 women) and 6 percent of graduate students (20 women) in the sample reported such an experience while they were students in Virginia colleges or universities. The women reported that thirty-six percent of attempted rapes were completed, for a total of 30 reported rapes.

Approximately a third of attempted or completed rapes (34 percent) described by these 67 women took place at parties; about a fifth each occurred during casual interaction and on dates. Most occurred during April or the fall. Assailants in the reported attempted or completed rapes were primarily students -- 47 percent from the same college as the woman, 14 percent from a different college. Half of the student assailants (47 percent, or 20 men) were reportedly members of an athletic team, a fraternity, and/or a campus military organization. Forty-one percent (15 individuals) were reported to be fraternity members. Non-student assailants were reported by 23 percent of the women. Most assailants were known to the women they assaulted -- 26 percent were acquaintances, 23 percent were friends, and 19 percent were boyfriends. Strangers were responsible for fewer than one in five (16 percent) of the attempted or completed rapes.

Ten percent of women (seven individuals) who experienced attempted or completed rape reported that weapons were used or they were threatened by them. Eighteen percent of those who experienced attempted rape and 39 percent of those against whom the rape was completed said they sustained physical injuries apart from the rape itself during the assault. Alcohol and drugs were involved in 69 percent of attempted or completed rapes. Men who attempted to rape these women were reported to be drinking, using drugs, or both in 53 percent of the incidents. Fifty-six percent of the women (36 individuals) had been using substances themselves; half of these (18 women) thought their substance use had rendered them unable to resist the assault. A full two thirds of those against whom the rape was completed considered themselves unable to resist.

Thirty-four percent of reported attempted or completed rapes

(22 incidents) took place in college-controlled areas -- 20 percent in dorm rooms or apartments (13 percent in the man's campus residence, 7 percent in the woman's), 11 percent in fraternity houses, and two percent in another college building. A large majority of these women (70 percent) considered themselves to be only minimally if at all responsible for what had happened. Most considered the man to be very responsible (83 percent) or moderately responsible (10 percent).

Over three-fourths of the women (78 percent, or 53 individuals) discussed what happened with others. Eighty-two percent had talked with their friends, and almost all had found this to be helpful. Twenty-three percent had talked with their families, with similar results. Only one or two of the women had discussed what happened with anyone else.

Only 13 percent (three women) of those who had experienced attempted rape and ten percent of those who were raped (another three) had reported the incidents to someone in authority. Reasons given for not reporting included believing it would not do any good (by 54 percent); feeling ashamed and not wanting anyone to know (42 percent); not wanting family to know (48 percent); or feeling guilty (41 percent), confused (41 percent), or scared (21 percent). Nearly a third of the women (32 percent) had not realized this was sexual assault, and 17 percent didn't know where to go to report what happened. Eighteen percent (25 percent of victims of attempted rape) did not want to get the man in trouble; 20 percent were afraid the men would hurt them if they told.

Of the women who reported the incident to someone in authority, most were advised by college officials about the legal options open to them; none went to court. Only one of the incidents was handled within the campus judiciary process. The man was found guilty, which was considered appropriate by the woman, although she gave no information about the penalty he incurred.

Group-forced intercourse

Incidents of gang rape are mercifully rare on Virginia's campuses, although any such incidents are too many. Three undergraduate women reported experiences in which a group of men had attempted to force them to have intercourse, and three men reported that they had been with a group of men who had forced a woman to have intercourse with at least one of them. All but one of the incidents took place at private or fraternity parties. Despite the physical injuries beyond the rape sustained by two of the three women, they all assigned themselves equal or near-equal blame for the incident, which was one of the reasons -- along with shame; confusion; and fear of blame, retaliation, and their families' knowing -- that they did not report the incidents to anyone in authority. All but one of the men also blamed the woman

or the other men for what had happened. Alcohol was a common element in these incidents.

Same-gender coercion

Three women in the sample reported having had unwanted sex with another woman because they were forced or were unable to resist. Six men had been forced by another man. Only two men acknowledged having forced another man.

The effect of age

Younger students were more likely to have given in to emotionally coerced sex play than were older students. Twenty-one percent of students 16-22 years old had done so, compared with 13 percent of students 23-30, 10 percent of those who were 31-40, and two percent of students over 40 years old. A similar pattern was reported with sex play which resulted from being physically threatened. This pattern did not hold for attempted and completed rape. Although the number of cases reported was too low to permit reliable inferences, students who reported these experiences represented all age groups in the sample.

PART II: PROGRAMS AND SERVICES

In October 1991 the Council surveyed public and private institutions of higher education to determine the scope of sexual assault education, prevention, and treatment services presently offered on campuses. A questionnaire was sent to chief student-affairs officers, seeking input as well from counseling center directors, chief academic affairs officers, deans of students, security chiefs, and residence-life directors.

Response to the survey was good, with all of the state-supported senior and two-year institutions replying and over 60 percent of the independent schools, colleges, and universities.

THE REPORTING OF INCIDENTS

The Uniform Crime Report section of the State Police reports just 15 forcible rapes on Virginia's campuses in 1990. But there is evidence that this is only a small part of the problem. According to the student survey, only 2-3 percent of victims report to anyone in authority; even fewer cases reach the campus or local judicial system. Of the students who do report what has happened to them, more seem willing to talk to a campus counselor than to report to the police: counseling centers reported serving 229 sexual-assault cases during the 1990-91 year. More yet may go off campus for help. The great majority of the sexual assault victims at the University of Virginia who seek help, for instance, do so at the local rape-crisis center. Because of the underreporting and the overlap in the statistics kept by various agencies, the number of actual incidents is virtually impossible to determine on the basis of official crime statistics. Greater coordination among on- and off-campus counseling centers and campus and local police in recording incidents is clearly called for and will be required by the new federal campus-crime reporting mandate.

Students need to both have and be informed about their options in reporting these incidents. Three-quarters of the colleges and universities in Virginia use student handbooks as one way to inform students about whom to contact if they have been assaulted or raped. Also popular are independent booklets or brochures, used by about half. Over half of the institutions surveyed have assault-reporting protocols.

POLICY

Only a little over a third of the institutions reported having written policies on sexual assault and articulating education and prevention goals, including only five of the 23 community colleges.

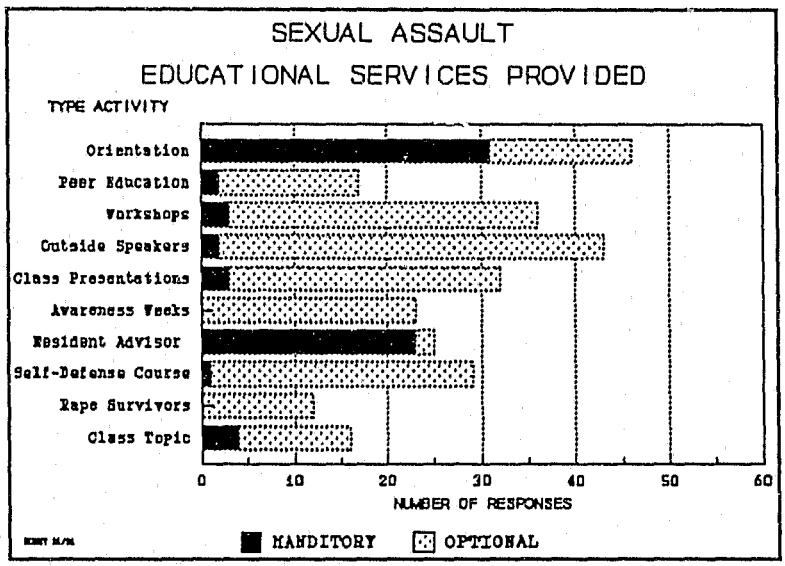
In fact, written policies on sexual harassment are in place in twice as many institutions as sexual-assault policies, perhaps because this issue has been receiving attention longer. Progress toward clear and specific definitions of sexual assault has been made at only 13 institutions, with the others including sexual assault in a general policy about appropriate student behavior. No senior institution without a written assault policy lacks a broader behavior policy, and only two surveyed institutions reported having neither an assault nor a broader policy. In contrast, all the institutions surveyed have written policies on alcohol and other substance abuse, almost certainly as a result of federal pressure to do so. The Student Right To Know legislation may have a similar effect on the articulation of sexual assault policies on campus.

Of the institutions with written assault policies, almost all reported that they publish them in student handbooks. Over half also publish them as part of a code of conduct document, while about a third also use employee handbooks, independent booklets, and newspaper articles.

Most campuses have groups studying the issue of sexual assault. Seventeen institutions have established a sexual-assault task force, while 8 more have a combined task force on sexual assault and substance abuse. They are comprised mostly of faculty, students, and administrators, with fewer reporting staff, student health personnel, and campus police among their members.

EDUCATION

Widely established educational programs include those at orientation and resident-assistant training. Three-quarters of the institutions schedule some sexual-assault education during orientation, although the effectiveness and inclusiveness of these programs has not been assessed, and only 14 percent of women and 11 percent of men respondents to the student survey said that they had made use of such programs. About three-quarters of the residential institutions also had either mandated or optional sexual-assault training for residence assistants.



Few other educational program offerings are uniformly required or presented across campuses. In decreasing order of popularity, outside speakers, workshops, class presentations, self-defense classes, and awareness-week events are each sponsored by at least a third of the institutions.

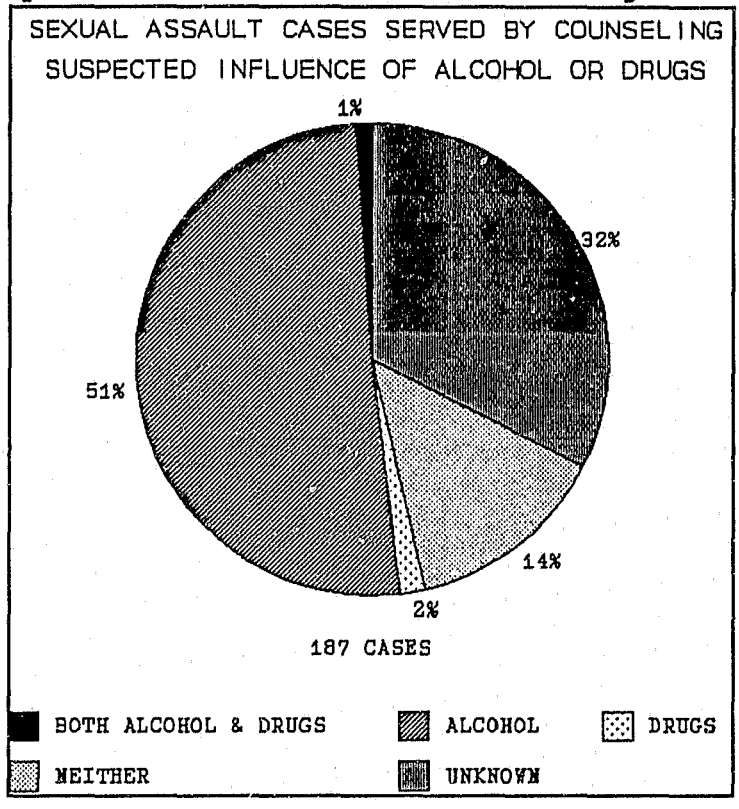
Institutions have difficulty providing information about the numbers of students involved in sexual-assault education or prevention activities. And often other segments of the college community have little knowledge of what activities the student-affairs staff plans or would like to offer. There seems to be a need for better coordination and sharing of sexual-assault information across institutional divisions and boundaries. In addition, campuses could learn from each other. The survey itself alerted some respondents to service possibilities that they had not considered, like the "last-resort" taxi program.

TREATMENT AND COUNSELING

Campus rape-crisis counselors and sexual-assault hotlines exist at only 17 and 9 institutions respectively, although respondents to the student survey indicated that these services are very important to them. Rape survivors' groups exist on 12 campuses.

More than half of the institutions specify student-health service staff as resources or contacts for students, and 17 list

faculty. Yet less than a third train student-health professionals, and even fewer train faculty, in issues related to sexual assault. In fact only about half the institutions require sexual-assault training for counseling staff, resident assistants, campus police, and student affairs staff, who are most likely to be the contact persons for victims. Such persons should also be knowledgeable about substance abuse.



Of the sexual-assault and rape cases reported to counseling centers, more than half involved the use of alcohol by the victim, assailant, or both. Few involved drugs alone, while about 15 percent involved neither drugs nor alcohol. (No information about drug or alcohol influence was available in a third of the reported cases.)

While the scarcity of counselors specifically trained in assault counseling is particularly acute at community colleges, over half of all institutions identified no counseling staff with such training. Statewide only 46 counseling professionals have received specific training in sexual-assault counseling, with many clustered on larger campuses and almost none in the community colleges. This is not to say that these staff are not generally well credentialed. Almost all have degrees in either psychology or counseling education, 81 with doctoral degrees in these areas and 142 with master's credentials. Seven psychiatrists are retained on contract or on a part-time basis.

About 70 percent of Virginia institutions have on-campus counseling centers for psychological services and counseling that offer crisis services. All public senior institutions except Clinch Valley College and Virginia Military Institute, all but three of the private institutions, and about half the community colleges have them. But the staffs at these centers are presently seriously strained. As the enrollment in Virginia's colleges and universities reaches 350,000, only 227 FTE staff (249 people, including paid interns and residents) are responsible for counseling about sexual violence.

'Counseling center staff had an unusually wide range of

estimates about what percentage of student clients sought help because they either had been sexually assaulted in college or affected by sexual abuse when younger. Estimates of the former ran from zero to a high of 12 percent, while the latter problem brought percentages from zero to a stunning 40 percent. When the results of the student survey are considered, the possibility of increasing future demands on the system are sobering. The Council's student survey indicates that up to 11 percent of Virginia women students have experienced sexual assault or rape during their college career, and other studies suggest that many more enter college with such experiences in their backgrounds. As sexual assault services become more known on campuses and the stigma of reporting sexual assault lessens, the potential demand for counseling and treatment could grow dramatically.

This is particularly troubling at a time when student support services are being radically pruned at many institutions as a result of the budget reductions. In fact, The Chronicle of Higher Education predicts that if budget shortfalls persist, "A wide range of activities and services traditionally associated with higher education, such as psychological counseling and health services for students, will be cut back sharply or even eliminated" (Chronicle, A35).

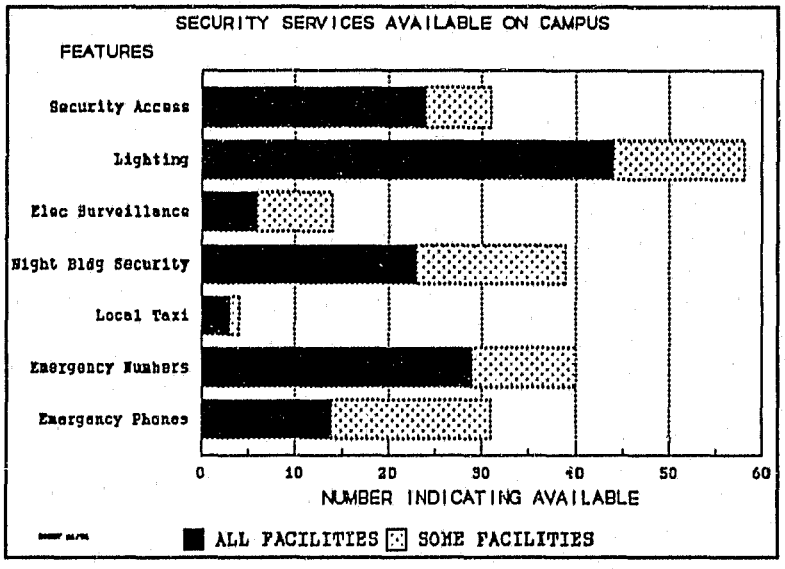
While most campuses coordinate their sexual-assault services through a student-affairs office or counseling center, eight institutions have sexual-assault offices. The two largest institutions, the University of Virginia and Virginia Tech, have full-time coordinators. By contrast, 22 institutions have substance-abuse offices, ten of which are staffed by full-time coordinators.

One solution to the problem of providing services in a time of diminishing resources, chosen by a quarter of the institutions, is to refer students for psychological services and counseling under formal contracts with community service providers. Almost all of the remaining institutions (with and without their own counseling centers) reported that they also refer students but have no formal contracts with community resources. Across the state, on-campus centers made over 1,400 referrals to a variety of community service providers for a variety of services. The largest number (450) were sent to private providers of psychological services and counseling. Another 300 were referred to mental health or community services boards, while 350 more went to self-help groups like Alcoholics and Narcotics Anonymous and Adult Children of Alcoholics.

Specifically related to the issue of sexual assault were the 177 referrals made to community sexual-assault centers, the 18 sent to victim/witness assistance programs, and at least 70 students who were referred to battered women's shelters. Community rape-crisis centers are used by about a third of all institutions. Colleges set in communities as diverse as Farmville, Danville, Lexington,

and Buena Vista reported having community rape-crisis centers, in addition to the more urban localities like Fairfax, Norfolk, and Richmond. Colleges may or may not compensate local agencies for these services and may at some point have to help them deal with the strain on their resources created by an increasing student reliance on their services.

SECURITY



Virginia college students feel only moderately safe on their campuses. When asked what should be done to combat sexual assault, students most commonly responded, "Improve security." To some degree this results from a misperception about the danger: students reported on the survey questionnaire that only six percent of the men who coerced them, 13 percent of the men who assaulted them, and 16 percent of the men who attempted to or succeeded in raping them were strangers, and a minority of incidents occur on campus-controlled property. But failing to make the campus a safe physical environment is one of the ways an institution can put itself at risk of liability.

There are many security measures in place at Virginia institutions, although they may not cover all areas or facilities on campus. The most frequently available security measures include safety lighting (found at almost all locations), controlled residence access at four-fifths of the residential campuses, and a security office at three-quarters of the institutions.

Security in buildings with night classes was less uniform, with at least five each of private and public institutions apparently having no facilities covered by security during night classes. Several services that students think are important and useful are unevenly available. Only half the institutions report having escort services, while safety shuttle services operate on only 11 campuses. There is uneven emergency telephone coverage, with call boxes or emergency phones found on only half of the campuses. Four of the senior residential colleges did not have call boxes, nor did either of the public non-residential campuses. Relatively low-cost prevention strategies such as local taxi

arrangements, where the institution pays the fare and is reimbursed later, exist at just four institutions: the University of Virginia, Virginia Wesleyan, Sweetbriar, and Tidewater Community College. Also little used are high-technology security devices such as electronic surveillance.

PART III: PROGRAM GUIDELINES

Sexual assault is a pervasive social problem for which colleges and universities are not to blame. The attitudes and experiences that students bring with them are formed in the family and in early years of education and socialization. Nevertheless, as educational communities, colleges and universities need to deal, within the limits of their resources, with the consequences of those attitudes and behaviors. And particularly to the degree that they are residential, institutions have a responsibility to provide a safe environment and establish behavioral standards for students. Institutions should make available programs to educate students about sexual violence, take measures to prevent it, and have in place procedures to deal with those incidents that occur.

Some elements of programs on sexual assault should be provided by colleges and universities for all students and others should be made available either by the institution directly or in cooperation with the local community. This section of the report contains program or policy recommendations that apply to both state-supported and private colleges and universities, as well as commuter institutions such as the community colleges. This guidance is intended as preliminary, since the educational community will discuss these issues at a conference in spring 1992 preparatory to a final report to the legislature in December 1992.

CAMPUS AND COMMUNITY RESPONSIBILITY

The distribution of responsibility between the campus and the local community for protecting students from rape and sexual assault varies depending upon the mission and nature of the college or university, including the types of students it serves and the resources of both the campus and the local community.

For instance, all institutions should have clear and well publicized policies and procedures for dealing with sexual assault and rape, the campus should be as safe a place for students as it can reasonably be made, and every institution should have a system of keeping track of incidents of rape and sexual assault. In addition, most institutions would agree that they have further responsibilities for the safety and well-being of students living in university housing, including education, treatment, and support services.

But there are few, if any, institutions that serve only full-time residential students, and many provide residential facilities for only a small proportion of their students. Full-time students, especially those living in university housing, tend to look to the institution for all services. Part-time students, especially older

students living in the local community, tend to rely on the community for services. In this case it is the college's responsibility to provide information about the campus's and community's available services and to work cooperatively with the community service providers to ensure that students' needs are met and that full and complete records are kept of all incidents.

CAMPUS PROGRAM ELEMENTS

Accordingly, the college's responsibilities can be grouped by those it should provide to all students and those it may provide to some or all of its students through cooperative agreements with community-based organizations. Those that fall into the first category are

- policies on sexual assault and rape,
- physical security,
- information,
- reporting of incidents, and
- judicial procedures.

Those that fall into the second group are

- educational programs and
- treatment and support.

Campus Policies and Procedures

Each private and state-supported college and university should review its existing policies and procedures to be sure it has a separate policy statement on sexual assault and rape. The campus policy should clearly indicate that these are criminal behaviors that may be dealt with through the criminal and civil courts, as well as through the campus judiciary system. That policy should include an explanation of any legal terms and behavioral definitions of terms like "sexual assault"; "rape," including "acquaintance rape"; and "consent." The policy should describe the campus judicial procedures designed to deal with rape and sexual assault and describe the penalties for those behaviors. This explicit statement on sexual assault might be modelled on those for alcohol and drug abuse. All students, faculty, and staff should be informed about the policy.

In 1991-92 about one-half of the institutions had a specific policy on sexual assault; most others included sexual assault in a broader conduct policy. Such general policies neither provide sufficient visibility to the issue, signal its seriousness, nor, in many cases, clearly define the prohibited behavior. The policy should also be separate from policies on sexual harassment, which

generally are focused on employment situations or student-faculty relationships. Within campus policy documents, the sexual assault policy should be clearly labeled and set off in a separate section for ease of access.

In addition to the policy, each college should establish and widely distribute written protocols or procedures for dealing with sexual assault cases, which should include the following elements:

- information regarding the specific personnel to notify;
- specific reporting requirements and procedures for the college, city or county, and state;
- treatment and other services available, both on and off campus;
- information about how the case will be managed and reported;
- immediate steps that the victim should take to ensure that all options remain available for pursuing the incident through the criminal justice system, civil judicial procedures, or the campus judicial system; and
- procedures for protecting confidentiality for both the accuser and the accused.

On many campuses it is unclear which administrative unit is responsible for policies and procedures relating to sexual assault or rape. Only eight institutions have a designated sexual assault office or coordinator. Testimony to the Governor's Task Force on Substance Abuse and Sexual Assault indicated that having someone in charge gives coherence to campus activities and facilitates interaction between the university and community-based organizations. The individual designated to coordinate all campus activities should not be expected to provide all services and resources but rather to develop a coordinated program and provide information on available services and resources within the campus or in the local community.

This designation should be made by the institution as a formal assignment and widely publicized among students, faculty, and staff. Whether it is a part-time or full-time responsibility will depend upon the size, resources, and mission of the institution, as well as the proportion of students who are residential. But whoever has this responsibility should have appropriate training in all aspects of sexual assault. Part of this training may be provided by local or state agencies, many of whom have approved curricula. The person should also have enough authority to carry out her or his duties effectively.

This individual should also be charged with the annual evaluation of the campus programs, policies, and procedures and with developing recommendations, in consultation with a campus-wide advisory committee, on future program direction and policies. Student surveys, such as that being conducted by the Council of Higher Education, should be repeated periodically, as budget

constraints permit and size and mission make appropriate, on each campus. Studies of the use and effectiveness of campus and off-campus programs should complement student and faculty advisory committee recommendations.

Recommendations about policies and procedures

By September 1992, all colleges and universities should have completed their review of existing policies on sexual assault and rape. If necessary, a separate policy should be adopted. It should be widely distributed. All students should receive a copy of the policy when registering for the first time each academic year. Faculty and staff should receive a copy at the beginning of each academic year or when hired.

By September 1992, each campus should designate a single office or individual employee as the "sexual assault coordinator" for the campus. This individual should have appropriate authority and training and should draw upon campus and community resources for program delivery and services.

Physical Security Provisions

Although students identify improved security as the most important thing institutions can do to make campuses safer, most of the incidents of sexual coercion or assault reported by undergraduate and graduate women occur between acquaintances. Only six percent of the emotional coercion incidents reported, 13 percent of sexual assaults, and 16 percent of attempted and completed rapes were perpetrated by strangers. And most do not occur in college-controlled buildings: only 41 percent of the incidents of emotional coercion reported, 37 percent of the sexual assaults, 34 percent of the attempted and completed rapes happen in areas for which the college has responsibility. Nevertheless, every campus should be made as safe a physical environment for students as possible, given the ethical and legal liabilities involved.

Each college or university should assume responsibility for architectural and programmatic activities that improve the physical safety of the campus. All areas of the campus should be well lighted, especially parking lots; the areas around instructional buildings, library, student unions, and residential facilities; and pathways. Architectural designs for new or renovated facilities should be examined to incorporate safety and crime-prevention features.

The Department of Criminal Services' Crime Prevention Through Environmental Design (CPTED) program provides guidance to campus planners and plant maintenance staffs about how slight changes to architectural design features can facilitate monitoring of working areas and parking lots. The design and entrance systems of

residential facilities and instructional facilities used by students or staff in evening or weekend hours are particularly important.

Other campuses might also provide models of how to improve the safety of students. Where appropriate and feasible, institutions should consider implementing new services that students have found helpful at other campuses. These might include escort services from campus locations to residential facilities or parking areas, shuttle services to parking areas or off-campus locations, call boxes, area crime-watch cooperatives, electronic surveillance systems, local taxi services, and high visibility patrol programs, including bike coverage and special event staffing.

Recommendations about physical security

By September 1992, all campuses should incorporate crime prevention through environmental design into the campus master plan and architectural design of new facilities and planned renovations. Campuses should incorporate such concepts into facilities currently being planned.

Each campus should examine services currently being provided by other campuses and those already implemented to determine if new or changed services could be provided in a cost-effective manner.

All residential facilities should provide necessary entry security systems, internal and external lighting, and routine security coverage to establish a safe environment for students and their guests. Institutions should have maximum flexibility in determining how to pay for such systems.

Information

Information about campus policies, procedures, services available on the campus, services available off-campus, and where to go for additional information, resources, or services needs to be available to all students, faculty, and staff. In 1991-92 information related to sexual assault and campus rape was not as well developed or as widely disseminated as that related to substance abuse, especially alcohol.

Most campuses have effective and economical means of providing all students with information on substance-abuse policies and services. Each student and all new faculty and staff should be provided similarly with the following information about sexual assault and rape -- which should also be included in the student handbook, calendar or other campus publications -- at the time of initial registration each year, as part of the faculty and staff orientation at the beginning of each academic year, or, in the case

of employees hired during the year, at the time of hiring:

- campus policies and procedures,
- telephone numbers for campus contacts and offices providing services or identified in the campus policies and procedures,
- information about campus services for victims and those available in the community. Details on how to use the community-based services should include information on costs and campus cooperation agreements, and
- telephone numbers for rape hotline and victim's advocates.

In addition to providing this information directly to each student, each campus should develop an informational program of campus posters, awareness displays, and other non-traditional promotional materials to increase awareness of students, employees, and guests to the campus about means of preventing sexual assault. These informational materials are most effective in areas of high student traffic and residential facilities. Current activities of George Mason University, Lord Fairfax Community College, and Washington and Lee University were identified as effective and economical approaches to informing students by non-traditional means.

Recommendation about information

By fall 1993 each campus should provide information to each student and employee annually on campus policies, procedures, and services available on and off the campus. Informational posters and other materials should be used immediately to maintain awareness of the potential risk of sexual assault.

Reporting Requirements

New federal regulations will expand college and university requirements for reporting crimes to students and prospective students. Virginia's colleges and universities are working with the Department of Criminal Justice Services and the State Council of Higher Education to develop guidelines and computer software to provide some of the required information. All institutions with certified police departments already provide information on crimes reported within their jurisdiction. This information is published annually by the Uniform Crime Reporting Section of the Department of State Police.

But both the campus police departments and those of the cities and counties can report only the crimes that are reported to them. Studies, including this one, indicate that sexual assault and rape are not reported by many victims. And current statewide crime statistics are limited to events that are reported specifically to

the criminal justice system. Campuses need to collect information on all sexual assaults on campus and the disposition of each incident.

Recommendation about reporting

Each campus should implement appropriate data collection procedures and systems for incidents of sexual assault and rape on campus, in conjunction with the annual crime and student right-to-know reporting requirements. Provisions should be made to protect confidentiality of accused and accusers.

Judicial Procedures

The primary mission of colleges and universities is to educate students. It is not obvious to everyone that they should adjudicate complaints of sexual assault or rape, which are, after all, crimes that are the responsibility of the criminal-justice system.

There are, however, a number of reasons that it is in the interest of college communities to adjudicate such issues. First, they are communities. As such they -- unlike shopping centers, for instance -- are coherent and self regulating. And they are organized around the need to educate students. In order to do so, they must create an environment in which education is possible -- that is, where students feel secure. Then too, how that environment is organized and run is in itself an educational tool. And finally, as communities that are sometimes larger than the towns in which they are situated, they will periodically have to deal with the failures, as well as the successes, of education.

And the criminal-justice system frequently does not deal effectively with the problem of sexual assault and rape among acquaintances. That system has the capacity to deprive offenders of their liberty. Thus its procedures are designed to offer the fullest possible protection to the accused, including the most stringent standard of evidence: juries must unanimously conclude that the case has been proved beyond a reasonable doubt. Crimes such as acquaintance rape -- most often lacking substantiating evidence or witnesses -- are difficult or impossible to prove to this degree of certitude, and consequently they are often not prosecuted. When they are, only a small percentage of the cases result in guilty verdicts. On the other hand, the evidentiary standard in campus judicial proceedings is clear and convincing evidence or a preponderance of the evidence, as it is in civil matters generally. Thus, just as the case would be if a sexual-assault victim sued an accused attacker civilly for damages, the burden of proof would be lower in a campus proceeding and a finding of responsibility or liability on the evidence presented more likely.

There are other examples in law of two processes designed to deal with the same behavior but with different standards of evidence. For instance, a person responsible for causing injury in an automobile accident may be prosecuted in a criminal court where, because a guilty verdict may result in a loss of liberty, the standard of evidence is "beyond a reasonable doubt." That same accident may then be the subject of civil litigation, where only a preponderance of evidence is necessary to hold the person legally responsible for paying monetary damages. In a civil suit the worst a defendant can lose is money; in a campus procedure, the worst is the loss of the privilege of attending the institution.

A campus disciplinary proceeding is not a trial to determine whether a felony has been committed; it is a hearing to determine whether a campus policy has been violated. The concept of double jeopardy is therefore not applicable. And since colleges may not dismiss students without some kind of hearing, a campus process is necessary in any case. Moreover, campus hearings may take place previous to court action and indeed probably must if the college is to act decisively enough to make the members of the community feel safe. A campus procedure that waited upon the results of legal proceedings would offer no protection to the victim or other members of the community during the long period of time that court cases typically take. And by the time the college imposed sanctions, they might well be rendered moot by the graduation of the perpetrator.

But the overlap between campus and criminal proceedings raises legal complexities. Where criminal charges are pending, therefore, the institution should encourage the accused to seek the advice of a lawyer. If the accused student's testimony is voluntary (that is, a student is not forced to decide between expulsion or testifying), then it is admissible in any later criminal proceedings; if it is not voluntary, it is not admissible. The former may cause problems for the accused; the latter scenario could adversely affect the prosecution. So campuses will have to make a policy decision about whether they will infer guilt from an accused student's refusal to testify because of pending criminal action.

All victims of sexual assault and rape who report the event should be advised by campus officials of their option to pursue the matter in the courts. They should also, however, have the option to pursue the matter only through the campus judiciary. Some victims might prefer the campus option because of the historically low rate of conviction in acquaintance rape cases in the courts; the likelihood that in the adversarial atmosphere of the courts they might well come under a second, judicial attack by the defense; the time the proceedings will take; and the severity of the sanctions in the legal system. Many victims of acquaintance rape do not want to see their attackers jailed; they simply want the person to know that such behavior is not tolerated in the community, and they want to feel safe.

A campus judiciary procedure will be perceived as a reasonable option if and only if such a procedure can be designed to be fair, not excessively litigious, and speedy, and that it will result in appropriate penalties. The task force offers the following suggestions to colleges and universities in creating such judicial procedures:

o Since the purpose of the campus judiciary is not to prosecute a felony but to determine whether a campus policy has been violated, the nature of the policy violation should be spelled out in behavioral terms in an explicit sexual assault policy. The behaviors described may mirror those in criminal statute or go beyond it, as long as they reflect a genuine public consensus about what is not tolerable in the campus community. The framers of the policy should therefore solicit advice from a wide variety of campus groups, most importantly students, in determining the kinds of behavior covered (e.g., watching or aiding an assault as well as committing one), defining what is meant by each term (e.g., "consent"), and specifying who is covered (e.g., visitors to campus who are assaulted by students, as well as other students). The location of the event might pose some difficulty, but the task force suggests that the framers of the policy look to other campus policies for guidance on this: if it is an honor violation for a student to cheat while off campus, the same principle should apply to sexual assault.

o The sexual assault policy should be designed to encourage reporting and at the same time ensure that the hearing is fair and impartial. It should therefore describe the judicial procedures that are in place to handle sexual assault cases, along with the protections afforded both the accuser and the accused. Those procedures should not mimic trial procedures. They should be fair and timely. They should use a hearing panel that has been trained in the emotional and legal complexities of sexual assault; if the present student judiciary is not designed well for this purpose, a special panel should be established. The procedures should respect the rights of both the accuser and the accused to know the names of witnesses ahead of time, to be present throughout the hearings, to be heard, to offer and to see and hear all evidence, and to appeal the decision. The task force recommends that the institution permit students to be represented by helpers other than lawyers; the latter may accompany and advise students at any hearings but should not represent them. Campuses will have to make a policy decision as to whether the hearings should be open or closed and whether to allow both the accuser and the accused to cross-examine witnesses, neither of which are legally mandated. Accused students should have their Constitutional (i.e., Miranda and fourth amendment) rights respected during any "custodial interrogation" or collection of evidence by campus police, be presented with a written statement of the charges, be given full opportunity to refute them and to bring witnesses on their behalf, and receive written notice of the findings and any penalties. The task force

recommends that as a matter of policy, the accuser should be protected from irrelevant testimony about previous sexual history, have the right to make a victim-impact statement before any penalties are decided upon, be told what penalties were imposed, and be held harmless on other violations committed during the event (i.e., underage drinking).

o The policy should spell out the possible consequences of the behavior, including penalties that must be imposed if the student is found to be in violation of the policy. Those penalties should not leave the community with the impression that sexual violence is taken less seriously than violations like plagiarism.

At the spring conference on sexual assault, the task force will have further guidance to offer campuses in this area, including descriptions of existing judiciary processes and discussion of the legal issues involved.

Recommendation about judicial systems

By September 1992, each campus should have examined its judicial system to be sure that it addresses sexual assault and rape in the ways suggested above. If the existing campus judicial system cannot accommodate these recommendations, a special panel should be created to deal specifically with cases of alleged sexual assault and rape.

Educational Programs.

Current educational programs about sexual assault vary greatly among the colleges and universities. Most institutions include mandatory sessions on sexual assault and rape in their orientation programs. However, only new freshmen and transfer students are required to attend orientation on most campuses. Most residential campuses require that residential staff and student advisors participate in training programs and special sessions dealing with sexual assault.

Each campus should examine its educational programs and select those that effectively serve various groups of students. Programs should be addressed to both female and male students and employees. Certain groups, such as fraternal organizations and athletic teams, should receive special attention. National fraternal organizations and the NCAA have programs that can be used directly or adapted for local use. Participation of coaches, athletes, and panhellenic representatives in planning such programs would be valuable.

Educational programs for residents of campus facilities should be considered part of the institution's residential life operation and budgeted accordingly. Educational programs for the general student body, such as orientation or components of courses, should

be part of the instructional budget.

Annually a representative group on each campus should examine the effectiveness of educational programs. The composition of this group will vary by institution, but the following would normally be included: student-life staff, residential advisors, campus health staff, fraternity and sorority representatives, athletes, undergraduate and graduate student representatives, faculty, women's center or group representatives, and representatives of community-based organizations or groups. Sufficient data about participation and expenditures should be maintained to facilitate this review of activities and resources.

Personal integrity and the uses and misuses of power are, of course, recurring themes in Western culture. The ways in which these themes are played out in sexual violence could inform curricula in history, literature, science, and the social sciences.

Recommendation about educational programs

By fall 1993, each campus should develop a plan for campus educational programs related to sexual assault that reflects the institutional mission and includes specific goals and measurable objectives for each major component of the program. The plan should include an evaluation component.

Treatment and Support

While emphasis should be placed on strategies and actions that prevent sexual assault and rape through information and education, institutions must be prepared to deal with victims. Medical and psychological treatment services -- including counseling, medical treatment, and victim advocacy -- should be immediately accessible. Support groups should be made available to individuals close to the victim. Depending upon the resources in the local community, each campus should either organize to provide the services on the campus or to facilitate immediate victim access to community services. Institutions that permit offenders to return to campus are encouraged to require them to have treatment before readmission.

Student victims should also be told that the Division of Crime Victims' Compensation reimburses eligible victims for medical and counseling expenses. The Code of Virginia also allows for the payment of medical fees associated with the collection of evidence. The institution should make victims aware of the procedures involved in the collection of physical evidence (by means of the Physical Evidence Recovery Kit, or PERK) and inform victims that the collected physical evidence could have great corroborative value in a criminal prosecution. Most hospital staffs have received training in the collection of this evidence and should be able to further explain the procedure.

Ideally, adequate training would be provided for all institutional personnel whom victims are apt to contact -- faculty, for instance. It is essential that training at least be provided for all those identified as contact persons in the campus procedures and, on residential campuses, student and full-time personnel employed as residential advisors or supervisors. Few campuses have adequate training programs for faculty, staff, and student employees. Where services are provided jointly with community-based organizations, joint training programs might be considered.

On most campuses the campus or local police have responsibility for investigating sexual assaults or rapes. In 1990, there were few female officers in the campus police units and only slightly more in the local departments. Colleges and local communities should examine the composition of their police departments with an eye to increasing the number of female officers. The investigative unit might also be complemented with campus or community counseling staff.

Recommendations about treatment and support

All colleges should have plans for providing treatment and support services to victims of sexual assault or rape who are students, employees of the institution, or guests on campus. Institutions should decide if these services should be provided by institutional staff, volunteers, community-based organizations or groups, or through a combination of providers.

All colleges should plan for adequate training for all staff, students, and volunteers who are identified in the campus procedures as providing treatment or support services.

Treatment services should be provided at no charge to the victim. Medical services should be provided as part of the investigation to encourage victims to pursue legal recourse. Counseling and support services should be provided to victims who reside in university housing as part of the residential life package. Commuting students should have the option of relying on institutional or community services. Victims electing to use private services may have to bear the financial cost of those services, although they should be alerted to state resources for medical and counseling expenses, as well as those associated with the collection of physical evidence.

STATE-WIDE PROGRAM COMPONENTS

There are some program components that should be implemented through one or more central agencies for all institutions because of implicit efficiencies or economies and to provide a coherent core of policy and activities, with the caveat that given recent

budget reductions, these services can be provided if and only if outside resources can be found to support them. Many of these program components are modeled after the successful substance-abuse programs implemented in recent years. They include

- adequate training programs, which are critical to effective campus programs. They are needed for campus police, counseling center staff, residential staff (including student advisors), student service personnel, health center staff, and crisis or support center staff and volunteers. This responsibility might be shared among several central agencies and coordinated with the programs for substance abuse.

- regional consortia, which should be funded and coordinated by a central agency. The substance-abuse consortia are effective models for sexual-assault consortia.

- periodic conferences and newsletters, a good means of sharing information and focusing attention on specific issues or effective solutions. Campus staff may not have sufficient resources to maintain awareness of research findings and new approaches to educational programs on sexual assault. How to modify the campus judicial system to deal effectively with sexual assault cases is a current topic of general interest.

- information on institutional programs and activities. This agency should be funded to acquire rights to publications for all institutions and to negotiate bulk purchases of other program materials.

- coordination with other agencies, particularly the Department of Education. If the problem of sexual abuse exists at all levels of the educational system, as students say it does, greater coordination among the segments of education are necessary to ensure coherent programs that begin in the early grades. The Lieutenant Governor's Task Force of Sexual Assault will be making recommendations on educational programs aimed at children, including an evaluation of the Family-Life Education curriculum, which should be part of the discussion.

PART IV: NEXT STEPS

This report is described as preliminary, because the work of the task force is not done. It should continue to analyze and refine the survey results. It needs to communicate with Virginia's colleges and universities about what it has learned respecting what the campuses are doing and about good practice. And it should report to the Governor and General Assembly about the development of sexual-assault prevention and treatment programs on Virginia's campuses.

Consequently, the task force will spend the rest of the study year in the following activities:

o It will hold focus groups on college and university campuses to collect information from and take the recommendations of campus groups and individuals about campus programs. It will pursue questions raised or left unanswered by the student survey, and it will elicit suggestions from students and campus personnel on how to increase reporting of sexual assaults to campus or off-campus officials.

o And it will hold a state-wide conference on campus sexual assault and rape in spring 1992, at which the survey results will be shared, the characteristics of exemplary programs described, speakers and panels give presentations on the major issues, and participants -- primarily student-services personnel, students, community-service providers, interested faculty, and law-enforcement personnel -- meet in small sessions to discuss how to develop programs appropriate for the needs of their campuses. Some of the issues that will need to be addressed are campus judicial systems, campus and community cooperation, campus security through architectural and environmental design, training for campus personnel, and campus services for part-time and commuter students. Those who attend the conference may also have suggestions about the future agenda for state-level activities to address sexual assault and rape on campus.

The study grant will terminate at the end of June, 1992. If further funded to do so, the Council of Higher Education will ask each campus to submit a description of the rape reporting, education, and prevention program in place or under development at that institution, thereby ensuring the on-going impact of the task force's work. There should be evidence that in developing or revising its program, each institution has attended to the characteristics of good programs as described in the report to the General Assembly. Each campus should also develop links with community organizations that address the problem of rape, to share resources and information in reducing risk in the entire community.

The task force might well be reconstituted as an on-going

committee that could provide information, policy guidance, and consultation to campuses. And the Council staff would also work with agencies such as the Department of Education to ensure that the problem of sexual violence is addressed throughout the curriculum by expanded educational programs at all levels, beginning in the grades where the problems of sexual violence itself starts.

Those reports and the results of the committee's further work will then be summarized in a report to the Governor and General Assembly in December, 1992.

Citations

Jacobson, Robert L. "Academic Leaders Predict Major Changes for Higher Education in Recession's Wake." The Chronicle of Higher Education XXXVIII, 13 (November 20, 1991).

Koss, M.P., Gidycz, C.A., and Wisniewski, N. "The Scope of Rape: Incidence and Prevalence of Sexual Aggression and Victimization in a National Sample of Higher Education Students." Journal of Consulting and Clinical Psychology 55 (1987): 162-170.

Smith, Michael Clay. Coping With Crime on Campus. New York: ACE/Macmillan, 1988.

United States. Senate. Committee on the Judiciary. Women and Violence. 101 Cong., 2nd sess. Part 2. Serial No. J-101-80. Washington: GPO, 1990.

Footnotes

[1] A total of 2,207 students returned completed questionnaires, for an overall response rate of 47 percent. Included among these respondents were 753 men (response rate of 40 percent) and 1,455 women (response rate of 51 percent). Reflecting the distribution of students across the state, respondents were most likely to be enrolled in doctoral universities (44 percent) or two-year colleges (36 percent) and in schools with 10,000 or more students (64 percent). About two-thirds of the sample were attending four-year institutions. Thirty-nine percent attended schools where a large majority of students (80 - 100 percent) were fulltime; 30 percent attended schools where fewer than a third of students (19 - 29 percent) were part time. Three-fourths (77 percent) were attending colleges and universities located in non-urban areas. Ninety-eight percent were attending coeducational colleges.

Two-thirds of student respondents were single, 25 percent married, and 5 percent separated or divorced. The remainder were engaged (4 percent), or living together (2 percent). Most (83 percent) were white, non-Hispanic. Nine percent were African-American, 5 percent were Asian-American, and 2 percent were Hispanic. Nine Native American students responded.

[2] The sample data on the proportion of the respondents who had ever experienced various types of sexual assault, weighted to reflect the distribution of the study population by class and type of institution, was used to estimate the number of women in the study population of selected Virginia colleges and universities who would report such experiences had they all been surveyed. Correcting for the possibility of sampling error, there is a 95 percent chance that the actual number of women in the study population who would report each type of experience falls within the ranges presented in Table 3. (As in any survey, nonsampling errors may make the sample unrepresentative of the study population.)

Counts were also made (and again, weighted) of the number of respondents who had each type of experience during 1990-1991 and the cumulative number of experiences reported. Estimates of the incidence of each type of experience within the time period were produced by first calculating an average frequency per woman of each type of experience. The sampling error range estimates for the number of women reporting each experience were then multiplied by the appropriate per capita frequency per woman to produce estimates of the incidence of each experience. There is a 95 percent chance that the actual number of reported incidents in the study population would fall within the ranges presented in Table 3.

Students who attended Virginia colleges and universities in the study population sometime during the August 1, 1990 - July 31,

1991, period, but who are no longer in attendance, could not be surveyed yet would have reported some incidents during that period. Incidence estimates on the basis of survey responses thus underestimate the number of assaults that would have been reported by students in attendance during this period.

[3] Comparisons between Koss's figures and the Virginia ones are complicated by several factors. First, she is estimating numbers of women students who have experienced attempted or completed rapes, not the number of incidents they experienced, as the Virginia survey does. The latter figure is higher. Second, she adjusts for forward telescoping -- the tendency for respondents to incorrectly place an experience at a certain point in time. Her raw figure was 7.6 percent of college women reporting attempted or completed rape during a 12-month period. The Ohio working-women figure is not adjusted for forward telescoping and does not include attempted rapes. But given all these differences, it is still safe to say that the Virginia figures are roughly comparable to those of other studies.

LD9203139

SENATE JOINT RESOLUTION NO. 194
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Rules
on February 1, 1991)
(Patron Prior to Substitute—Senator Y. B. Miller)

Requesting the State Council of Higher Education to study campus rape.

WHEREAS, the Crime Awareness and Campus Security Act of 1990 was enacted by Congress last fall requiring all colleges and universities to publish and distribute annual crime reports; and

WHEREAS, according to one recent report, eighty percent of all campus crime is committed by students; and

WHEREAS, national statistics show that one in four college women will be raped or sexually assaulted during her college years; and

WHEREAS, it is estimated that half of those rapes are perpetrated by acquaintances or dates, not by strangers; and

WHEREAS, even though federal law will now require annual crime reports, rape and sexual assault are historically the least reported crimes in all segments of our society; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the State Council of Higher Education be requested to study campus rape. The State Council should examine (i) ways in which to encourage the reporting of rape and sexual assault by student victims, (ii) methods of providing education on rape awareness to both female and male students, (iii) measures to better provide security against rape on campuses, and (iv) other issues which the joint subcommittee considers are related to the issue of rape on Virginia's campuses.

The State Council shall complete its work in time to submit its findings and recommendations to the Governor and the 1992 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Official Use By Clerks	
Agreed to By The Senate	**Agreed to By The House of Delegates**
without amendment ☐	without amendment ☐
with amendment ☐	with amendment ☐
substitute ☐	substitute ☐
substitute w/amdt ☐	substitute w/amdt ☐
Date: _____	Date: _____
Clerk of the Senate	Clerk of the House of Delegates

APPENDIX II

SCHEV SEXUAL BEHAVIOR ON CAMPUS SURVEY

METHODS

Sampling

SCHEV coordinated the communications with state-supported and private colleges and universities regarding the survey sample. As wide a participation base as possible was sought. All state-supported schools participated; participation was optional for private schools.

SCHEV provided their most current statistics on enrollment at all state schools, by pertinent categories of students. Gender was an important category in determining the sampling plan, since males and females received different questionnaires. Class standing was another category used in the sampling and weighting processes, because it was thought that experiences with sexual situations of the sort described in the questionnaire could differ in type or frequency for different classes.

The SCHEV enrollment statistics were entered into a sampling spreadsheet. The general scope of the project allowed for a sample size of 5,000. Schools participating were separated from schools that declined to participate. Six sampling categories were defined by a two-by-three matrix: two genders (male and female) by three class standing categories (freshmen, graduate students, and undergraduate upperclass). Disproportionate samples were drawn by gender and class to allow sufficient numbers of cases for detailed analyses of each of the six sampling categories. The late addition of Virginia Union University to the spreadsheat brought the requested sample to 5,023.

Several problems developed with the sampling frame that was received which lowered the sample size somewhat. Samples were not obtained for Shenandoah University (n=23), Southern Seminary College (n=5), and Virginia Union University (n=22). Mary Baldwin College was asked for one male student but could not comply due to registration problems. There were an additional 13 cases deleted from the sample due to improperly coded gender (11 females coded as males and 2 males coded as females). This brought the actual sample size down to 4,959.

One other problem with the sample did not affect the total sample size. George Mason University was requested to supply 195 undergraduate upperclass students and 204 graduate students. Instead, they supplied 204 undergraduate upperclass students and

195 graduate students.

Data Collection and Data Entry Procedures

The four questionnaire forms were mailed between October 7 and October 10 to 2,995 women and 1,419 men as follows:

- 795 freshman women
- 2,200 upperclass/graduate women

- 545 freshman men
- 1,419 upperclass/graduate men

The mailing packets included a cover letter, copy of the questionnaire, business reply return envelope for return of the questionnaire, and business reply postcard stamped with an identification number. This process was designed to ensure the respondents' anonymity. Sample members were directed to return the questionnaire and postcard separately. The initial mailing was followed on October 16 with a reminder postcard. A second mailing to students who had not returned their identification number postcards contained a second cover letter, another copy of the questionnaire, and a business reply envelope for return of the questionnaire. The second mailing was conducted from October 28-30. Returned questionnaires were entered into a data set using the CASES software system.

The data set for this analysis was closed on November 22. As of that date, returns had been received from 1,455 women (387 freshmen and 1,068 upperclass/graduate) and 752 men (159 freshmen and 593 upperclass/graduate). Discounting postcards returned as bad addresses from those considered eligible to respond, response rates were as follows:

- Women (50.95%)
  - Freshmen (50.13%)
  - Upperclass/Graduate (50.95%)

- Men (40.11%)
  - Freshmen (29.67%)
  - Upperclass/Graduate (44.29%)

Weighting

Because some groups in the population were sampled at different rates than others (e.g., more women than men were sampled), and because response rates differed among groups, the final data set of respondents did not represent the proper proportions of subgroups within the student population. To correct

for this, the data have been weighted according to the known parameters of the population. The weighting process simply gives more weight to respondents who were underrepresesented in the sample and less weight to those who were overrepresented.

The data were weighted on three characteristics: gender, class, and type of institution. As noted above, disproportionate sampling occurred based on gender and class. In addition, response rates varied considerably by type of institution. To accomplish the weighting, a 22-cell matrix was used to classify respondents. The original 6-cell sampling scheme (gender by class) was used, in addition to institutional type. Four institutional types were used (doctoral, comprehensive, private, and two-year). Two possible cells in this matrix -- graduate men and graduate women at two-year schools -- were considered to be logically impossible and so were excluded from the weighting scheme.

The weights compare the proportion of respondents in each of the 22 weighting categories to the corresponding category's proportion for the sampling frame as a whole. The weights are the quotient of the sampling frame proportion divided by the survey proportion.

In the spreadsheet utilized for the final weights, enrollment numbers for Southern Seminary College, Shenandoah University, and Virginia Union University were deleted because no samples were received from these three institutions, and the total numbers of students at participating universities were part of the weighting calculations.

These weights create a pooled dataset, results from which are generalizeable to the student population at participating universities. The weights correct for the differential sampling rates across the six sampling categories, and for the different rates of response across institutional types. Weights for each of the categories are as follows:

Women	Weight
Freshmen	
Private	0.763247
Doctoral	0.641243
Comprehensive	0.871530
2-year	1.033884
Upperclass	
Private	0.924930
Doctoral	0.875109
Comprehensive	0.992055
2-year	1.691978
Graduate	
Private	0.329048
Doctoral	0.331490
Comprehensive	0.288925

Men		
	Freshmen	
	Private	1.608678
	Doctoral	1.193379
	Comprehensive	1.568521
	2-year	2.087290
	Upperclass	
	Private	2.138991
	Doctoral	1.275087
	Comprehensive	1.363047
	2-year	1.691978
	Graduate	
	Private	0.481884
	Doctoral	0.496308
	Comprehensive	0.781564

APPENDIX III

Survey Sample Tables

Sample

	TOTALS			freshmen			other un dergrads etc			graduate and 1st prof'l		
	men	women	total	men	women	total	men	women	total	men	women	total
TOTAL: Private	82	180	262	22	53	75	44	99	143	16	28	44
TOTAL: Doctoral	967	1227	2194	135	157	292	419	560	979	413	510	923
TOTAL: Comprehensive	277	499	776	79	119	198	177	319	496	21	61	82
TOTAL: Community Colleges	666	1085	1751	308	466	774	358	619	977	0	0	0
TOTAL: Two-year colleges	7	11	18	5	7	12	2	4	6	0	0	0
GRAND TOTALS	1999	3002	5001	549	802	1351	1000	1601	2601	450	599	1049
PRIVATE INSTITUTIONS												
Commonwealth Coll-Hampton	2	6	8	1	2	3	1	4	5	0	0	0
Commonwealth Coll-Norfolk	1	8	9	1	6	7	0	2	2	0	0	0
Commonwealth Coll-Richmond	3	10	13	2	8	10	1	2	3	0	0	0
Hollins College	1	21	22	0	4	4	0	10	10	1	7	8
Lynchburg College	16	32	48	3	5	8	9	17	26	4	10	14
Mary Baldwin College	1	17	18	0	5	5	1	12	13	0	0	0
Randolph-Macon College	7	11	18	2	3	5	5	8	13	0	0	0
Roanoke College	10	17	27	4	5	9	6	12	18	0	0	0
Saint Paul's College	3	6	9	1	2	3	2	4	6	0	0	0
Shenandoah University	8	15	23	2	3	5	3	8	11	3	4	7
Southern Seminary College	0	5	5	0	3	3	0	2	2	0	0	0
Virginia Wesleyan College	8	15	23	3	4	7	5	11	16	0	0	0
Washington and Lee Univ.	22	17	39	3	3	6	11	7	18	8	7	15
PRIVATE TOTAL	82	180	262	22	53	75	44	99	143	16	28	44
DOCTORAL INSTITUTIONS												
George Mason University	177	264	441	18	24	42	75	120	195	84	120	204
Old Dominion University	120	167	287	18	23	41	70	90	160	32	54	86
University of Virginia	199	223	422	26	31	57	58	71	129	115	121	236
Virginia Commonwealth U.	158	270	428	17	25	42	79	144	223	62	101	163
VPI&SU	249	207	456	48	41	89	110	94	204	91	72	163
William and Mary	64	96	160	8	13	21	27	41	68	29	42	71
DOCTORAL TOTAL	967	1227	2194	135	157	292	419	560	979	413	510	923
COMPREHENSIVE INSTITUTIONS												
Christopher Newport Coll	26	51	77	5	9	14	21	42	63	0	0	0
Clinch Valley College	8	11	19	3	3	6	5	8	13	0	0	0
James Madison University	75	117	192	17	23	40	48	76	124	10	18	28
Longwood College	14	40	54	4	9	13	10	27	37	0	4	4
Mary Washington College	18	44	62	5	10	15	13	32	45	0	2	2
Norfolk State University	43	89	132	18	28	46	22	48	70	3	13	16
Radford University	51	104	155	12	22	34	33	65	98	6	17	23
VMI	19	0	19	6	0	6	13	0	13	0	0	0
Virginia State University	23	43	66	9	15	24	12	21	33	2	7	9
COMPREHENSIVE TOTAL	277	499	776	79	119	198	177	319	496	21	61	82

APPENDIX III
Survey Sample Tables

Sample (continued)

	TOTALS			freshmen			Other undergrads			graduate and 1st prof'l		
	men	women	total	men	women	total	men	women	total	men	women	total
COMMUNITY COLLEGES												
Blue Ridge Comm Coll	12	24	36	5	9	14	7	15	22	0	0	0
Central Virginia Comm Coll	23	34	57	8	11	19	15	23	38	0	0	0
Dabney S. Lancaster CC	6	12	18	2	4	6	4	8	12	0	0	0
Danville CC	15	26	41	5	7	12	10	19	29	0	0	0
Eastern Shore CC	3	7	10	1	2	3	2	5	7	0	0	0
Germanna CC	8	18	26	4	8	12	4	10	14	0	0	0
J. Sargeant Reynolds CC	53	98	151	8	16	24	45	82	127	0	0	0
John Tyler CC	22	39	61	6	9	15	16	30	46	0	0	0
Lord Fairfax CC	12	24	36	5	10	15	7	14	21	0	0	0
Mountain Empire CC	16	20	36	7	14	21	9	6	15	0	0	0
New River CC	19	29	48	10	15	25	9	14	23	0	0	0
Northern Virginia CC	219	312	531	111	149	260	108	163	271	0	0	0
Patrick Henry CC	10	20	30	6	10	16	4	10	14	0	0	0
Paul D. Camp CC	5	15	20	3	9	12	2	6	8	0	0	0
Piedmont Virginia CC	19	35	54	9	14	23	10	21	31	0	0	0
Rappahannock CC	5	13	18	3	8	11	2	5	7	0	0	0
Southside Virginia CC	9	19	28	3	10	13	6	9	15	0	0	0
Southwest Virginia CC	19	26	45	11	15	26	8	11	19	0	0	0
thomas Nelson CC	41	65	106	24	38	62	17	27	44	0	0	0
Tidewater CC	92	147	239	47	63	110	45	84	129	0	0	0
Virginia Highlands CC	12	22	34	6	11	17	6	11	17	0	0	0
Virginia Western CC	38	63	101	22	28	50	16	35	51	0	0	0
Wytheville CC	8	17	25	2	6	8	6	11	17	0	0	0
TOTAL COMMUNITY COLLEGES	666	1085	1751	308	466	774	358	619	977	0	0	0
TWO-YEAR COLLEGE												
Richard Bland College	7	11	18	5	7	12	2	4	6	0	0	0
TOTAL TWO-YEAR COLLEGE	7	11	18	5	7	12	2	4	6	0	0	0

Totals

	Totals	Prop	N if prop	Forced N	Sampling proportion
Men total	122723		0.01630		
Freshmen	36083	0.294	588	550	0.0152
Other UG	72798	0.593	1186	1000	0.0137
Grad	13842	0.113	226	450	0.0325
Women total	152874		0.01962		
Freshmen	46443	0.304	911	800	0.0172
Other UG	92537	0.605	1816	1600	0.0173
Grad	13894	0.091	273	600	0.0432

APPENDIX III
Survey Sample Tables

Entire population

	TOTALS			freshmen			Other undergrads			graduate and 1st prof'l		
	men	women	total	men	women	total	men	women	total	men	women	total
TOTAL: Private	5154	9325	14479	1448	2986	4434	3213	5696	8909	493	643	1136
TOTAL: Doctoral	51984	53304	105288	8794	9094	17888	30493	32365	62858	12697	11845	24542
TOTAL: Comprehensive	18773	26796	45569	5234	6907	12141	12887	18483	31370	652	1406	2058
TOTAL: Community Colleges	46357	62805	109162	20292	27058	47350	26065	35747	61812	0	0	0
TOTAL: Two-year colleges	455	644	1099	315	398	713	140	246	386	0	0	0
GRAND TOTALS	122723	152874	275597	36083	46443	82526	72798	92537	165335	13842	13894	27736
PRIVATE INSTITUTIONS												
Commonwealth Coll-Hampton	123	337	460	41	117	158	82	220	302	0	0	0
Commonwealth Coll-Norfolk	121	455	576	98	337	435	23	118	141	0	0	0
Commonwealth Coll-Richmond	140	582	722	103	463	566	37	119	156	0	0	0
Hollins College	46	982	1028	0	230	230	3	580	583	43	172	215
Lynchburg College	950	1489	2439	169	274	443	655	991	1646	126	224	350
Mary Baldwin College	65	993	1058	15	275	290	50	718	768	0	0	0
Randolph-Macon College	523	616	1139	151	172	323	372	444	816	0	0	0
Roanoke College	707	961	1668	253	267	520	454	694	1148	0	0	0
Saint Paul's College	233	341	574	96	126	222	137	215	352	0	0	0
Shenandoah University	436	722	1158	106	178	284	239	450	689	91	94	185
Southern Seminary College	0	257	257	0	155	155	0	102	102	0	0	0
Virginia Wesleyan College	529	861	1390	189	233	422	340	628	968	0	0	0
Washington and Lee Univ.	1281	729	2010	227	159	386	821	417	1238	233	153	386
PRIVATE TOTAL	5154	9325	14479	1448	2986	4434	3213	5696	8909	493	643	1136
DOCTORAL INSTITUTIONS												
George Mason University	9174	11134	20308	1152	1388	2540	5427	6962	12389	2595	2784	5379
Old Dominion University	7236	7788	15024	1166	1316	2482	5088	5219	10307	982	1253	2235
University of Virginia	9467	8670	18137	1684	1776	3460	4236	4083	8319	3547	2811	6358
Virginia Commonwealth U.	8808	12135	20943	1125	1480	2605	5786	8305	14091	1897	2350	4247
VPI&SU	13897	9468	23365	3126	2377	5503	7983	5415	13398	2788	1676	4464
William and Mary	3402	4109	7511	541	757	1298	1973	2381	4354	888	971	1859
DOCTORAL TOTAL	51984	53304	105288	8794	9094	17888	30493	32365	62858	12697	11845	24542
COMPREHENSIVE INSTITUTIONS												
Christopher Newport Coll	1919	2923	4842	359	522	881	1560	2401	3961	0	0	0
Clinch Valley College	559	689	1248	203	201	404	356	488	844	0	0	0
James Madison University	4888	6123	11011	1125	1314	2439	3469	4390	7859	294	419	713
Longwood College	988	2185	3173	239	535	774	737	1560	2297	12	90	102
Mary Washington College	1234	2510	3744	299	591	890	921	1878	2799	14	41	55
Norfolk State University	2871	4692	7563	1191	1601	2792	1597	2794	4391	83	297	380
Radford University	3413	5450	8863	813	1269	2082	2422	3778	6200	178	403	581
VMI	1350	0	1350	407	0	407	943	0	943	0	0	0
Virginia State University	1551	2224	3775	598	874	1472	882	1194	2076	71	156	227
COMPREHENSIVE TOTAL	18773	26796	45569	5234	6907	12141	12887	18483	31370	652	1406	2058

APPENDIX III
Survey Sample Tables

Entire population (continued)

	TOTALS			freshmen			Other undergrads			graduate and 1st prof'l		
	men	women	total	men	women	total	men	women	total	men	women	total
COMMUNITY COLLEGES												
Blue Ridge Comm Coll	826	1354	2180	334	506	840	492	848	1340	0	0	0
Central Virginia Comm Coll	1594	1950	3544	495	629	1124	1099	1321	2420	0	0	0
Dabney S. Lancaster CC	406	709	1115	125	257	382	281	452	733	0	0	0
Danville CC	1098	1547	2645	348	430	778	750	1117	1867	0	0	0
Eastern Shore CC	174	371	545	62	106	168	112	265	377	0	0	0
Germanna CC	550	1036	1586	286	439	725	264	597	861	0	0	0
J. Sargeant Reynolds CC	3768	5667	9435	509	903	1412	3259	4764	8023	0	0	0
John Tyler CC	1511	2245	3756	381	528	909	1130	1717	2847	0	0	0
Lord Fairfax CC	850	1425	2275	349	598	947	501	827	1328	0	0	0
Mountain Empire CC	1130	1171	2301	459	820	1279	671	351	1022	0	0	0
New River CC	1352	1657	3009	673	876	1549	679	781	1460	0	0	0
Northern Virginia CC	15126	18111	33237	7297	8670	15967	7829	9441	17270	0	0	0
Patrick Henry CC	745	1170	1915	426	608	1034	319	562	881	0	0	0
Paul D. Camp CC	396	851	1247	216	497	713	180	354	534	0	0	0
Piedmont Virginia CC	1321	2016	3337	565	824	1389	756	1192	1948	0	0	0
Rappahannock CC	347	758	1105	184	449	633	163	309	472	0	0	0
Southside Virginia CC	680	1069	1749	229	566	795	451	503	954	0	0	0
Southwest Virginia CC	1329	1509	2838	746	875	1621	583	634	1217	0	0	0
thomas Nelson CC	2852	3759	6611	1580	2206	3786	1272	1553	2825	0	0	0
Tidewater CC	6364	8550	14914	3082	3666	6748	3282	4884	8166	0	0	0
Virginia Highlands CC	818	1232	2050	400	624	1024	418	608	1026	0	0	0
Virginia Western CC	2582	3652	6234	1421	1639	3060	1161	2013	3174	0	0	0
Wytheville CC	538	996	1534	125	342	467	413	654	1067	0	0	0
TOTAL COMMUNITY COLLEGES	46357	62805	109162	20292	27058	47350	26065	35747	61812	0	0	0
TWO-YEAR COLLEGE												
Richard Bland College	455	644	1099	315	398	713	140	246	386	0	0	0
TOTAL TWO-YEAR COLLEGE	455	644	1099	315	398	713	140	246	386	0	0	0

REPORT OF THE VIRGINIA STATE CRIME COMMISSION

Youthful Offender Act

TO THE GOVERNOR AND THE GENERAL ASSEMBLY OF VIRGINIA

HOUSE DOCUMENT NO. 43

COMMONWEALTH OF VIRGINIA
RICHMOND
1990

MEMBERS OF THE VIRGINIA STATE CRIME COMMISSION

From the Senate of Virginia:

Elmon T. Gray, Chairman
Howard P. Anderson
Elmo G. Cross, Jr.

From the House of Delegates:

Robert B. Ball, Sr., Vice Chairman
V. Thomas Forehand, Jr.
Raymond R. Guest, Jr.
A. L. Philpott
Warren G. Stambaugh
Clifton A. Woodrum

Appointments by the Governor:

Robert C. Bobb
Robert F. Horan, Jr.
George F. Ricketts, Sr.

Attorney General's Office:

H. Lane Kneedler

COMMONWEALTH of VIRGINIA

POST OFFICE BOX 3-AG
RICHMOND, VIRGINIA 23208

IN RESPONSE TO
THIS LETTER TELEPHONE
(804) 225-4534

ROBERT E. COLVIN
EXECUTIVE DIRECTOR

VIRGINIA STATE CRIME COMMISSION

General Assembly Building
910 Capitol Street

October 17, 1989

TO: The Honorable Gerald L. Baliles, Governor of Virginia
and Members of the General Assembly

Pursuant to formal request of the Virginia Parole Board, the Virginia State Crime Commission undertook a study to "determine the intent of statutory requirements and the correlative procedures for implementation" of the Youthful Offender Act.

In honoring this formal request, a study was conducted by the Virginia State Crime Commission. I have the honor of submitting herewith the study report and recommendations on Virginia's Youthful Offender Program.

Respectfully submitted,

Elmon T. Gray
Chairman

ETG/sm

Corrections Subcommittee studying

Youthful Offenders

Members

Reverend George F. Ricketts, Sr., Chairman
Senator Howard P. Anderson
Delegate Robert B. Ball, Sr.
Mr. Robert C. Bobb
Senator Elmo G. Cross, Jr.
Senator Elmon T. Gray
Delegate Raymond R. Guest, Jr.
Speaker A. L. Philpott

Staff

Robert E. Colvin, Executive Director
D. Robie Ingram, Staff Attorney
Michael P. Maddox, Research Assistant
Sylvia A. Coggins, Administrative Assistant

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I. AUTHORITY FOR STUDY

By letter dated March 31, 1989, the Virginia Parole Board made of the Crime Commission a formal request to "conduct a study and review" of the Youthful Offender Act, Code of Virginia, §19.2-311. By vote of the full Crime Commission on April 18, 1989 it was agreed to conduct this study.

§9-125 of the Code of Virginia establishes and directs the Virginia State Crime Commission (VSCC) "to study, report, and make recommendations on all areas of public safety and protection." §9-127 of the Code of Virginia provides that "the Commission shall have duty and power to make such studies and gather information in order to accomplish its purpose, as set forth in §9-125, and to formulate its recommendations to the Governor and the General Assembly." §9-134 of the Code of Virginia authorizes the Commission to "conduct private and public hearings, and to designate a member of the Commission to preside over such hearings." The Virginia State Crime Commission, in fulfilling its legislative mandate, undertook the study of the Youthful Offender Act requested by the Virginia Parole Board.

II. MEMBERS APPOINTED TO SERVE

During the April 18, 1989 meeting of the Crime Commission, its Chairman, Senator Elmon T. Gray of Sussex, selected Reverend George F. Ricketts, Sr., to serve as chairman of the Corrections subcommittee which conducted this study. Members of the Crime Commission who serve on the subcommittee are:

Reverend George F. Ricketts, Sr., of Richmond, Chairman

Senator Howard P. Anderson of Halifax

Delegate Robert B. Ball, Sr., of Henrico

Mr. Robert C. Bobb of Richmond

Senator Elmo G. Cross, Jr., of Hanover

Senator Elmon T. Gray of Sussex

Delegate Raymond R. Guest, Jr., of Front Royal

Speaker A. L. Philpott of Bassett

III. EXECUTIVE SUMMARY

During the course of the study the subcommittee met on four occasions, and heard testimony from corrections officials and members of the Virginia Parole Board.

The information received by the subcommittee suggested the need for amendments to the Youthful Offender Act to resolve ambiguities in the Code and to create an efficient process of moving youths into and out of the program.

The subcommittee found that a redundant testing period required by the present Code, subsequent to sentencing, unnecessarily consumes additional resources, conflicts with Supreme Court rules on jurisdiction of the court, and inhibits authority of the sentencing court.

Conflicting Code sections appear to restrict the ability of the Department of Corrections to place youthful offenders in appropriate facilities other than the singular facility at Southampton.

The subcommittee also found that no statistics were available to measure the effectiveness of the program in terms of reducing recidivism.

Finally, the subcommittee concluded that the Code does not clearly address how to handle those youth sentenced under the Act who are subsequently removed for intractable behavior, or who subsequently receive a second conviction with a determinate sentence. Thus, the subcommittee recommended the following:

1. *That, upon loss of eligibility to remain in the youthful offender program, an offender be denied access to actual program components but continue to receive continuous parole evaluation.*

2. *That an offender receiving a subsequent conviction be paroled, at the Parole Board's discretion, to serve his second sentence consecutively.*

3. *That "intractable behavior" (the exhibition of which results in loss of eligibility to remain in the youthful offender program) be defined in the Code.*

4. *That an offender be housed in any suitable facility, not solely the Southampton facility.*

5. *That all testing for suitability for program be done before sentencing. (No resentencing; no violation of Rule 1:1.)*

6. *That recidivism rates be tracked for this and other programs.*

IV. BACKGROUND

The Youthful Offender Act in Virginia (Code of Virginia, §19.2-311 et seq., (See Appendix B.) was passed subsequent to passage of a comparable federal statute which has since been repealed. Prior to 1982, sentencing to the youthful offender program was relatively rare. Since that time the program has been far better utilized, to the point where the youthful offender facility at Southampton is habitually at, or near, capacity.

A legislative review of the youthful offender statute was sought by Frank Saunders of the Virginia Parole Board, to respond to perceived ambiguities in the law and specific difficulties encountered in administration of the program. During the 1989 Session of the Virginia General Assembly, Delegate William P. Robinson, Jr. submitted, but subsequently withdrew, House Bill No. 1558, to amend the Youthful Offender Act. (See Appendix D.) In March, 1989, Clarence Jackson, Chairman of the Parole Board, made a formal request of the Crime Commission for consideration of these problems. In April, 1989 the full Commission voted to review that statute.

V. APPLICABLE LAW

- *Code of Virginia, §53.1 et seq. Facilities for Youthful Offenders.*
- *Code of Virginia, §19.2-311 et seq. Indeterminate Commitment.*
- *Supreme Court of Virginia, Rule 1:1. Finality of Judgments.*

VI. OBJECTIVES/ISSUES

Difficulties in administration of the Youthful Offender Program have arisen as a result of questions as to how existing law should be interpreted, and whether such law serves the objectives of the program.

The subcommittee identified the following as distinct issues for study:

A. *Where should authority for administration of the program derive?*

   (i) What authority does present law grant, and to whom?
   (ii) In achieving the objectives the law is meant to serve, how should authority and responsibility for administration of the program be apportioned?

B. *How should any conflict between the Youthful Offender Act and Rule 1:1 of the Rules of Supreme Court of Virginia be resolved (should the act be made an exception from the Rule or made to conform therewith).*

C. *Does the present law, in the context of existing prison facilities, effectively bar participation of females in the Youthful Offender Program and, if so, how should such obstacles be overcome?*

D. *When an individual receives a sentence under the Youthful Offender Act, and in addition receives a determinate sentence (or sentences) for one or more other criminal acts, how should program apply to said individual?*

VII. PROBLEM ANALYSIS/DISCUSSION

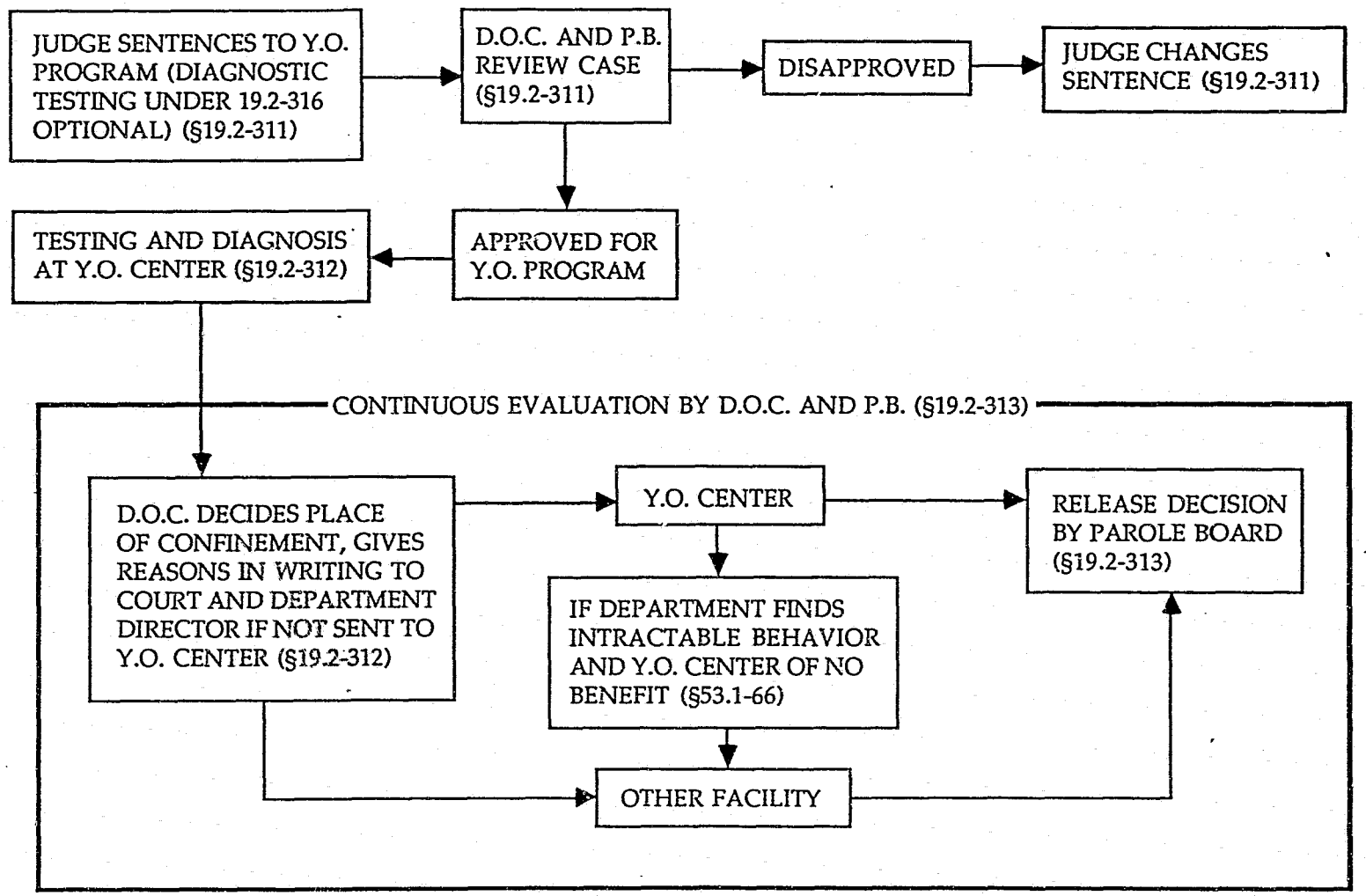
A. Diagnostic Testing for Entry into Program

Because there exist multiple stages in the process of sentencing and admitting an individual to the Youthful Offender Program, questions have arisen as to what authority exists at any given time in this process. (See Figure VII.-1 for status of program at the time of this report.)

Under Code of Virginia, §19.2-316, the court may, in its discretion, commit a person to the diagnostic facilities of the Youthful Offender institution for testing prior to any determination of punishment. (See Appendix B.) Whether this option has been exercised by the court or not, a judge may sentence a first offender between the ages of eighteen and twenty-one to an indeterminate sentence under Code of Virginia, §19.2-311. (See Appendix B.)

If a youth is sentenced to this program, a concurrence by the Parole Board and by the Department of Corrections is required to determine that the individual is fit for the program and that facilities remain available. Should concurrence not be reached, the individual must be returned to the court for resentencing. In the case that this process consumes more than twenty-one days, Rule 1:1 of the Rules of Supreme Court of Virginia does not appear to permit a return to the court for resentencing since the court has by that time lost jurisdiction. (See Appendix B.)

YOUTHFUL OFFENDER PROGRAM
SENTENCING, PLACEMENT, PAROLE



Code of Virginia, §19.2-313, allows for parole of "any person committed under the provisions of §19.2-311" at the sole discretion of the Virginia Parole Board, following a requisite "initial study, testing and diagnosis" (See Appendix B). It would appear from the statute, therefore, that only the Parole Board may release an individual from the program once he has already been accepted. The law does not clearly establish that testing as required under §19.2-311 need take place prior to acceptance into the program. Actually, §19.2-313 suggests that the required testing take place subsequent to acceptance into the program.

B. Place of Confinement

The Department of Corrections is given explicit authority in Code of Virginia, §53.1-66, to remove any individual from a youthful offender facility upon a finding "that his intractable behavior indicates he will not benefit from the program" (See Appendix B). Removal from such facility is not equivalent to removal from the youthful offender program. In establishing the requirement for separate facilities for the program, however, Code of Virginia, §53.1-63, implies that youthful offenders must be housed at a youthful offender facility. This conclusion would seem to be contradicted by §53.1-64, which specifically recognizes that persons may be "confined elsewhere in the state corrections system under the indeterminate period of commitment authorized by §19.2-311 et seq." (See Appendix B.)

This ambiguity in the law has brought about significant confusion as to the appropriate course of conduct in sentencing and parole for individuals transferred out of the Youthful Offender Center.

C. Facilities for Females

The question of facilities for females sentenced under §19.2-311 et seq. is closely related to this section of the law as well. If separate facilities are required for youthful offenders, accommodations must be provided for any females sentenced under the Act. There have been relatively few persons in this category during the history of the youthful offender program in this state, and even these low figures appear to be on the decline. No females were sentenced to the program in 1988 and none were sentenced in 1989 as of the most recent available data (See Appendix C). It is not clear whether the lack of separate facilities is a factor in this regard.

D. Resentencing of Ineligible Inmates

The practice of the Parole Board and Department of Corrections at present is to place persons sentenced to the youthful offender program in the reception center at Southampton for approximately five days. Thereafter, they are sent to the Youthful Offender Center for a joint institution assessment. This process appears to encompass both the initial review required under §19.2-311, and the initial study, testing and diagnosis mandated by §19.2-313.

Because this practice normally exceeds twenty-one days, Rule of Court 1:1 does not permit return of these individuals for resentencing if they are not accepted into the program. A consensus by the Department of Corrections and the Parole Board suggests a sixty-day time period to be more appropriate for this process.

§19.2-312 grants authority only to the Department of Corrections to determine where an individual should be confined once that individual is in the program, and has undergone the initial testing and diagnosis process.

E. Removal from the Program

Currently, the Code makes no specific allowance for the situation where a youthful offender receives a second criminal offense. The practice is to remove a second offender from the facility and, effectively, from the program altogether, with the result that he does not receive ordinary parole consideration. At some point (usually shortly after receiving a second conviction) he is paroled to serve the second (fixed) term. No "method" for service of a second sentence is in existing Code language.

Likewise, under existing practice, a youthful offender exhibiting intractable behavior is removed from the facility and from the program entirely. His "immediate" parole eligibility and continuous evaluation could be lost, and ordinary review is not substituted. Under current practice he could potentially serve out the full three-year sentence in another facility.

VIII. STUDY DESIGN

The subcommittee reviewed the law governing the youthful offender program, and solicited information and testimony on the program in practice from the Department of Corrections and the Virginia Parole Board.

The subcommittee also engaged in an on-site inspection of the Youthful Offender Center at Southampton, as well as an inspection of the St. Bride's Correctional Center, which is the primary alternative facility for those individuals who would otherwise qualify, but are not sentenced to, or accepted into, the youthful offender program.

An analysis of existing law, and of the youthful offender program as it now operates, was conducted in conjunction with consideration of goals for the program. A review of objectives of the program has been made in determining what changes in the law and/or practice of the program are necessary to meet these objectives.

MEETINGS:

First Subcommittee Meeting	June 20, 1989
Second Subcommittee Meeting	July 27, 1989
Third Subcommittee Meeting	August 15, 1989
Fourth Subcommittee Meeting	September 19, 1989
Fifth Subcommittee Meeting	December 18, 1989

REPORTS:

Initial Staff Study	June 20, 1989
1st Interim Report	July 27, 1989
2nd Interim Report	August 15, 1989
Final Report to Subcommittee	September 19, 1989
Initial Report to Full Commission	October 17, 1989
Final Report to Full Commission	December 19, 1989

IX. FINDINGS

A. DOC and Parole Board joint review, and post sentence testing & diagnosis is effective as a jointly-conducted, single process.

An investigation into the administration of the Youthful Offender Act revealed that the separate processes of (1) joint review by the Virginia Parole Board and Department of Corrections required under Code of Virginia §19.2-311, and (2) the testing and diagnosis of sentenced inmates called for under §19.2-312, are presently being conducted as a single ongoing process. While this procedure could cloud the lines of responsibility of the reviewing parties, the Commission has determined that it is an efficient means for carrying out statutory duties and that all parties involved in the process find it to be most effective.

B. Discretionary presentence testing and mandatory postsentence testing can effectively be accomplished with a single testing period prior to sentencing.

A presentence testing period presently allowed at the discretion of the sentencing judge pursuant to Code of Virginia §19.2-316 is conducted in essentially the same manner as testing required by §19.2-311 and §19.2-312 subsequent to sentencing. Thus, comparable test results could be achieved with a single test period. By conducting such testing prior to sentencing, violation of Court Rule 1:1 is avoided.

C. Current practice potentially denies an ineligible offender appropriate parole review.

A youthful offender who loses his eligibility to continue to participate in the program by virtue of his intractable behavior or second conviction (or, as proposed, by voluntary withdrawal) often also loses all parole consideration and may serve more time than he would if appropriately reviewed. There is no Code provision to address this problem.

D. There is no mechanism in the Code to accomodate a youthful offender who receives a second offense.

A second offender who is no longer eligible for the youthful offender program is not accomodated by current law. It is unclear 1) whether a second offense should be served concurrently or consecutively, 2) how parole time is to be calculated, or 3) when and by what mechanism a youthful offender sentence would be considered fully served.

E. Other corrections facilities for housing inmates comparable to those at the Youthful Offender Center may offer more programs.

A tour and review of the Youthful Offender Center at the Southampton Correctional Center, and a similar tour and review of the facilities at St. Bride's Correctional Center (both used for individuals of comparable age and similar convictions), revealed that varying educational and vocational programs are available at each but that the greater number (and larger) of the programs are found at St. Bride's. Thus, inmates in the Youthful Offender Center may not be receiving educational and training benefits that are available at other corrections facilities which house similar offenders.

F. Success of the youthful offender program in rehabilitating cannot presently be determined.

The objective inherent in placing young people in the youthful offender program is rehabilitation. The hope is that with proper treatment and exposure to peers who are also found suitable for this program, offenders will be better equipped to reenter society in a productive and law abiding role. The Commission's investigation found, however, that a rate of recidivism for graduates of the program cannot be determined with present statistical data. A prime means for determining the success of the program (relative to normal incarceration), therefore, is not available.

X. RECOMMENDATIONS

The subcommittee studying the youthful offender program carefully considered the goals of the program, as reflected in the Youthful Offender Act, and the manner in which it is presently administered. At its meeting on December 18, 1989, the subcommittee unanimously adopted the following recommendations for presentation to the full Commission on December 19, 1989. (See Appendix F for proposed statutory language.)

A. Amendment to the Youthful Offender Act to accomodate those ineligible for the program.

The subcommittee recommended amending § 19.2-311 of the Code of Virginia to essentially codify existing practice with respect to treatment of second offenders and those offenders exhibiting intractable behavior. Presently, without guidance from the Code, an inmate found ineligible to continue as a youthful offender is removed by the Department of Corrections from the program entirely. As a consequence, continuous parole evaluation is often lost. The subcommittee recommended that, if ineligible, an offender would only lose his access to programs and not his eligibility for continuous parole evaluation. Thus, a second offender or an intractable offender (or one who voluntarily removes himself from the program) will not "fall into the crack."

Additionally, per the recommended amendments, an offender who receives a subsequent conviction would, upon parole at the discretion of the Parole Board, serve his second sentence consecutively with the first (youthful offender) sentence.

Another amendment recommeded was to allow the offender to choose the program, or not, and to voluntarily withdraw. Under the latter circumstance he would still receive continuous parole evaluation under § 19.2-313.

B. Amendment to § 53.1-66 to define "Intractable Behavior."

To resolve any doubt the subcommittee recommended defining, in the Code, the meaning of "intractable behavior." (See Appendix F for definition.)

C. Amendment to the Virginia Code to permit housing of youthful offenders in any appropriate facility.

The subcommittee recommended amending §53.1-63 of the Code of Virginia to allow the housing of youths sentenced under the Youthful Offender Act at any state correctional facility found by the Board of Corrections to be suitable

and designated as such. (See Appendix F.) This clarifies allowance for women to be placed, likewise, at any suitable facility.

D. Amendment to the Virginia Code to require testing prior to sentence, and eliminate post-sentence testing.

The subcommittee recommended abolishing §19.2-312 of the Code of Virginia, requiring testing of persons already sentenced to the youthful offender program, and amending §19.2-311 to provide for a sixty-day period of mandatory testing and diagnosis of all convicted persons prior to their being sentenced to the program. (See Appendix F.) This removes problem or re-sentencing and violation of Court Rule 1:1 (21-day rule).

E. Administrative recommendation to track recidivism rates among inmates of discrete programs in the DOC.

The subcommittee recommended an administrative standard within the Virginia Department of Corrections requiring a regular and habitual process of tracking the rate of recidivism among inmates sentenced/assigned to the youthful offender program and other programs and institutions within that department.

XI. RESOURCES/ACKNOWLEDGEMENTS

The Commission greatly appreciates the assistance of the following in the conduct of this study:

- *The Virginia Department of Corrections*
  Mr. Ed Morris
  Mr. Forrest Powell
  Mr. Mike Leininger

- *The Virginia Parole Board*
  Mr. Frank Saunders, Member
  Mr. John Brown, Member
  Mr. Clarence Jackson, Chairman

- *The Youthful Offender Center, Southampton Correctional Center*
  Mr. James Allen, Acting Warden

- *The St. Bride's Correctional Center*

- *Virginia Attorney General's Office*

- *Virginia Department of Criminal Justice Services*
  Mr. Richard P. Kern

APPENDIX A

COMMONWEALTH of VIRGINIA

Virginia Parole Board
6900 Atmore Drive
Richmond, Virginia 23225
(804) 674-3081

CLARENCE L. JACKSON, JR.
CHAIRMAN

LEWIS W. HURST
VICE-CHAIRMAN

JOHN D. PARKER
EXECUTIVE DIRECTOR

BOARD MEMBERS

JOHN A. BROWN
GEORGE M. HAMPTON, SR.
LEWIS W. HURST
CLARENCE L. JACKSON, JR.
FRANK E. SAUNDERS

March 31, 1989

The Honorable Elmon T. Gray, Chairman
Virginia State Crime Commission
General Assembly Building
P. O. Box 3-AG
Richmond Virginia 23208

Dear Mr. Chairman:

Since the enactment of legislation creating the Youthful Offender Act, Code Section 19.2-311, many questions have been raised about the intent of statutory requirements and the correlative procedures for implementation. Also, because other sections of the Code control judicial decisions, Section 19.2-311 appears to conflict with those Sections.

The two primary agencies involved in carrying out the intent of Section 19.2-311, the Virginia Parole Board and the Department of Corrections, jointly concur that an impartial review of the code and related operating procedures should be conducted. Therefore, the Virginia Parole Board would like to request that the State Crime Commission conduct a study and review of the above mentioned statute. This request is being made after considerable assessment by the VPB and DOC that there does exist a number of inconsistencies in the interpretation and application of the statute.

The nature of these problems are many, however, to give the State Crime Commission an understanding of the complexity of these problems, I have outlined for your information the following examples:

(1) Conflict in language in different sections of the Code makes it difficult to determine when the sentencing court's jurisdiction over the youthful offender ceases. For example, when an offender is not accepted into the Youthful Offender Program after a concurrent assessment between the VPB and

DOC, he is then redirected to the adult system. This practice is contrary to statutory provisions requiring that the offender be returned to the sentencing court when program acceptance is denied.

(2) In some instances an offender sentenced under the Act may never leave the assessment component stage due to an initial screen-out at DOC's Reception Center.

(3) There seems to be a statewide lack of knowledge and awareness of the provisions of the statute.

As I indicated, there are other problems associated with the Act that we feel should be addressed. Members of the Virginia Parole Board would like to meet with you and members of the Commission to outline the problem areas and offer any suggestions on how we think improvements could be made in the statute to make it a more meaningful application of the Youthful Offender Program as originally intended by the legislature.

Thank you for your consideration in this matter. We look forward to your response.

Sincerely,

Clarence L. Jackson (GP)

Clarence L. Jackson
Chairman

CLJJr:gbb

APPENDIX B

ARTICLE 2.

Indeterminate Commitment.

§ 19.2-311. Indeterminate commitment to Department of Corrections in certain cases; duration and character of commitment; concurrence by Department. — A. The judge, after a finding of guilt, when fixing punishment in those cases specifically enumerated in subsection B of this section, may, in his discretion, in lieu of imposing any other penalty provided by law or which a jury has imposed in a jury trial, commit persons convicted in such cases for a period of four years, which commitment shall be indeterminate in character. Subject to the provisions of subsection C hereof, such persons shall be committed to the Department of Corrections for initial confinement for a period not to exceed three years. Such confinement shall be followed by at least one year of supervisory parole, conditioned on good behavior, but such parole period shall not, in any case, continue beyond the four-year period.

B. The provisions of subsection A of this section shall be applicable to first convictions in which the person convicted:

1. Committed the offense of which convicted after becoming eighteen but before becoming twenty-one years of age, or was a juvenile certified for trial as an adult under the provisions of § 16.1-269 or § 16.1-272; and

2. Was convicted of an offense which is either (i) a felony not punishable as a Class 1 felony, or (ii) a misdemeanor involving injury to a person or damage to or destruction of property; and

3. Is considered by the judge to be capable of returning to society as a productive citizen following a reasonable amount of rehabilitation.

C. Subsequent to a finding of guilt and judgment of commitment, the Department of Corrections and the Parole Board shall forthwith review all aspects of the case, and if they concur that (i) such commitment is in the best interest of the Commonwealth and of the person convicted and (ii) facilities are available for the confinement of such person, then such person shall be forthwith so committed. In the event such concurrence is not reached, then such person shall be again brought before the court, which shall review the sentence previously imposed, and may reduce such sentence, or commit such person to the Department of Corrections or to a local detention facility to serve his sentence as the interests of justice may require. (Code 1950, § 19.1-295.1; 1966, c. 579; 1974, cc. 44, 45; 1975, c. 495; 1976, c. 498; 1980, c. 531; 1988, c. 38.)

§ 19.2-315. Compliance with terms and conditions of parole; time on parole not counted as part of commitment period. — Every person on parole under § 19.2-314 shall comply with such terms and conditions as may be prescribed by the Board according to § 53.1-157 and shall be subject to the penalties imposed by law for a violation of such terms and conditions. Notwithstanding any other provision of the Code, if parole is revoked as a result of any such violation, such person may be returned to the institution established under Article 4 (§ 53.1-63 et seq.) of Chapter 2 of Title 53.1 upon the direction of the Parole Board with the concurrence of the Department of Corrections, provided such person has not been convicted since his release on parole of an offense constituting a felony under the laws of the Commonwealth. Time on parole shall not be counted as part of the four-year period of commitment under this section. (Code 1950, § 19.1-295.5; 1966, c. 579; 1975, c. 495; 1984, c. 33.)

ARTICLE 4.

State Facilities for Youthful Offenders.

§ 53.1-63. Department to establish facilities for persons committed under § 19.2-311 et seq. — The Department shall establish, staff and maintain state correctional facilities for the rehabilitation, training and confinement of persons committed to the Department under the provisions of § 19.2-311 et seq. Persons admitted to these facilities shall be determined by the Department to have the potential for rehabilitation through confinement and treatment therein. (Code 1950, § 53-128.1; 1966, c. 482; 1974, cc. 44, 45; 1982, c. 636.)

§ 53.1-64. Programs and facilities. — The Department shall establish and maintain at each facility:

1. Programs for counseling, education and vocational training;

2. Buildings sufficient to ensure the secure confinement of persons admitted to the facility; and

3. Programs for the study, testing and diagnosis of the following persons:

a. Persons committed to the Department under the provisions of § 19.2-311 et seq. and confined at a youthful offender facility for a determination as to the likelihood of their benefitting from the program of such facility; and

b. Persons confined therein and confined elsewhere in the state corrections system under the indeterminate period of commitment authorized by § 19.2-311 et seq., to evaluate their progress periodically and to determine their readiness for release; and

c. Persons committed to the Department for diagnosis under the provisions of § 19.2-316 prior to a determination of punishment. (Code 1950, § 53-128.2; 1966, c. 482; 1982, c. 636.)

§ 53.1-65. Consideration of report developed at diagnostic facilities. — The Department shall give careful consideration to the report developed at the diagnostic facilities established under § 53.1-64 in determining whether persons committed to it under the provisions of § 19.2-311 et seq., are to be confined at a youthful offender facility or elsewhere in the state corrections system. (Code 1950, § 53-128.3; 1966, c. 482; 1982, c. 636.)

§ 53.1-66. Transfer of prisoners to other facilities. — Any person confined by the Department in a facility established by this chapter may be transferred from such facility to other facilities in the state corrections system for the remainder of the period of commitment under § 19.2-311 et seq., upon a finding by the Department that his intractable behavior indicates he will not benefit from the programs of a youthful offender facility. (Code 1950, § 53-128.4; 1966, c. 482; 1982, c. 636.)

§ 53.1-67. Admission to facility; good conduct allowance restricted. — In no case shall a person previously confined in a youthful offender facility, whether for a different or the same offense, be confined again in such a facility, except for the purposes of study, testing and diagnosis.

The provisions of §§ 53.1-191, 53.1-196, and 53.1-198 through 53.1-201 relating to good conduct credits and allowances and extraordinary service and the provisions of § 53.1-187 relating to credit for time served in a correctional facility or juvenile detention facility shall not apply to persons sentenced under § 19.2-311 for a crime committed on or after July 1, 1983. Acts performed by such persons which would earn credit for them under § 53.1-191, if it were applicable, shall be noted on their record by the authorities of the facility. (Code 1950, § 53-128.5; 1966, c. 482; 1982, c. 636; 1983, c. 606; 1984, c. 313.)

PART ONE

General Rules Applicable to All Proceedings

Editor's note. — Part One became effective March 1, 1972. The statements of the source appearing after the several rules in this part, which were prepared by a subcommittee and presented to the Judicial Council, are not part of the Rules as adopted by the Supreme Court of Virginia.

Rule 1:1. Finality of Judgments, Orders and Decrees.

All final judgments, orders, and decrees, irrespective of terms of court, shall remain under the control of the trial court and subject to be modified, vacated, or suspended for twenty-one days after the date of entry, and no longer. But notwithstanding the finality of the judgment, in a criminal case the trial court may postpone execution of the sentence in order to give the accused an opportunity to apply for a writ of error and supersedeas; such postponement, however, shall not extend the time limits hereinafter prescribed for applying for a writ of error. The date of entry of any final judgment, order, or decree shall be the date the judgment, order, or decree is signed by the judge.

APPENDIX C

NUMBER OF YOUTHFUL OFFENDER SENTENCES BY SEX

1985-1989

	1985[a]	1986	1987	1988	1989[b]
Male	103	165	157	117	9
	94.5%	98.8%	97.5%	100.0%	100.0%
Female	6	2	4	0	0
	5.5%	1.2%	2.5%	0.0%	0.0%
	109	167	161	117	9

[a] Based on approximately eleven months of data.

[b] Based on approximately one month of data.

* Data source: Pre/Post Sentence Investigation database.

(Information provided by the Virginia Department of Criminal Justice Services)

APPENDIX D

1989 SESSION

LD6697555

HOUSE BILL NO. 1558

Offered January 23, 1989

A BILL to amend and reenact § 19.2-311 of the Code of Virginia, relating to youthful offenders.

Patron–Robinson

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-311 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-311. Indeterminate commitment to Department of Corrections in certain cases; duration and character of commitment; concurrence by Department.–A. The judge, after a finding of guilt, when fixing punishment in those cases specifically enumerated in subsection B of this section, may, in his discretion, in lieu of imposing any other penalty provided by law or which a jury has imposed in a jury trial, commit persons convicted in such cases for a period of four years, which commitment shall be indeterminate in character. ~~Subject to the provisions of subsection C hereof, such~~ *Such* persons shall be committed to the Department of Corrections for initial confinement for a period not to exceed three years. Such confinement shall be followed by at least one year of supervisory parole, conditioned on good behavior, but such parole period shall not, in any case, continue beyond the four-year period.

B. The provisions of subsection A of this section shall be applicable to ~~first~~ convictions in which the person convicted:

1. *(i)* Committed ~~the~~ *a first* offense of which convicted after becoming eighteen but before becoming twenty- ~~one~~ *five* years of age, or *(ii) committed a second or subsequent offense of which convicted after becoming eighteen but before becoming twenty-three years of age, or (iii)* was a juvenile certified for trial as an adult under the provisions of § 16.1-269 or § 16.1-272; and

2. Was convicted of an offense which is either (i) a felony not punishable as a Class 1 felony, or (ii) a misdemeanor involving injury to a person or damage to or destruction of property; and

3. Is considered by the judge to be capable of returning to society as a productive citizen following a reasonable amount of rehabilitation.

~~C. Subsequent to a finding of guilt and judgment of commitment, the Department of Corrections and the Parole Board shall forthwith review all aspects of the case, and if they concur that (i) such commitment is in the best interest of the Commonwealth and of the person convicted and (ii) facilities are available for the confinement of such person, then such person shall be forthwith so committed. In the event such concurrence is not reached, then such person shall be again brought before the court, which shall review the sentence previously imposed, and may reduce such sentence, or commit such person to the Department of Corrections or to a local detention facility to serve his sentence as the interests of justice may require.~~

APPENDIX E

APPENDIX E

Comparison of Southampton and St. Bride's Correctional Centers

Factors for Comparison	Youthful Offender Center Southampton Corr. Center	St. Bride's Corr. Center
Number of Inmates	Capacity - 100 Population - 95 - 100	Capacity - 455 Population - 450 - 455
Type of Inmates	First offenders between the age of 18 and 21. Program is voluntary.	First offenders between the age of 18 and 25.
Recidivism Rate Among First Offenders	Information unavailable.	Information unavailable.
Percentage of Population in Education or Trade Programs	100% classroom education is mandatory for all inmates.	Approx. 60% to 70% participation is voluntary.
Number of Trade Programs Available to Inmates	Four trade programs are available to train inmates. Participation is voluntary.	Eight trade programs are available to train inmates. Participation is voluntary.
Percentage of Inmates Receiving GED's by Year	1984-85 - 38% 1985-86 - 29% 1986-87 - 44% 1987-88 - 26% 1988-present 25%	1984-85 - 12.0% 1985-86 - 13.5% 1986-87 - 13.5% 1987-88 - 13.5% 1988-present 6.0%

APPENDIX F

D 9/12/89 Devine C 12/20/89 kmk

SENATE BILL NO. ..... HOUSE BILL NO. .....

A BILL to amend and reenact §§ 19.2-311, 19.2-316, 53.1-63, 53.1-64, 53.1-66 and 53.1-67 of the Code of Virginia and to repeal § 19.2-312 of the Code of Virginia, relating to the youthful offender program.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-311, 19.2-316, 53.1-63, 53.1-64, 53.1-66 and 53.1-67 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-311. Indeterminate commitment to Department of Corrections in certain cases; duration and character of commitment; concurrence by Department.--A. The judge, after a finding of guilt, when fixing punishment in those cases specifically enumerated in subsection B of this section, may, in his discretion, in lieu of imposing any other penalty provided by law ~~or which a jury has imposed in a jury trial~~ and, with consent of the person convicted , commit ~~persons convicted in such cases~~ such person for a period of four years, which commitment shall be indeterminate in character. Subject to the provisions of subsection C hereof, such persons shall be committed to the Department of Corrections for initial confinement for a period not to exceed three years. Such confinement shall be followed by at least one year of supervisory parole, conditioned on good behavior, but such parole period shall not, in any case, continue beyond the four-year period. The sentence of indeterminate commitment and eligibility for continuous evaluation and parole under § 19.2-313

shall remain in effect but eligibility for use of programs and facilities specified in § 53.1-64 shall lapse if such person (i) voluntarily withdraws from the youthful offender program, (ii) exhibits intractable behavior as defined in § 53.1-66, or (iii) is convicted of a second criminal offense. Any sentence imposed for a second criminal offense shall run consecutively with the indeterminate sentence.

B. The provisions of subsection A of this section shall be applicable to first convictions in which the person convicted:

1. Committed the offense of which convicted after becoming eighteen but before becoming twenty-one years of age, or was a juvenile certified for trial as an adult under the provisions of § 16.1-269 or § 16.1-272; ~~and~~

2. Was convicted of an offense which is either (i) a felony not punishable as a Class 1 felony, or (ii) a misdemeanor involving injury to a person or damage to or destruction of property; and

3. Is considered by the judge to be capable of returning to society as a productive citizen following a reasonable amount of rehabilitation.

C. Subsequent to a finding of guilt and ~~judgment of commitment~~ prior to fixing punishment, the Department of Corrections and the Parole Board shall ~~forthwith~~, concurrently with the evaluation required by § 19.2-316, review all aspects of the case ~~,~~ ~~and if they concur that~~ to determine whether (i) such indeterminate sentence of commitment is in the best interest of the Commonwealth and of the person convicted and (ii) facilities are available for the confinement of such person ~~,~~ ~~then~~. After the review such person shall be ~~forthwith so committed. In the event such concurrence is not reached~~

then such person shall be again brought before the court, which shall review the sentence previously imposed, and may reduce such sentence, or commit such person to the Department of Corrections or to a local detention facility to serve his sentence as the interests of justice may require findings of the Department and the Parole Board. The court may impose a sentence as authorized in subsection A, or any other penalty provided by law .

§ 19.2-316. Evaluation and report prior to determining punishment.-- The court, in its discretion, may After a finding of guilt but prior to determining fixing punishment as provided for in § 19.2-311 or other applicable provisions of law, the court shall commit, for a period not to exceed sixty days, the person convicted to the diagnostic component of those facilities of the institution established under Article 4 (§ 53.1-63 et seq.) of Chapter 2 of Title 53.1 for full and adequate study, testing, diagnosis, evaluation and report on the person's potential for rehabilitation through confinement and treatment in such facilities . If additional evaluation is deemed advisable, the Department of Corrections may apply to the court for an extension of such commitment for a period of up to sixty days. If the Director of the Department of Corrections determines such person should be confined in a facility other than one established under Article 4 (§ 53.1-63 et seq.) of Chapter 2 of Title 53.1, a written report giving the reasons for such decision shall be submitted to the sentencing court. The court shall not be bound by such written report in the matter of determining punishment. Additionally, the person may be committed or transferred to a mental hospital or like institution, as provided by law, during such sixty-day period.

§ 53.1-63. Department to establish facilities for persons committed under § 19.2-311 et seq.--The Department shall establish, staff and maintain , at any state correctional ~~facilities~~ facility designated by the Board, programs and housing for the rehabilitation, training and confinement of persons committed to the Department under the provisions of § 19.2-311 et seq. Persons admitted to these facilities shall be determined by the Department to have the potential for rehabilitation through confinement and treatment therein.

§ 53.1-64. Programs and facilities.--The Department shall establish and maintain at within each facility :

~~1.~~ Programs programs for counseling, education and vocational training;

~~2.~~ Buildings buildings sufficient to ensure the secure confinement of persons admitted to the facility; and

~~3.~~ Programs programs in at least one such facility for the study, testing and diagnosis of the following persons:

~~a.~~ 1. Persons committed to the Department for diagnosis and evaluation under the provisions of ~~§ 19.2-311 et seq. and confined at a youthful offender facility~~ § 19.2-316 for a determination as to the likelihood of their benefitting from the program of such facility; and

~~b.~~ 2. Persons confined ~~therein and confined elsewhere~~ in the state corrections system under the indeterminate period of commitment authorized by § 19.2-311 et seq., to evaluate their progress periodically and to determine their readiness for release ; and

~~c. Persons committed to the Department for diagnosis under the provisions of § 19.2-316 prior to a determination of punishment~~ .

§ 53.1-66. Transfer of prisoners to other facilities.--Any person confined by the Department in a facility established by this

chapter may be transferred from such facility to other facilities in the state corrections system for the remainder of the period of commitment under § 19.2-311 et seq., upon a written finding by the Department submitted to the sentencing court that ~~his~~ the person has exhibited intractable behavior ~~indicates he will not benefit from the programs of a youthful offender facility~~ .

"Intractable behavior" means behavior which (i) indicates an inmate's unwillingness or inability to conform his behavior to that necessary to his successful completion of the program or (ii) is so disruptive as to threaten the successful completion of the program by other participants.

§ 53.1-67. Admission to facility; good conduct allowance restricted.--In no case shall a person previously confined in a youthful offender facility, whether for a different or the same offense, be confined again in such a facility, except for the purposes of study, testing and diagnosis.

The provisions of §§ 53.1-191, 53.1-196, and 53.1-198 through 53.1-201 relating to good conduct credits and allowances and extraordinary service and the provisions of § 53.1-187 relating to credit for time served in a correctional facility or juvenile detention facility shall not apply to persons sentenced to an indeterminate sentence under § 19.2-311 for a crime committed on or after July 1, 1983. Acts performed by such persons which would earn credit for them under § 53.1-191, if it were applicable, shall be noted on their record by the authorities of the facility.

2. That § 19.2-312 of the Code of Virginia is repealed.

#

REPORT OF THE
VIRGINIA STATE CRIME COMMISSION

Part-Time, Volunteer and Auxiliary Law Enforcement Officers

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

House Document No. 10

COMMONWEALTH OF VIRGINIA
RICHMOND
1989

COMMONWEALTH of VIRGINIA

VIRGINIA STATE CRIME COMMISSION

General Assembly Building
910 Capitol Street

POST OFFICE BOX 3-AG
RICHMOND, VIRGINIA 23208

IN RESPONSE TO
THIS LETTER TELEPHONE
(804) 225-4534

ROBERT E. COLVIN
EXECUTIVE DIRECTOR

October 18, 1988

TO: The Honorable Gerald L. Baliles, Governor of Virginia, and Members of the General Assembly:

House Joint Resolution 19, agreed to by the 1988 General Assembly, directed the Virginia State Crime Commission to study the training standards required for part-time, volunteer and auxiliary deputy sheriffs and police officers. In fulfilling this directive, a study was conducted by the Virginia State Crime Commission. I have the honor of submitting herewith the study report and recommendations on Virginia's part-time, volunteer and auxiliary law enforcement officers.

Respectfully submitted,

Elmon T. Gray
Chairman

ETG:tes

ENCLOSURE

Members of the

Virginia State Crime Commission

From the Senate of Virginia:

Elmon T. Gray, Chairman

Howard P. Anderson

Elmo G. Cross, Jr.

From the House of Delegates:

Robert B. Ball, Sr., Vice Chairman

A. L. Philpott

V. Thomas Forehand, Jr.

Raymond R. Guest, Jr.

Warren G. Stambaugh

Clifton A. Woodrum

Appointments by the Governor:

Robert C. Bobb

Robert F. Horan, Jr.

George F. Ricketts, Sr.

Attorney General's Office:

H. Lane Kneedler

Subcommittee

Studying

Part-time, Volunteer and Auxiliary Law Enforcement Officers

Members:

Delegate Raymond R. Guest, Jr., Chairman
Delegate Robert B. Ball, Sr.
Mr. Robert C. Bobb
Senator Elmo G. Cross, Jr.
Delegate V. Thomas Forehand, Jr.
Senator Elmon T. Gray
Mr. H. Lane Kneedler
Delegate Warren G. Stambaugh

Staff:

Robert E. Colvin, Executive Director
Susan E. Foster, Research Assistant
Tammy E. Sasser, Executive Administrative Assistant
Kris Ragan, Secretary

The subcommittee expresses its sincere appreciation to the Director and staff of the Department of Criminal Justice Services, particularly Mr. Lex Eckenrode, Division Director; Mr. Byran Childress, Section Chief; Mr. George Gotschalk, Section Chief, and Mr. Don Anderson, Programmer-Analyst, for their technical advice and assistance in conducting this study.

Table of Contents

I. Authority for Study

House Joint Resolution 19, sponsored by Delegate Warren G. Stambaugh and passed by the 1988 General Assembly, authorizes the Virginia State Crime Commission to "(i) determine the current use of part-time deputy sheriffs, and volunteer or auxiliary law enforcement personnel (ii) evaluate minimum training standards as these standards may apply to part-time deputy sheriffs and volunteer personnel; and (iii) determine the level of funding, if any, needed to provide training for these individuals."

§9-125 of the Code of Virginia establishes and directs the Virginia State Crime Commission (VSCC) "to study, report, and make recommendations on all areas of public safety and protection." §9-127 of the Code of Virginia provides that "the Commission shall have the duty and the power to make such studies and gather information in order to accomplish its purpose, as set forth in §9-125, and to formulate its recommendations to the Governor and the General Assembly." §9-134 of the Code of Virginia authorizes the Commission to "conduct private and public hearings, and to designate a member of the Commission to preside over such hearings." The VSCC, in fulfilling its legislative mandate, undertook the law enforcement training study as requested by House Joint Resolution 19.

II. Members Appointed to Serve

During the April 1988 meeting of the Crime Commission, its chairman, Senator Elmon T. Gray of Sussex, selected Delegate Raymond R. Guest, Jr. to serve as chairman of this subcommittee. Members of the Crime Commission who served on the subcommittee are:

Delegate Raymond R. Guest, Jr. of Front Royal, Chairman
Delegate Robert B. Ball, Sr. of Henrico
Mr. Robert C. Bobb of Richmond
Senator Elmo G. Cross, Jr. of Hanover
Delegate V. Thomas Forehand, Jr. of Chesapeake
Senator Elmon T. Gray of Sussex
Mr. H. Lane Kneedler (Attorney General's Office)
Delegate Warren G. Stambaugh of Arlington

III. Executive Summary

A. AUXILIARY/VOLUNTEER LAW ENFORCEMENT OFFICERS

Currently, there are 2 conflicting provisions in the Code of Virginia regulating auxiliary police. Under §15.1-159.2 (A) of the Code of Virginia, auxiliaries have all the powers of constables at common law and are not required to undergo formal training; however, under §15.1-159.2 (B), auxiliaries have the powers of full-time law enforcement officers if they have satisfied the state mandated training requirements.

The problem arises when one realizes there is no discernible distinction between a constable at common law for whom training is not required and a full-time officer for whom training is required.

The subcommittee recommends that the Virginia Code be amended to authorize each jurisdiction to establish the training standards for its auxiliary program, except that all auxiliaries must meet the basic and in-service firearms training requirements established by the Criminal Justice Services Board.

B. PART-TIME LAW ENFORCEMENT OFFICERS

There is currently no provision in the Virginia Code establishing minimum training standards for part-time law enforcement officers. Therefore, the subcommittee recommends that the Code of Virginia be amended to require all part-time police officers and deputy sheriffs to complete training requirements consistent with those of full-time law enforcement officers established by the Criminal Justice Services Board.

IV. Background

Chapter 157 of the 1968 Acts of Assembly authorized the governing bodies of cities, counties and towns to establish auxiliary police forces which would possess all the powers and immunities of constables at common law. In 1987, legislation inserted a seemingly inconsistent provision, §15.1-159.2(B) of the Code of Virginia, which empowered the governing bodies to establish auxiliary police forces which have all the powers, authority and immunities of full-time law enforcement, provided all such forces have met the training requirements established by the Department of Criminal Justice Services. According to the 1971 Report of the Attorney General, a "constable is by virtue of his office a conservator of the peace, whose duties are similar to those of a sheriff." Therefore, there is no discernible distinction between a constable at common law and a full-time law enforcement officer. Consequently, the statutory training requirement is easily manipulated. Whether an auxiliary officer must be trained is dependent upon the particular provision of the Virginia Code under which the office was established. If the auxiliary officer in question has been exercising legal authority and is untrained, a police department may assert that the office was established under 15.1-159.2(A); hence, no training is required.

Subsequent legislative remedial efforts have not resolved this problem. In 1988, legislation supplemented 15.1-159.2(B) by providing that an officer would not be permitted to carry or use a firearm while serving as an auxiliary police officer without first meeting the firearms training requirements for law enforcement officers prescribed by the Criminal Justice Services Board. Because of its placement in provision B, this provision is arguably inoperative and without force and effect. Provision B already requires that auxiliary police forces established pursuant to its authority receive training. If the provision were intended to resolve the contradiction within the Code of Virginia it should have been inserted in provision A.

In 1968, the Virginia State Crime Commission proposed legislation to create a Law Enforcement Officers Training Standards Commission which would set minimum training standards for all law enforcement officers. The legislation was successful and the Training Standards Commission was established effective July 1, 1968. Since that time, the Commission's duties have expanded and the name of the Commission was changed to Criminal Justice Officers Training and Standards Commission and later incorporated into the Department of Criminal Justice Services. This agency establishes the curriculum and supervises the training of law enforcement officers, correctional officers, court bailiffs and civil process servers.

Specifically, §9-170 of the Code of Virginia authorizes the Commission to establish training standards for law enforcement officers. However, the authority is qualified by §9-169 which defines a law enforcement officer as a full-time employee. Therefore, the Department of Criminal Justice Services cannot rely on its authority under §9-170 to set training standards for part-time deputy sheriffs or auxiliary law enforcement officers. Thus, if the legislature finds that minimum training standards for part-time deputy sheriffs and auxiliary police are necessary, it should expand the definition of law enforcement officer in §9-169 to include these law enforcement personnel.

V. Objectives

The subcommittee examined the following major issues:

A. Define the responsibility and authority of part-time deputy sheriffs and volunteer or auxiliary law enforcement personnel according to job function.

B. Determine the current use of part-time deputy sheriffs and volunteer or auxiliary law enforcement.

C. Determine the desirability of establishing minimum training requirements for part-time deputy sheriffs and auxiliary or volunteer law enforcement.

D. Attempt to reconcile §15.1-159.2(A) and (B), conflicting provisions within the Code of Virginia regulating the training requirements of auxiliary police.

E. Determine the level of funding, if any, needed to provide training for these individuals.

VI. Recommendations

The full Crime Commission met on October 18, 1988 and received the report of the subcommittee. After careful consideration, the findings and recommendations of the subcommittee were adopted by the Commission. Pursuant to HJR 19 (1988), the Law Enforcement Subcommittee studying part-time, auxiliary and volunteer law enforcement met on August 16, 1988 to examine the current use of such officers, the minimum training standards desirable for such officers and the level of funding needed to provide any recommended training. After careful consideration, the subcommittee made the following recommendations:

A. Minimum Training Standards for Auxiliary and Volunteer Law Enforcement Officers

Amend §15.1-159.2 to authorize the law enforcement agency in each jurisdiction to establish the training standards for its auxiliary program, except that all auxiliary police officers who carry or use a firearm must meet the basic and in-service firearms training requirements established by the Criminal Justice Services Board.

B. Minimum Training Standards for Part-time Law Enforcement Officers

Require part-time deputy sheriffs and police officers to have the same training as full-time law enforcement officers.

VII. Work of the Subcommittee

The subcommittee held one extensive staff briefing on June 21, 1988; one public hearing on July 21, 1988 in Richmond, Virginia to solicit input from concerned individuals and organizations; and one work session in Richmond, Virginia on August 16, 1988. In addition, the subcommittee reviewed legislation from other states as well as 230 responses to a survey mailed statewide to police departments and sheriffs' offices.

A. Testimony and Survey

Public testimony and the survey revealed that the auxiliary programs in Virginia differ greatly as to the level of training required, the job function to be performed and the legal authority possessed by auxiliaries. While some testimony supported state mandated training equivalent to that required of full-time law enforcement for auxiliaries performing the same function as full time officers, the vast majority expressed concern that mandating that level of training would kill auxiliary programs in many jurisdictions.

B. Parallel or Similar Studies

Report on Law Enforcement Training to the Governor and the General Assembly of Virginia

In 1978, the Virginia State Crime Commission, in conjunction with the Secretary of Public Safety and the Joint Legislative Audit and Review Commission, was requested to conduct a study of the costs of alternative law enforcement training programs in Virginia including the creation of a government subsidized police training academy, establishing compulsory minimum training standards, requiring instructor certification, creating educational and training incentives and providing statewide employment assistance. Primarily, the study recommended the consolidation of the twelve regional academies into eight, and made recommendations as to their operation. However, the 1978 study did not directly address the precise issues currently being studied by the Crime Commission.

A search performed on LEGISNET revealed no similar legislative studies conducted in other states on this issue. However, this was not conclusive because LEGISNET only includes only those legislative studies actually submitted by the states.

VIII. Discussion of Issues

A. Auxiliary Law Enforcement Officers

Current Use

According to our survey results, at least 36 police departments and 21 sheriffs' offices in Virginia have auxiliary programs.

Current Responsibility, Authority and Training

Public testimony and the survey indicated that auxiliary programs currently operative in Virginia are characterized by their dissimilarity. Due to the lack of guidelines in the Virginia Code, each jurisdiction has promulgated its unique set of rules to govern its particular program, both as to formal training requirements and job function.

For instance, 39% of police departments responded that their auxiliary officers perform the same functions as full-time law enforcement officers; 47% have the same legal authority; however, only 14% have training equivalent to that of full-time law enforcement officers. 6% of auxiliary officers have no formal training. On the other hand, some jurisdictions use auxiliaries solely as "ride along" officers; others perform routine traffic control duties, and some are utilized solely for special events. The training for such officers varies in proportion to the job function.

None of the sheriffs' offices who responded to our survey have auxiliary deputy sheriffs who perform the same duties as full-time officers. Rather, auxiliary deputy sheriffs are used primarily as "ride along" officers, to provide courtroom and jail security, to offer increased visibility at special events, and to perform routine traffic and crowd control duties. Only 29% of auxiliary deputy sheriffs possess the same arrest power as a full-time officer; most have only limited, if any, legal authority.

Despite the varied training requirements, police departments and sheriffs' offices have experienced few, if any, problems due to their auxiliary programs. Specifically, the survey revealed that 56% of police departments and 52% sheriffs' offices have experienced no problems; and 39%; and 33% respectively had minor problems. No police department and only one sheriff's office had experienced serious problems within their auxiliary program. Public testimony indicated overwhelming support for auxiliary programs by agency personnel and the public.

Desirability of Establishing Minimum Training Requirements

Testimony was divided on this issue. Certain government officials wholeheartedly believe that auxiliary law enforcement officers who perform the same duties as full-time law enforcement officers should be required to complete the same training requirements. Representatives from police departments and sheriffs' offices statewide expressed concern that mandating auxiliary training equivalent to that of full-time law enforcement officers would, in effect, legislate many auxiliary programs out of existence.

Requisite Funding

If the state requires auxiliary officers to undergo the same training as full-time law enforcement officers, each auxiliary must complete approximately 315 classroom hours and 60 field hours of training at an estimated cost of $7.13 per person per hour in 1989. In addition, in-service training requires 40 mandated hours every two years.

Conclusion

The subcommittee determined that each jurisdiction should be authorized to establish the training standards for its auxiliary program, except that no auxiliary police officer should be permitted to carry or use a firearm unless such auxiliary has met the basic and in-service firearms training requirements established by the Criminal Justice Services Board. Each jurisdiction would, therefore, be afforded flexibility to adapt its program to its needs and resources. However, the subcommittee was adamant about requiring the more stringent firearms training. In its present form, it is unclear whether the firearms training requirement in section 15.1-159.2(B) is applicable to all auxiliaries or only those auxiliaries established under the authority of (B). The subcommittee concluded that if an auxiliary is to carry a firearm, he should receive the requisite training.

B. Part-time Law Enforcement Officers

Current Situation

According to the Compensation Board, there are approximately 140 part-time deputy sheriffs in Virginia. Our survey results reveal that part-time deputies perform a variety of functions including courtroom security duties and acting as correctional officers. Only 24% have the same duties as full-time deputies. For 72% of part-time deputy sheriffs, training, to the extent it exists, is comprised of on-the-job-training or job related classes.

Currently, part-time law enforcement officers are not required under the Virginia Code to meet state mandated training requirements for full time officers. However, all law enforcement officers, part-time and full-time, employed by jurisdictions receiving "599 funding" must meet the state minimum training requirements. However, sheriffs' offices do not receive "599 funding"; therefore, part-time deputy sheriffs are not required to have training under any standard. 599 funding is a state revenue sharing program designed to assist localities with law enforcement efforts.

Conclusion

The subcommittee concluded that part-time deputy sheriffs and police officers should be required to complete the same training requirements as established by the Criminal Justice Services Board for full-time law enforcement officers.

Applicable Law

A. Virginia Code §15.1-159.2. Powers, authority and immunities of auxiliary police.

B. Virginia §9-170. Powers and duties of the Board and the Department: The Criminal Justice Services Department, under the direction of the Board, has the power to establish compulsory minimum training standards for law enforcement officers.

C. Virginia Code §9-169(9). Law enforcement officer defined as a full-time employee of a police department or sheriff's office.

APPENDICES

APPENDIX A

Legislative Proposals

D 9/14/88 Brinson T 9/16/88 df

SENATE BILL NO. ..... HOUSE BILL NO. .....

A BILL to amend and reenact § 15.1-159.2 of the Code of Virginia, relating to establishment of local auxiliary police forces; powers, authority and immunities thereof.

Be it enacted by the General Assembly of Virginia:

1. That § 15.1-159.2 of the Code of Virginia is amended and reenacted as follows:

§ 15.1-159.2. Establishment, etc., authorized; powers, authority and immunities generally.-- ~~A. In cities, counties and towns in the Commonwealth, the governing bodies thereof, for~~ The governing body of any county, city or town, for the further preservation of the public peace, safety and good order ~~of the community~~, shall have the power to establish, equip and maintain auxiliary police forces ~~,~~ . When called into service as hereinafter provided, the members of ~~which when called into service as hereinafter provided~~ any such auxiliary police force shall have all the powers , and authority and all the immunities ~~of constables at common law.~~

~~B. Such governing bodies shall also have the power to establish, equip and maintain auxiliary police forces which have all the powers and authority and all the immunities of full-time law-enforcement officers, if~~ provided all such ~~forces~~ members have met the training requirements established by the ~~Department of Criminal Justice Services under § 9-170. Any auxiliary officer employed prior to July 1, 1987, shall be exempted from any initial training requirement,~~

except that any such law-enforcement department in that jurisdiction. No auxiliary police officer shall not be permitted to carry or use a firearm while serving as an auxiliary police officer unless such officer has met the firearms training requirements established in accordance with basic and in-service training standards for law-enforcement officers as prescribed by the Criminal Justice Services Board.

D 9/14/88 Brinson C 9/20/88 df

SENATE BILL NO. ..... HOUSE BILL NO. .....

A BILL to amend and reenact §§ 9-169 and 9-180 of the Code of Virginia, relating to minimum training standards for certain part-time and full-time law-enforcement officers; definition.

Be it enacted by the General Assembly of Virginia:

1. That §§ 9-169 and 9-180 of the Code of Virginia are amended and reenacted as follows:

§ 9-169. Definitions.-- The following words, whenever used in this chapter, or in Chapter 23 (§ 19.2-387 et seq.) of Title 19.2 of this Code, shall have the following meanings, unless the context otherwise requires:

1. "Administration of criminal justice" means performance of any activity directly involving the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders or the collection, storage, and dissemination of criminal history record information.

2. "Board" means the Criminal Justice Services Board.

3. "Criminal justice agency" means a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities, but only to the extent that it does so.

4. "Criminal history record information" means records and data

collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges, and any disposition arising therefrom. The term shall not include juvenile record information which is controlled by Chapter 11 (§ 16.1-226 et seq.) of Title 16.1 of this Code, criminal justice intelligence information, criminal justice investigative information, or correctional status information.

5. "Correctional status information" means records and data concerning each condition of a convicted person's custodial status, including probation, confinement, work release, study release, escape, or termination of custody through expiration of sentence, parole, pardon, or court decision.

6. "Criminal justice information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

7. "Department" means the Department of Criminal Justice Services.

8. "Dissemination" means any transfer of information, whether orally, in writing, or by electronic means. The term does not include access to the information by officers or employees of a criminal justice agency maintaining the information who have both a need and right to know the information.

9. "Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office which is a part

or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of this Commonwealth, and shall include any member of the Regulatory Division of the Department of Alcoholic Beverage Control vested with police authority, any police agent appointed under the provisions of § 56-353 or any game warden who is a full-time sworn member of the enforcement division of the Commission of Game and Inland Fisheries. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

10. "Conviction data" means information in the custody of any criminal justice agency relating to a judgment of conviction, and the consequences arising therefrom, in any court.

§ 9-180. Compliance with minimum training standards by officers employed after July 1, 1971 and by officers appointed under § 56-353 after July 1, 1982.-- Every full-time law-enforcement officer employed after July 1, 1971, and officers appointed under the provisions of § 56-353 after July 1, 1982, and every part-time law-enforcement officer employed after July 1, 1989, shall comply with the compulsory minimum training standards established by the Board within a period of time fixed by the Board pursuant to Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of this Code . The Board shall have the power to require law-enforcement agencies of the Commonwealth and its political subdivisions to submit rosters of their personnel and pertinent data with regard to the training status of such personnel.

#

APPENDIX B

HJR 19

LD4104574

HOUSE JOINT RESOLUTION NO. 19

Offered January 18, 1988

Requesting the State Crime Commission to study volunteer, auxiliary and certain part-time law-enforcement officers.

Patron--Stambaugh

Referred to the Committee on Rules

WHEREAS, many localities avail themselves of the services of part-time deputy sheriffs and volunteer or auxiliary law-enforcement personnel; and

WHEREAS, in general, law-enforcement officers must meet certain minimum training requirements; and

WHEREAS, there is a need to determine what standards or minimum training requirements should be applied to other law-enforcement officers; and

WHEREAS, the Compensation Board has authorized funding for part-time deputy sheriffs; however, funding is not currently provided for training of these deputies nor for volunteer or auxiliary law-enforcement personnel; now, therefore be it

RESOLVED by the House of Delegates, the Senate concurring, that the Virginia State Crime Commission is requested to (i) determine the current use of part-time deputy sheriffs, and volunteer or auxiliary law-enforcement personnel; (ii) evaluate minimum training standards as these standards may apply to part-time deputy sheriffs and volunteer personnel; and (iii) determine the level of funding, if any, needed to provide training for these individuals.

The Commission shall employ whatever methods of inquiry it shall deem necessary, including, but not limited to, the employment of additional temporary staff. The Department of Criminal Justice Services, through its Training Standards section, shall lend its expertise and resources to the Commission in completing this study.

The Commission shall complete its study and submit its recommendations, if any, no later than December 1, 1988.

The direct costs of this study are estimated to be $3,780, and such amount shall be allocated to the Virginia State Crime Commission from the general appropriation to the General Assembly.

Official Use By Clerks	
Agreed to By The House of Delegates	**Agreed to By The Senate**
without amendment ☐	without amendment ☐
with amendment ☐	with amendment ☐
substitute ☐	substitute ☐
substitute w/amdt ☐	substitute w/amdt ☐
Date: _____	Date: _____
_____	_____
Clerk of the House of Delegates	Clerk of the Senate

APPENDIX C

Existing Virginia Legislation

seq.) of Chapter 15 of this title may expend such sums not to exceed $5,000. (Code 1950, § 15-573; 1962, c. 623; 1972, c. 428; 1980, c. 64; 1985, c. 145.)

The 1985 amendment deleted the former second sentence, which read "The governing body may also offer a reward, not to exceed a like sum, for the arrest and conviction of the criminal."

ARTICLE 4.

Auxiliary Police Forces in Counties, Cities and Towns.

§ 15.1-159.2. Establishment, etc., authorized; powers, authority and immunities generally. — A. In cities, counties and towns in the Commonwealth, the governing bodies thereof, for the further preservation of the public peace, safety and good order of the community shall have the power to establish, equip and maintain auxiliary police forces, the members of which when called into service as hereinafter provided shall have all the powers and authority and all the immunities of constables at common law.

B. Such governing bodies shall also have the power to establish, equip and maintain auxiliary police forces which have all the powers and authority and all the immunities of full-time law-enforcement officers, if all such forces have met the training requirements established by the Department of Criminal Justice Services under § 9-170. Any auxiliary officer employed prior to July 1, 1987, shall be exempted from any initial training requirement, except that any such officer shall not be permitted to carry or use a firearm while serving as an auxiliary police officer unless such officer has met the firearms training requirements established in accordance with in-service training standards for law-enforcement officers as prescribed by the Criminal Justice Services Board. (1968, c. 157; 1987, c. 421; 1988, c. 864.)

The 1987 amendment designated the first paragraph as subsection A and added subsection B.

The 1988 amendment substituted "if" for "provided" following "law-enforcement officers," in the first sentence and added the last sentence of subsection B.

§ 15.1-159.5. Calling auxiliary policemen into service; policemen performing service to wear uniform; exception. — A. The governing body of the county, city or town may call into service or provide for calling into service such auxiliary policemen as may be deemed necessary (i) in time of public emergency, (ii) at such times as there are insufficient numbers of regular policemen to preserve the peace, safety and good order of the community, or (iii) at any time for the purpose of training such auxiliary policemen. At all times when performing such service, the members of the auxiliary police force shall wear the uniform prescribed by the governing body.

B. Members of any auxiliary police force which has been trained in accordance with the provisions of § 15.1-159.2 B may be called into service by the Chief of Police of any jurisdiction to aid and assist regular police officers in the performance of their duties.

C. When the duties of an auxiliary policeman are such that the wearing of the prescribed uniform would adversely limit the effectiveness of the auxiliary policeman's ability to perform his prescribed duties, then clothing appropriate for the duties to be performed may be required by the Chief of Police. (1968, c. 157; 1987, c. 421; 1988, c. 190.)

§ 9-169. Definitions. — The following words, whenever used in this chapter, or in Chapter 23 (§ 19.2-387 et seq.) of Title 19.2 of this Code, shall have the following meanings, unless the context otherwise requires:

1. *"Administration of criminal justice"* means performance of any activity directly involving the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders or the collection, storage, and dissemination of criminal history record information.

2. *"Board"* means the Criminal Justice Services Board.

3. *"Criminal justice agency"* means a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities, but only to the extent that it does so.

4. *"Criminal history record information"* means records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges, and any disposition arising therefrom. The term shall not include juvenile record information which is controlled by Chapter 11 (§ 16.1-226 et seq.) of Title 16.1 of this Code, criminal justice intelligence information, criminal justice investigative information, or correctional status information.

5. *"Correctional status information"* means records and data concerning each condition of a convicted person's custodial status, including probation, confinement, work release, study release, escape, or termination of custody through expiration of sentence, parole, pardon, or court decision.

6. *"Criminal justice information system"* means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

7. *"Department"* means the Department of Criminal Justice Services.

8. *"Dissemination"* means any transfer of information, whether orally, in writing, or by electronic means. The term does not include access to the information by officers or employees of a criminal justice agency maintaining the information who have both a need and right to know the information.

9. *"Law-enforcement officer"* means any full-time employee of a police department or sheriff's office which is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of this Commonwealth, and shall include any member of the Regulatory Division of the Department of Alcoholic Beverage Control vested with police authority, any police agent appointed under the provisions of § 56-353 or any game warden who is a full-time sworn member of the enforcement division of the Commission of Game and Inland Fisheries.

10. *"Conviction data"* means information in the custody of any criminal justice agency relating to a judgment of conviction, and the consequences arising therefrom, in any court. (1981, c. 632; 1982, c. 419; 1983, c. 357; 1984, c. 543.)

The 1984 amendment substituted "member of the Regulatory Division of the Department of Alcoholic Beverage Control" for "member of the Enforcement or Inspection Division of the Department of Alcoholic Beverage Control" in subdivision (9), defining "Law-enforcement officer."

enforcement officers who have not completed the compulsory training standards set out in subdivision 2 above, prior to assignment of any such officers to undercover investigation work. Failure to complete such training shall not, for that reason, constitute grounds to exclude otherwise properly admissible testimony or other evidence from such officer resulting from any undercover investigation;

5. Establish compulsory minimum entry level, in-service and advanced training standards for those persons designated to provide courthouse and courtroom security pursuant to the provisions of § 53.1-120, and to establish the time required for completion of such training;

6. Establish compulsory minimum entry level, in-service and advanced training standards for deputy sheriffs designated to serve process pursuant to the provisions of § 8.01-293, and establish the time required for the completion of such training;

7. Establish compulsory minimum entry-level, in-service, and advanced training standards for persons employed as jailers or custodial officers by local criminal justice agencies and for correctional officers employed by the Department of Corrections under the provisions of Title 53.1, and establish the time required for completion of such training;

8. Establish compulsory minimum training standards for all dispatchers employed by or in any local or state government agency, whose duties include the dispatching of law-enforcement personnel. Such training standards shall apply only to dispatchers hired on or after July 1, 1988;

9. Consult and cooperate with counties, municipalities, agencies of this Commonwealth, other state and federal governmental agencies, and with universities, colleges, junior colleges, and other institutions, whether located in or outside the Commonwealth, concerning the development of police training schools and programs or courses of instruction;

10. Approve institutions, curricula and facilities, whether located in or outside the Commonwealth, for school operation for the specific purpose of training law-enforcement officers; but this shall not prevent the holding of any such school whether approved or not;

11. Establish and maintain police training programs through such agencies and institutions as the Board may deem appropriate;

12. Establish compulsory minimum qualifications of certification and recertification for instructors in criminal justice training schools approved by the Department;

13. Conduct and stimulate research by public and private agencies which shall be designed to improve police administration and law enforcement;

14. Make recommendations concerning any matter within its purview pursuant to this chapter;

15. Coordinate its activities with those of any interstate system for the exchange of criminal history record information, nominate one or more of its members to serve upon the council or committee of any such system, and participate when and as deemed appropriate in any such system's activities and programs;

16. Conduct inquiries and investigations it deems appropriate to carry out its functions under this chapter and, in conducting such inquiries and investigations shall have the authority to require any criminal justice agency to submit information, reports, and statistical data with respect to its policy and operation of information systems or with respect to its collection, storage, dissemination, and usage of criminal history record information and correctional status information, and such criminal justice agencies shall submit such information, reports, and data as are reasonably required;

17. Conduct audits as required by § 9-186;

APPENDIX D

Part-time, Volunteer and Auxiliary Law Enforcement Survey

COMMONWEALTH of VIRGINIA

VIRGINIA STATE CRIME COMMISSION

General Assembly Building
910 Capitol Street

POST OFFICE BOX 3-AG
RICHMOND, VIRGINIA 23208

IN RESPONSE TO
THIS LETTER TELEPHONE
(804) 225-4534

ROBERT E. COLVIN
EXECUTIVE DIRECTOR

July 21, 1988

Dear Colleague:

The Virginia State Crime Commission is currently studying part-time, volunteer and auxiliary law enforcement officers. Specifically, the Commission is to determine the current use of part-time and auxiliary law enforcement officers, evaluate minimum training standards applicable to such personnel, and the level of funding, if any, needed to provide training for these individuals. Several weeks ago, in an effort to obtain input from affected individuals, the Crime Commission dispatched a survey to police departments and sheriffs offices in Virginia. As of today, we have not received a completed survey from your agency. Please take a few minutes to complete and return the survey to the above address no later than August 3. I have enclosed another copy of the survey for your convenience. If our letters have crossed in the mail, please disregard this letter and accept my appreciation for your assistance.

Thank you for your cooperation. If you have any questions, please contact staff research assistant, Susan Foster, at (804) 225-4534.

Sincerely,

Robert E. Colvin
Executive Director

REC:kr

Enclosure

LAW ENFORCEMENT SURVEY - POLICE DEPARTMENTS

I. Does your Department employ auxiliary or volunteer police?

_____ yes

_____ no

1. If yes, approximate number:_____

2. If no, what is the reason your Department does not employ auxiliary or volunteer police?_____

_____

_____

_____

II. If your Department employs AUXILIARY OR VOLUNTEER LAW ENFORCEMENT PERSONNEL, please answer the following:

1. Describe the job function (e.g. traffic control) of auxiliary or volunteer law enforcement personnel in your Department. _____

_____

_____

2. Describe the minimum training standards currently required by your Department for auxiliary or volunteer law enforcement personnel.

_____

_____

3. Does your Department provide in-house training for auxiliaries or are they trained at an academy?

_____

_____

4. Describe the legal authority (e.g. arrest power) possessed by auxiliary or volunteer law enforcement personnel in your Department. _____

_____

5. Do your auxiliary police carry a firearm?_____

6. Average compensation, if any, of auxiliary or volunteer law enforcement personnel in your Department _____

7. Approximate number of hours worked per week by an auxiliary or volunteer law enforcement officer in your Department _____

8. How many hours do you require an auxiliary to donate annually?_____

9. Do auxiliaries in your Department wear uniforms different and distinct from public law enforcement officers?_____

   Why/Why not?_____

   _____

10. How would you describe the problems, external or internal, with auxiliary or volunteer law enforcement officers in your area?

    _____ none

    _____ minor

    _____ moderate

    _____ serious

    a) Please describe the nature of any problems incurred.

    _____

    _____

    _____

11. Identify the advantages of auxiliary law enforcement officers.

    _____

12. What has been the overall impact on crime prevention by auxiliaries in your Department?_____

    _____

13. Has your agency been involved in any civil litigation due to the action of an auxiliary or volunteer law enforcement personnel?

    _____ yes

    _____ no

    If yes, please describe _____

    _____

    _____

Law Enforcement Survey - Sheriff Offices

I. Does your office employ part-time, volunteer or auxiliary deputy sheriffs?

_____ yes

_____ no

1. If yes, approximate number employed:_____

2. If no, is there a specific reason your office does not employ part-time volunteer or auxiliary deputy sheriffs?

_____

_____

II. If your office employs PART-TIME, VOLUNTEER OR AUXILIARY DEPUTY SHERIFFS, please answer the following:

1. Describe the job function (e.g. crowd control) of part-time deputy volunteer or auxiliary sheriffs in your office. _____

   A) Part-time Deputies_____

   _____

   B) Volunteer Deputies_____

   _____

2. Describe the minimum training standards currently required by your office for part-time auxiliary or volunteer deputy sheriffs. _____

   A) Part-time Deputies_____

   _____

   B) Volunteer Deputies_____

   _____

3. Describe the legal authority (e.g. arrest power) possessed by part-time, volunteer or auxiliary deputy sheriffs in your office. _____

   A) Part-time Deputies_____

   _____

   B) Volunteer Deputies_____

   _____

4. Average compensation of part-time auxiliary or volunteer deputy sheriffs in your office_____

A) Part-time Deputies_____

_____

B) Volunteer Deputies_____

_____

5. Approximate number of hours worked per week by part-time auxiliary or volunteer deputy sheriffs in your office_____

A) Part-time Deputies_____

_____

B) Volunteer Deputies_____

_____

6. How would you describe the problems with part-time, auxiliary or volunteer deputy sheriffs in your area?

A) Part-time Deputy Sheriffs		B) Volunteer Deputy Sheriffs	
_____	none	_____	none
_____	minor	_____	minor
_____	moderate	_____	moderate
_____	serious	_____	serious

a) Please describe the nature of any problems incurred.

_____

_____

_____

7. Have you been involved in any civil litigation due to the action of a part-time auxiliary or volunteer deputy sheriff?

_____ yes

_____ no

If yes, please describe _____

_____

_____

Survey Results of Police Departments

The Crime Commission received 126 out of 175 surveys dispatched to Police Departments in Virginia.

REASON AUXILIARY PROGRAMS

Not Utilized

° No need for an Auxiliary Program	47%
° Prohibitive Cost	19%
° Potential liability/insurance	15%
° Other	19%

JOB FUNCTION

° Same as full-time officer	39%
° Ride along with regular officer or serve as back up	39%
° Traffic and crowd control	17%
° Other	6%

TRAINING

° Less than regular officer	81%
° Same as regular officer	14%
° No formal training	6%
° More than regular oficer	0%

Note: 72% of the training is provided in-house

LEGAL AUTHORITY

° Same as regular officer	47%
° Limited (on duty and/or to assist another officer)	28%
° No legal authority	25%

PROBLEMS EXPERIENCED

° None	56%
° Minor	39%
° Moderate	6%
° Serious	0%

UNIFORMS

° Same as regular officer	72%
° Different from regular officer	28%

Survey Results of sheriffs' offices

The subcommittee received 104 completed surveys out of the 124 which were dispatched.

A. AUXILIARY/VOLUNTEER DEPUTY SHERIFFS

JOB FUNCTION

° Special events and traffic control	38%
° Jail and courtroom security	29%
° Ride along with regular officer	29%
° Same as full-time officers	0%

TRAINING

° Firearms only	29%
° Job related classes	29%
° On the job	14%
° Same as full-time officers	14%
° No training	14%

LEGAL AUTHORITY

° Same as regular officer	29%
° Limited (i.e. regular officer must be present)	29%
° No legal authority	19%
° Only in emergencies	10%
° Other	10%

PROBLEMS EXPERIENCED

° None	52%
° Minor	33%
° Moderate	5%
° Serious	5%

B. PART-TIME DEPUTY SHERIFFS

JOB FUNCTION

° Courtroom security and legal process servers	46%
° Same as full-time officers	24%
° Jail (e.g. transport prisoners)	11%
° Correctional officers	9%
° Other	11%

TRAINING

° Same as full-time officer	28%
° On the job	22%
° Job related classes	22%
° Background in law enforcement	11%
° No training	9%
° Other	4%

LEGAL AUTHORITY

° Same as full-time officer	83%
° No legal authority	11%
° Other	6%

PROBLEMS EXPERIENCED

° None	67%
° Minor	15%
° Moderate	11%
° Serious	4%

QUOTES FROM POLICE DEPARTMENTS ON THEIR AUXILIARY FORCE

"Our auxiliary officers are a tremendous help to our patrol division by supplying much needed manpower." Newport News Police Department

"Auxiliaries release sworn officers for more important functions." Richmond Bureau of Police

"Increase visibility." Dumfries Police Department

"Auxiliaries have allowed our regular officers more flexibility, allowed us to undertake more aggressive programs, and they have been a community relations asset to the Department." Waynesboro Police Department

"Increased patrols and surveillances in areas where crimes are occurring have resulted in arrest or moving the criminal out of the area." Danville Police Department

"Reduce overtime needed during special events." Arlington County Police Department

"The auxiliary unit with our department has proven very beneficial. We feel that training of this type of officer should be geared to how they are utilized not just an arbitrary standard which may not apply and could result in the loss of this assistance." Roanoke City Police Department

140249

REPORT OF THE
VIRGINIA STATE CRIME COMMISSION

Drug Testing of Arrestees

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

House Document No. 9

COMMONWEALTH OF VIRGINIA
RICHMOND
1989

COMMONWEALTH of VIRGINIA

POST OFFICE BOX 3-AG
RICHMOND, VIRGINIA 23208

IN RESPONSE TO
THIS LETTER TELEPHONE
(804) 225-4534

ROBERT E. COLVIN
EXECUTIVE DIRECTOR

VIRGINIA STATE CRIME COMMISSION

General Assembly Building
910 Capitol Street

October 18, 1988

TO: The Honorable Gerald L. Baliles, Governor of Virginia
Members of the General Assembly:

House Joint Resolution 60, agreed to by the 1988 General Assembly, directed the Virginia State Crime Commission "to study a voluntary drug testing program for arrestees awaiting trial or sentencing." In fulfilling this directive, a study was conducted by the Virginia State Crime Commission. I have the honor of submitting herewith the study report and recommendations on the Drug Testing of Arrestees.

Respectfully submitted,

Elmon T. Gray
Chairman

ETG:kr

Members of the Virginia State Crime Commission

From the Senate of Virginia:

Elmon T. Gray, Chairman
Howard P. Anderson
Elmo G. Cross, Jr.

From the House of Delegates:

Robert B. Ball, Sr., Vice Chairman
V. Thomas Forehand, Jr.
Raymond R. Guest, Jr.
Speaker A. L. Philpott
Warren G. Stambaugh
Clifton A. Woodrum

Appointments by the Governor

Robert C. Bobb
Robert F. Horan, Jr.
George F. Ricketts, Sr.

Attorney General's Office

H. Lane Kneedler

Subcommittee Studying

Drug Testing of Arrestees

Members:

Delegate Clifton A. Woodrum, Chairman
Senator Howard P. Anderson
Senator Elmon T. Gray
Delegate Raymond R. Guest, Jr.
Mr. Robert F. Horan, Jr.
Mr. H. Lane Kneedler
Speaker A. L. Philpott
Delegate Warren G. Stambaugh

Staff:

Robert E. Colvin, Executive Director
Tammy E. Sasser, Executive Administrative Assistant
Kris Ragan, Secretary

The subcommittee sincerely appreciates
the support and assistance provided by the
Attorney General's Office:

Stephen D. Rosenthal, Deputy Attorney General
John S. West, Administrative Staff Specialist

Table of Contents

I. Authority For Study

House Joint Resolution 60, agreed to by the 1988 General Assembly, directs the Virginia State Crime Commission "to study a voluntary drug testing program for arrestees awaiting trial or sentencing." House Joint Resolution 60 was proposed by Attorney General Mary Sue Terry, and patroned by Delegate Ralph L. Axselle of Henrico County.(Appendix A).

Section 9-125 of the Code of Virginia establishes and directs the Virginia State Crime Commission (VSCC) "to study, report and make recommendations on all areas of public safety and protection." Section 9-127 provides that "The Commission shall have the duty and power to make such studies and gather information and data in order to accomplish its purposes as set forth in §9-125..., and to formulate its recommendations to the Governor and the General Assembly." Section 9-134 authorizes the Commission "to conduct private and public hearings, and to designate a member of the Commission to preside over such hearings." The VSCC, in fulfilling its legislative mandate, undertook the Drug Testing of Arrestees Study as directed by House Joint Resolution 60.

II. Members Appointed to Serve

During the April 19, 1988 meeting of the Crime Commission, Senator Gray appointed Delegate Clifton A. Woodrum of Roanoke to serve as the Chairman of the subcommittee on Drug Testing of Arrestees Study. Members of the Crime Commission who served on the subcommittee are as follows:

Delegate Clifton A. Woodrum, Chairman
Senator Howard P. Anderson
Senator Elmon T. Gray
Delegate Raymond R. Guest, Jr.
Mr. Robert F. Horan, Jr.
Mr. H. Lane Kneedler
Speaker A. L. Philpott
Delegate Warren G. Stambaugh

III. Executive Summary

The full Crime Commission met on October 18, 1988 and received the report of the subcommittee. After careful consideration, the findings and recommendations of the subcommittee were adopted by the Commission. After conducting an extensive review of reports from the National Institute of Justice and from the District of Columbia and New York drug testing programs, the subcommittee strongly supports the position that a close link exists between drug abuse and criminal behavior. The subcommittee found that the data from the two initial drug testing programs indicated a high percentage of drug use among all arrestees, especially those who committed major felonies. The results of the projects also strongly indicated that drug testing of arrestees is an effective way of identifying those who pose high risks of pretrial rearrest, and that pretrial drug testing can significantly reduce those risks for many arrestees.

The subcommittee worked closely with the Director of the District of Columbia drug testing program to learn how that program is conducted. Testimony was heard on the constitutional issues surrounding the testing program, the importance of the test result information to the judicial officers and the current drug testing technology.

The subcommittee also worked closely with the Department of Criminal Justice Services and the Department of Corrections to decide the proper agency in the state to administer a pilot drug testing program.

The subcommittee made the following recommendations at its September 27, 1988 meeting:

A. Enabling Legislation

Introduce legislation to amend Section 19.2-123 of the Code of Virginia to enable any jurisdiction served by a pretrial services agency to conduct a voluntary drug testing program in agreement with the chief judge of the General District Court. The amendment should require that the test results only be used to assist the judicial officer in setting the conditions of release. The amendment would also allow the judicial officer to require an arrestee who tested positive on the initial test, and was subsequently released, to refrain from illegal drug use and submit to periodic tests until final disposition of his trial. (Appendix B)

B. Coordination of Pilot Program by the Department of Corrections

Contingent upon the passage of the proposed enabling legislation, request the Department of Corrections, in coordination with its new pretrial services program, to establish a pilot drug testing program for all accused felons in a jail's lock-up section.

C. Quarterly Reports From the Department of Corrections

Request that the Department of Corrections report on a quarterly basis to the Virginia State Crime Commission on the results of the drug testing program.

IV. Background

Due to the growing concern over the apparent link between drug abuse and crime, the National Institute of Justice, United States Department of Justice, provided funding in 1984 for pilot projects in New York city and the District of Columbia to focus on the relationship of drug abuse and pretrial criminality.

These two pilot studies have shown that more than half of the defendants tested have used drugs shortly before their arrests; a substantial percentage of defendants charged with major crimes were using drugs; and pretrial rearrest rates were fifty percent higher for drug users than for nonusers. The pretrial testing results in New York have only been used for research, while the results from the District of Columbia program have been used to set the conditions of release of the accused.

Since 1984, the National Institute of Justice, through the Bureau of Justice Assistance, has chosen three additional sites across the country to implement a pretrial drug testing program modeled after the one established in the District of Columbia: the State of Delaware; Portland, Oregon; and Pima County, Arizona.

In 1987, following the guidelines of the New York program, Drug Use Forecasting programs were established in twelve of the largest localities across the United States: New York; Washington, D.C.; Orleans Parish (New Orleans); San Diego County, California; Marion County (Indianapolis), Indiana; Maricopa County (Phoenix), Arizona; Los Angeles; Houston; Chicago; Detroit; Fort Lauderdale, Florida; and Portland, Oregon.

The results of the projects strongly indicate that drug testing of arrestees is an effective way of identifying those who pose high risks of pretrial rearrests and that pretrial drug testing can substantially reduce those risks for many arrestees.

V. Scope of the Study

House Joint Resolution 60 instructed the Drug Testing of Arrestees Study subcommittee to review the following topics to determine the feasibility and desirability of establishing a voluntary drug testing of arrestees program in Virginia:

- The methods of the pilot drug testing programs in the District of Columbia and New York City;
- The proper agency in Virginia to administer such a program;
- The cost of developing and implementing such a program;
- The drugs to be tested for; and
- The potential effectiveness of such a program.

VI. Work of the Subcommittee

The subcommittee held three meetings (June 9, September 1, and September 27) and one public hearing (July 27). The subcommittee used these meetings to review the structure of the proposed drug testing program, the cost estimates for the establishment of such a program and consideration of the proposed enabling legislation. At each of its meetings, the subcommittee heard testimony on the different aspects of the drug testing program from a variety of interested groups. Attorney General Mary Sue Terry, whose office initially proposed that this study be conducted, testified at the subcommittee's first meeting that the data compiled from the two original pilot drug testing programs did indicate a strong correlation between drug use and criminality. She urged the subcommittee to consider establishing a pilot program to provide data relevant to Virginia.

The subcommittee would like to express special appreciation to the following individuals who provided valuable technical assistance during the course of the study: Dr. Paul B. Ferrara of the Bureau of Forensic Science; Dee A. Malcan and C. Ray Mastracco of the Department of Corrections; Daniel E. Catley and Tony C. Casale of the Deparment of Criminal Justice Services; Oscar R. Brinson of the Division of Legislative Services; Barry Cox of Richmond Offender Aid and Restoration Inc and William R. Bowler of the Richmond City Sheriff's Office..

VII. Discussion of Issues

A. Applicable Law

1. Discussion

Section 19.2-120 of the Code of Virginia provides that an accused will be admitted to bail by a judicial officer unless that officer has reason to believe that the accused "will not appear for trial or hearing," or that his liberty "will constitute an unreasonable danger to himself or the public."

In determining the conditions of release of the accused on unsecured bond or promise to appear, Section 19.2-123 requires the judicial officer to consider, in addition to other background information on the accused, "any other information available to him which he believes relevant to the determination of whether or not the defendant or juvenile is likely to absent himself from court proceedings."

It further stipulates that "should the judicial officer determine that such a release will not reasonably assure the appearance of the accused," he may "impose any other conditions deemed reasonably necessary to assure appearance as required, and to assure his good behavior pending trial." (A copy of Sections 19.2-119 - 19.2-123 of the Code of Virginia are included in Appendix C).

While the pretrial testing programs have not been successfully challenged on constitutional grounds, a court case is currently pending against the program in the District of Columbia, Berry v. the District of Columbia. The U. S. District Court of the District of Columbia initially dismissed the claims as meritless, but on appeal to the U. S. Court of Appeals for the D. C. Circuit the case was remanded to the District Court for a "full exploration" of the claims of unconstitutionality made by the defendant. The Attorney General's office reviewed the documentation available on the case and established that the two major issues were whether the search or seizure is "reasonable" under the Fourth Amendment, and whether there is a need for "individualized suspicion." Further inquiries about the status of the case revealed that due to unique circumstances it will, more than likely, not settle the constitutional questions raised about the drug testing program.

2. Conclusion

The subcommittee concluded that Section 19.2-123 of the Code of Virginia should be amended to specifically state that a judicial officer may require a defendant to refrain from illegal drug use and be tested as a condition of release.

Specifically, the legislation should be broadly written to enable localities which are served by a pretrial services agency to conduct a drug testing program in agreement with the chief judge of the General District Court.

To protect the program from constitutional challenges, the subcommittee concluded that, unlike the D. C. program, the test results should not be provided to the judicial officer until after the bail decision is made. The judicial officer would only consider the test result at the time he sets the conditions of release. If the accused or juvenile tests positive for illegal drugs, and is admitted to bail, the judicial officer may then order that he be tested on a periodic basis until final disposition of his trial. The statute would also allow the judicial officer to impose more stringent conditions of release, contempt of court, or revocation of release for any accused whose subsequent tests are positive. (See Appendix B)

B. Procedures For The Drug Testing Program

1. Discussion

The review of the structure of the drug testing program focused on the information provided to the subcommittee by the District of Columbia Pretrial Services Agency. In gaining a general understanding of the guidelines that the D. C. Agency uses to conduct its program, the subcommittee paid particular attention to three issues: (1) who is tested; (2) the time at which the judicial officer receives the test result, and whether the test result is used in making the release decision or only in setting the conditions of release; and (3) the reliability of the drug testing equipment and the specific need to retest positive results. (See Appendix D for a report on the District of Columbia's drug testing program).

The D. C. Pretrial Agency collects voluntary urine samples from all defendants in the central lock-up each morning. The defendant's test result is then included in the agency's pretrial report which is given to the judicial officer at the bail hearing. The test result, however, is only used to determine the conditions of release. Most often, a defendant who tests positive is then required to enroll in a regular, once or twice a week drug testing program. A D. C. Superior Court Judge testified that he relies heavily on the drug test results when setting the conditions of release. He also stated that all of the judges in the D. C. system are supportive of the program and think that drug use is a very important factor in determing whether a defendant will appear for trial and whether a defendant will be a danger to himself or the community while on bail.

Representatives from both the D.C. Pretrial Agency, and the Bureau of the Forensic Labs, testified on the reliability of the drug testing equipment. They told the subcommittee that in order to provide the judicial officer with the test results at the time he sets bail or sets the conditions of release, the testing would need to be done on-site. The D. C. Pretrial Agency uses the Emit test and claims that it is almost 100% reliable, and other testimony indicated that the Emit test is a good, quick test with close to 97% reliability. The D. C. representative also indicated that each positive test is reconfirmed by another test.

2. Conclusion

The subcommittee concluded that a pilot drug testing program should be established following the general guidelines of the District of Columbia program. The Virginia pilot program, however, would only test those felons in lock-up each morning. The subcommittee concluded that since this would be a pilot program, it should focus on those arrestees

that have committed the most serious crimes and pose the most serious threat to the community when released on bail. If the drug testing of felons proves to be a successful way of identifying those arrestees who pose a high risk of pretrial criminality, then consideration could be given to expanding the program at a later date.

The subcommittee also decided that the judicial officer should not receive the test results until after the bail decision is made in order to ensure that this information is only considered in setting the conditions of release.

With regard to the reliability of the testing equipment, the subcommittee concluded that the technology and the safeguards built into the program would ensure that the test results were reliable.

C. Proper Agency to Administer the Drug Testing Program

1. Discussion

All participants in the study agreed that the drug testing program should be directly administered by a pretrial services agency. The testing program involves contact with the arrestees during the pre-release and post-release stages, and, therefore, could be combined with the pretrial agency's initial interviews and community surveillance. In conducting its research, the subcommittee learned that the Department of Corrections has received approval to establish five pretrial services programs around the state for misdemeanants. (See Appendix E) These proposed pretrial services programs would have a drug testing component.

In order not to duplicate efforts, the subcommittee worked with representatives of the Department of Corrections to determine if it could expand one of its pretrial programs to encompass the drug testing of felons pilot program. The Department of Corrections agreed that, with funding, it could administer such a program.

2. Conclusion

The subcommittee concluded that the Department of Corrections should expand its efforts with one of its pretrial programs to conduct pre-release and post-release drug testing for felons to accommodate the subcommittee's pilot program. The Department of Corrections agreed that it had the necessary procedures established to do this, and would supervise and operate such a drug testing program.

The subcommittee also concluded that the Department of Corrections should report to the Commission on a quarterly basis on the progress of the pilot program. The Department of Corrections' report should include, but not be limited to, the following areas:

(a) The number of arrestees who tested positive for drugs at the time of arrest and the type of crime they were arrested for;

(b) The effectiveness of the program in reducing pretrial rearrests and failure-to-appear rates; and

(c) The response by the judicial officers in the locality to the program and its results.

D. Estimated Cost of A Pilot Program

1. Discussion

In order to establish a cost approximation for implementing a drug testing program, the subcommittee worked with the Director of the Richmond Pretrial Services Agency to determine the cost of adding a drug testing program like the one in the District of Columbia to the Richmond pretrial program.

The pilot drug testing program would test all accused felons in lock-up each morning and conduct follow-up tests on all who tested positive on the initial test and are subsequently released. The following breakdown represents a general cost approximation for a drug testing program in Richmond:

1. Initial Test
   1,000 initial tests at $7 = $7,000

2. Follow-up Tests
   220 accused felons released under supervision by Pretrial Services
   380 (or 49%) of remaining 780 felons eventually released on bail

   600 (or 60%) released of the original 1,000 tested
   75% of 600 (or 450) have positive drug test

   450 tested once weekly for 10 weeks
   450 x 10 x $7 = $31,500

3. Personnel Cost
   Two FTE at $20,000 plus, 25% fringe = $50,000

4. Additional Office Space = $3,000

5. **Total Cost Estimate = $91,500**

Cost per accused monitored = $203.30

2. Conclusion

Initial inquiries were made concerning possible sources of federal funding to cover the costs of such a pilot program. At the time of the study, the Department of Criminal Justice Services reported that no federal funding was available. The subcommittee concluded that the Department of Criminal Justice Services should continue to seek federal sources of funding. If federal funding is still unavailable, the subcommittee would recommend that the Department of Planning and Budget, the House Appropriations Committee and the Senate Finance Committee be encouraged to consider funding the pilot program.

E. Types of Drugs to Test for in the Drug Testing Program

1. Discussion

The decision of what drugs to test for largely depends on the location in which the pilot program is established. The District of Columbia and New York studies found that the most abused drugs are cocaine, opiates (heroin), barbiturates and phencyclidine (PCP). Therefore, a pilot drug testing program in Richmond might conduct a four drug screen test to analyze urine samples for cocaine, opiates (heroin), barbiturates and PCP.

2. Conclusion

The subcommittee concluded that the option should be given to the pretrial agency to test for any such illegal drugs that it may deem appropriate.

F. Potential Effectiveness of the Drug Testing Program

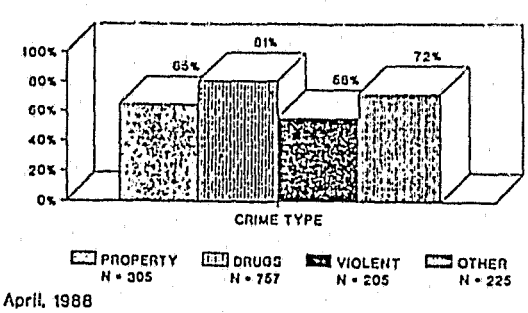
1. Discussion

The goal of the drug testing program is to reduce the use of drugs by those arrestees released, thereby reducing pretrial criminality and increasing trial appearances. Figures from the 1986 New York study indicated a high percentage of drug use among arrestees who committed major felonies. For example:

Arrest Charge	Percent Positive
Possession of drugs	76%
Sale of drugs	71%
Possession of stolen property	61%
Forgery	60%
Burglary	59%
Murder/manslaughter	56%
Larceny	56%
Robbery	54%
Weapons	53%

The latest statistics compiled by the D. C. Pretrial program continue to support strongly the theory that drug use is linked very closely to criminal behavior, and that this drug use is prevalent among all types of crimes:

Adult Drug Detection Unit
Percent Positive by
*Crime Type**



April, 1988

*Excludes 70 No Papered Cases

2. Conclusion

The subcommittee concluded that the statistics from the two original pilot drug testing programs do indicate that a positive correlation exists between drug abuse and criminal behavior. The subcommittee further concluded that the drug testing program serves as an effective way to identify those who pose high risk of pretrial rearrest and that pretrial drug testing can significantly reduce those risks for many arrestees.

More specifically, the drug testing program does the following:

- Provides judges with information about an arrestee's drug use at the time the conditions of release are set;
- Reduces the number of arrestees who are rearrested or fail to appear, thus reducing the amount of jail time they serve for these offenses; and
- Allows judges to release high risk arrestees, ones that they otherwise would not release, with the confidence that the arrestee's drug use and other activities will be closely monitored.

VIII. Recommendations

The subcommittee made the following recommendations at its September 27, 1988 meeting:

A. Enabling Legislation

Introduce legislation to amend Section 19.2-123 of the Code of Virginia to enable any jurisdiction served by a pretrial services agency to conduct a voluntary drug testing program in agreement with the chief judge of the General District Court. The amendment should require that the test results only be used to assist the judicial officer in setting the conditions of release. The amendment would also allow the judicial officer to require an arrestee who tested positive on the initial test, and was subsequently released, to refrain from illegal drug use and submit to periodic tests until final disposition of his trial. (Appendix A)

B. Coordination of Pilot Program by the Department of Corrections

Contingent upon the passage of the proposed enabling legislation, request the Department of Corrections, in coordination with its new pretrial services program, to establish a pilot drug testing program for all accused felons in lock-up.

C. Quarterly Reports From the Department of Corrections

Request that the Department of Corrections report on a quarterly basis to the Virginia State Crime Commission on the results of the drug testing program.

APPENDIX A

House Joint Resolution 60

HOUSE JOINT RESOLUTION NO. 60

House Amendments in [ ] - February 16, 1988

Requesting [~~that a joint subcommittee be established~~ the Crime Commission] to study drug testing for arrestees and defendants awaiting trial.

Patron--Axselle

Referred to the Committee on Rules

WHEREAS, the National Institute of Justice, U.S. Department of Justice, has provided funding for two pilot projects in New York and the District of Columbia to determine the extent of drug use among arrestees; whether current drug use at the time of arrest is a good indication of pretrial misconduct; the effectiveness of drug testing before trial in reducing pretrial misconduct (e.g., pretrial rearrests and failure to appear for court); and the relationship between drug abuse and criminal conduct; and

WHEREAS, the preliminary findings from the two-year-old drug testing projects show that: more than half of the defendants tested had used drugs shortly before their arrests; the use of cocaine has increased dramatically in the past two years and PCP and opiates are major drug problems; a substantial percentage of defendants charged with major crimes were using drugs (e.g., approximately half of the arrestees charged with robbery and two-fifths charged with burglary were drug users); and pretrial rearrest rates were fifty percent higher for drug users than for nonusers; and

WHEREAS, the results of the projects strongly indicate that drug testing of arrestees is an effective way of identifying those who pose high risks of pretrial rearrests and that pretrial drug testing can substantially reduce those risks for many arrestees; and

WHEREAS, the drug test results have been extremely useful to the courts in fashioning appropriate conditions of release on bail, reducing the use of drugs and thereby reducing the risks of pretrial misconduct by arrestees; and

WHEREAS, the success of the two drug testing projects indicates that such a program could be useful in the Commonwealth in reducing drug abuse and pretrial misconduct; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That [~~a joint subcommittee study~~ a the Crime Commission is requested to study a voluntary] drug testing program for arrestees awaiting trial or sentencing, the study to include, but not be limited to, a review of the methods and results of the drug testing programs in New York and the District of Columbia, the potential effectiveness of such a program in Virginia, the proper agency in Virginia to administer such a program, the costs for developing and implementing such a program, the drugs to be tested for and the most effective and efficient drug testing method.

[~~The joint subcommittee shall be composed in the following manner: three members from the House Courts of Justice Committee and two members of the House Health, Welfare and Institutions Committee, appointed by the Speaker; two members from the Senate Courts of Justice Committee and one member of the Senate Committee on Rehabilitation and Social Services, appointed by the Senate Committee on Privileges and Elections; a Commonwealth's attorney and a representative of the Division of Consolidated Laboratory Services, Department of General Services, both to be appointed by the Governor.~~

~~The joint subcommittee shall report its findings and recommendations to the 1989 Session of the General Assembly.~~

~~The indirect cost of this study is estimated to be $7,465; the direct cost shall not exceed $3,600~~ The Commission shall complete its work in time to report to the Governor and the General Assembly prior to the 1989 Session as provided in procedures of the Division of Legislative Automated Systems].

APPENDIX B

Proposed Legislation to Amend Section 19.2-123
of the Code of Virginia

D 7/20/88 Brinson C 9/21/88 df

SENATE BILL NO. ..... HOUSE BILL NO. .....

A BILL to amend and reenact § 19.2-123 of the Code of Virginia, relating to release of an accused on bond or promise to appear; conditions of release; drug testimony.

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-123 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-123. Release of accused on unsecured bond or promise to appear; conditions of release.-- ~~(a)~~ A. If any judicial officer has brought before him any person held in custody and charged with an offense, other than an offense punishable by death, or a juvenile taken into custody pursuant to § 16.1-246 ~~said~~ , the judicial officer shall consider the release pending trial or hearing of the accused on his written promise to appear in court as directed or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer. In determining whether or not to release the accused or juvenile on his written promise to appear or an unsecured bond , the judicial officer shall take into account the nature and circumstances of the offense charged, the accused's or juvenile's family ties, employment, financial resources, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings, and any other information available to him which he believes relevant to the determination of

whether or not the defendant or juvenile is likely to absent himself from court proceedings.

In the case of a juvenile or in any case where the judicial officer determines that such a release will not reasonably assure the appearance of the accused as required, the judicial officer shall then, either in lieu of or in addition to the above methods of release, impose any one ~~,~~ or any combination of the following conditions of release which will reasonably assure the appearance of the accused or juvenile for trial or hearing:

~~(1)~~ __.__ Place the person in the custody of a designated person or organization agreeing to supervise him;

~~(2)~~ __.__ Place restrictions on the travel, association or place of abode of the person during the period of release and restrict contacts with household members for a period not to exceed seventy-two hours;

~~(3)~~ __.__ Require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof. The value of real estate owned by the proposed surety shall be considered in determining solvency; or

~~(4)~~ __.__ Impose any other condition deemed reasonably necessary to assure appearance as required, and to assure his good behavior pending trial, including a condition requiring that the person return to custody after specified hours.

In addition, where the accused is a resident of a state training center for the mentally retarded, the judicial officer may place the person in the custody of the director of the state facility, if the director agrees to accept custody. Such director is hereby authorized to take custody of such person and to maintain him at the training

center prior to a trial or hearing under such circumstances as will reasonably assure the appearance of the accused for the trial or hearing.

B. In any jurisdiction served by a pretrial services agency which offers a drug testing program approved for the purposes of this subsection by the chief general district court judge, any such accused or juvenile charged with a crime may be requested by such agency to give voluntarily a urine sample. This sample may be analyzed for the presence of phencyclidine (PCP), barbituates, cocaine, opiates or such other drugs as the agency may deem appropriate prior to the initial appearance of the accused or juvenile at a hearing to establish bail. The agency shall inform the accused or juvenile being tested that test results shall be used by a judicial officer at the initial bail hearing only to determine appropriate conditions of release. All test results shall be confidential with access thereto limited to the judicial officer, the Commonwealth's attorney, defense counsel and, in cases where a juvenile is tested, the parents or legal guardian or custodian of such juvenile. However, in no event shall the judicial officer have access to any test result prior to making an initial release determination. Following this determination, the judicial officer shall consider the test results and the testing agency's report and accompanying recommendations, if any, in setting appropriate conditions of release. Any accused or juvenile whose urine sample has tested positive and who is admitted to bail may, as a condition of release, be ordered to refrain from illegal drug use and may be required to be tested on a periodic basis until final disposition of his case to ensure his compliance with the order. Sanctions for a violation of any condition of release pertaining to

abstention from drug use, which violations shall include subsequent positive test results or failure to report as ordered for testing, may be imposed in the discretion of the judicial officer and may include imposition of more stringent conditions of release, contempt of court proceedings or revocation of release. Any test given under the provisions of this subsection which yields a positive result shall be reconfirmed by a second test if the person tested denies or contests the initial positive result.

~~(b)~~ C. Nothing contained in this section shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court.

~~(c)~~ D. Nothing in this section shall be construed to prevent an officer taking a juvenile into custody from releasing that juvenile pursuant to § 16.1-247 of this Code. If any condition of release imposed under the provisions of this section is violated, the judicial officer may issue a capias or order to show cause why the bond should not be revoked.

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APPENDIX C

Code of Virginia: Section 19.2-119 - Section 19.2-123

ARTICLE 1.

Bail.

§ 19.2-119. "Judicial officer" defined. — As used in this article the term "judicial officer" means, unless otherwise indicated, any magistrate within his jurisdiction, any judge of a district court and the clerk or deputy clerk of any district court or circuit court within their respective cities and counties, any judge of a circuit court, and any justice of the Supreme Court of Virginia. (Code 1950, § 19.1-109.1; 1973, c. 485; 1974, c. 114; 1975, c. 495.)

§ 19.2-120. Right to bail. — An accused, or juvenile taken into custody pursuant to § 16.1-246 who is held in custody pending trial or hearing for an offense, civil or criminal contempt, or otherwise shall be admitted to bail by a judicial officer as defined in § 19.2-119, unless there is probable cause to believe that:

(1) He will not appear for trial or hearing or at such other time and place as may be directed, or

(2) His liberty will constitute an unreasonable danger to himself or the public. (1975, c. 495; 1978, c. 755; 1979, c. 649.)

§ 19.2-121. Fixing terms of bail. — If the accused, or juvenile taken into custody pursuant to § 16.1-246 is admitted to bail, the terms thereof shall be such as, in the judgment of any official granting or reconsidering the same, will be reasonably calculated to insure the presence of the accused, having regard to (1) the nature and circumstances of the offense, (2) the weight of the evidence, (3) the financial ability to pay bail, and (4) the character of the accused or juvenile. (1975, c. 495; 1978, c. 755; 1980, c. 190.)

Applied in Lee v. Winston, 551 F. Supp. 247 (E.D. Va. 1982).

§ 19.2-122. Bail by arresting officer. — A person arrested on a capias to answer, or hear judgment on, a presentment, indictment or information for a misdemeanor, or on an attachment, other than an attachment to compel the performance of a judgment or of an order or decree in a civil case, may be admitted to bail by the officer who arrests him, the officer taking a recognizance in such sum, not being less than $200 unless by general or special order of the court a less sum be authorized, as he, regarding the case and estate of the accused, may deem sufficient to secure his appearance before the court from which the process issued at the time required thereby. The officers shall return

the recognizance to the court on or before the return day of such process. If without sufficient cause he fail to make such return, he shall forfeit twenty dollars. (Code 1950, § 19.1-109; 1960, c. 366; 1966, c. 521; 1975, c. 495.)

Cross reference. — As to constitutional provision for bail, see Va. Const., Art. I, § 9.

Law Review. — For article, "Bail Reform and the Constitutionality of Pretrial Detention," see 55 Va. L. Rev. 1223 (1969).

§ 19.2-123. Release of accused on unsecured bond or promise to appear; conditions of release. — (a) If any judicial officer has brought before him any person held in custody and charged with an offense, other than an offense punishable by death, or a juvenile taken into custody pursuant to § 16.1-246 said judicial officer shall consider the release pending trial or hearing of the accused on his written promise to appear in court as directed or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer. In determining whether or not to release the accused or juvenile on his written promise to appear or an unsecured bond the judicial officer shall take into account the nature and circumstances of the offense charged, the accused's or juvenile's family ties, employment, financial resources, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings, and any other information available to him which he believes relevant to the determination of whether or not the defendant or juvenile is likely to absent himself from court proceedings.

Should the judicial officer determine that such a release will not reasonably assure the appearance of the accused as required, or, in the case of a juvenile, the judicial officer shall then, either in lieu of or in addition to the above methods of release, impose any one, or any combination of the following conditions of release which will reasonably assure the appearance of the accused or juvenile for trial or hearing:

(1) Place the person in the custody of a designated person or organization agreeing to supervise him;

(2) Place restrictions on the travel, association or place of abode of the person during the period of release;

(3) Require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof. The value of real estate owned by the proposed surety shall be considered in determining solvency; or

(4) Impose any other condition deemed reasonably necessary to assure appearance as required, and to assure his good behavior pending trial, including a condition requiring that the person return to custody after specified hours.

In addition, where the accused is a resident of a state training center for the mentally retarded, the judicial officer may place the person in the custody of the director of the state facility, if the director agrees to accept custody. Such director is hereby authorized to take custody of such person and to maintain him at the training center prior to a trial or hearing under such circumstances as will reasonably assure the appearance of the accused for the trial or hearing.

(b) Nothing contained in this section shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court.

(c) Nothing in this section shall be construed to prevent an officer taking a juvenile into custody from releasing that juvenile pursuant to § 16.1-247 of this Code. If any condition of release imposed under the provisions of this section is violated, the judicial officer may issue a capias or order to show cause why the bond should not be revoked. (Code 1950, § 19.1-109.2; 1973, c. 485; 1975, c. 495; 1978, cc. 500, 755; 1979, c. 518; 1981, c. 528.)

APPENDIX D

Report on Pilot Drug Testing Program
in the District of Columbia

National Institute of Justice

Research in Action

James K. Stewart, Director

Reprinted from *NIJ Reports/SNI 199* September/October 1986

Drugs and crime:
Controlling use and reducing risk through testing

by John A. Carver, J.D.

Drugs. Hardly a day goes by without more news reports detailing the extent of drug use in our society.

The costs in human lives and public resources are staggering. Twenty-five percent of all general hospital admissions arise from drug abuse. Forty percent of admissions from accidents are drug related. The national cost of accidents has been calculated at $81 billion per year, half of which is directly attributable to drug abuse.

Despite the well-publicized deaths of two top athletes from cocaine poisoning, cocaine overdose deaths are now running at a rate of 25 per week, up from 25 per *year* only a few years ago. Drug addiction of newborn babies is now a serious public health concern. Yet our drug abuse treatment programs have long waiting lists. Our public education efforts have had little effect on the growing demand for drugs.

At all levels, our criminal justice system is being strained to the breaking point by drugs, from the cop on the street, to crowded court dockets, to our teeming jails and prisons. With the number of drug cases increasing exponentially in recent years, and the number of drug-related cases even higher, criminal justice practitioners face a major crisis. How do we manage a problem of this magnitude?

The problem is especially acute in our courts. How are we to cope with the added dangers posed by drug abusing defendants at various decision points from pretrial release, to trial, to sentencing? How do we utilize our already over-burdened resources in a way that affords both fairness to the individual and a reasonable expectation of community safety? While the solution to many drug-related problems lies beyond the reach of the criminal justice system, there are a few rays of hope on an otherwise bleak landscape.

New techniques for managing the problem of drug abuse in the context of the criminal justice system have been implemented and are currently operating in the District of Columbia. With the assistance of the National Institute of Justice, judges in that jurisdiction are now much better equipped to *identify* those drug abusing defendants who pose the greatest threat to community safety, and to *monitor* their behavior and *control* their drug abuse while under the court's jurisdiction in a way that *reduces* the risk associated with drug abusers.

How? Through the latest in drug testing technology, coupled with the careful and effective use by judges of the information it provides. This article describes this new program of comprehensive drug testing, how it was implemented, and what it has meant to the court system.

The program was part of a major research study by the National Institute of Justice carried out in Washington, D.C., and New York City. Highlights of the findings from Washington, D.C., appear in the accompanying figures.

Project background

The drug testing program in the District of Columbia is the latest in a series of research efforts on drug abuse and crime sponsored by the National Institute of Justice. (For a review of recent research, see *Probing the Links Between Drugs and Crime*, by Bernard A. Gropper.)

The theoretical basis for the program is derived from earlier studies that show, among other things, that drug use is very much a characteristic of serious and violent offenders. On the other hand, even among high-risk individuals with established patterns of both drug abuse and criminality, increasing or reducing the level of drug abuse is associated with a corresponding increase or reduction in criminality (Gropper).

John A. Carver, J.D., is the Director of the Pretrial Services Agency in Washington, D.C.

Practical application of this research raises two major issues. First, how can courts determine who is a high-risk drug abuser? Second, once determined, what can a court system do to control drug use and reduce risk?

In the District of Columbia, the first task—identifying drug users—was accomplished through a new program of drug testing set up within the District of Columbia Pretrial Services Agency. With a statutory mandate to collect relevant information on each arrestee for use by the court in determining appropriate release conditions, the Agency was a logical (and neutral) place in which to implement a program of drug testing.

The second task—to integrate the technology into the court processes to *control* drug use and *reduce* risk—was more challenging. With the earlier research as the foundation, the program's working hypothesis was that close monitoring of a defendant's drug use, coupled with quick sanctions for violations, could prove effective in deterring drug use and reducing criminal activity.

An independent evaluation conducted by Toborg Associates, Inc., indicates that the District of Columbia has achieved remarkable success in demonstrating the effectiveness and feasibility of such an approach. It is hoped that the District of Columbia's experience will prove a useful guide to other jurisdictions in adopting similar programs.

Photo by Charles Harvey, PCTRS

The author, John A. Carver, J.D., is the Director of the Washington, D.C., Pretrial Services Agency.

Drug testing in operation

Drug testing of arrestees has existed in one form or another in the District of Columbia since the early 1970's. For a variety of reasons, its usefulness and impact on criminal case processing were minimal. With initial assistance from the National Institute of Justice, the D.C. Pretrial Services Agency established in March 1984 an entirely new approach to drug testing.

Relying on state-of-the-art technology to produce highly accurate drug tests in a very short time (generally 1 to 2 hours), the Agency has sought to put this information in the hands of judges at decision points where it can be of greatest use. These include the initial release decision (first appearance), throughout the pretrial period, and at sentencing. The Agency not only provides this important information to the court but offers judges a plan for dealing with the potential risks of releasing drug-abusing defendants. There are three situations in which the Agency conducts drug testing for the court: before the initial appearance, as a condition of release, and by special court order.

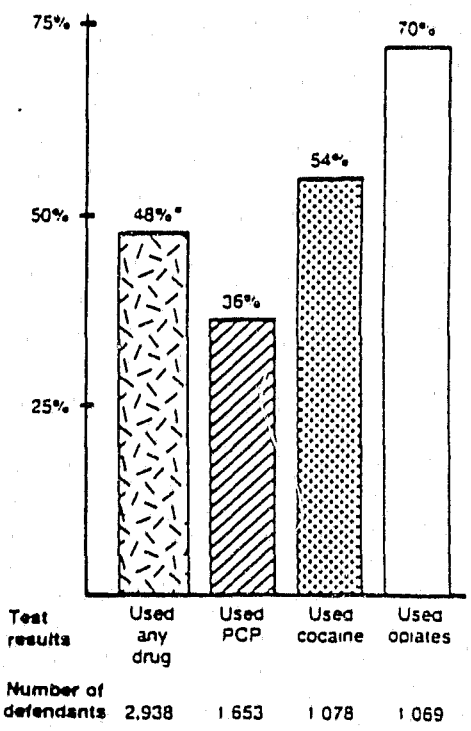
Initial or "lock-up" testing

The first and perhaps most important decision a judicial officer must make is the pretrial release decision. In the District of Columbia, this decision is made largely on the basis of information provided in a written report submitted by the Pretrial Services Agency in every case. The report summarizes the defendant's residence, family, and employment ties to the community, as well as prior criminal history and current status of pending charges, probation, parole, or warrants from other jurisdictions.

While the Agency has always asked arrestees about their drug use, only after the implementation of the drug detection program in 1984 could these important data be corroborated with a scientifically accurate test. Not surprisingly, the urinalysis testing program showed drug use to be far higher than the self-reported data indicated. (See Figure 1.)

Figure 1.

Percentage of drug users identified by urine tests who self-reported drug use (June 1984–January 1985)



*This shows that 48% of those who tested positive self-reported; or, alternatively, 52% of those who tested positive *failed* to report drug use.

Source: Toborg Associates, Inc.

In the District of Columbia, as well as the Federal system and most State court systems, the judicial officer must consider two factors at the initial release hearing: the risk of flight and risk to community safety. The court may set release conditions designed to deal with risks apparent in the defendant's background.

Since drug use correlates so strongly with increased risk in both categories (see "Drug Use and Pretrial Crime in the District of Columbia," *NIJ Research in Brief* by Mary A. Toborg and Michael P. Kirby), it is important that judges have this information when the defendant appears before the court. Accordingly, the Agency established its testing facility in the courthouse, adjacent to the cellblock.

Using Emit technology and five Autolab Carousel Units manufactured by the Syva Company, the Agency analyzes urine samples simultaneously for five drugs:

- Phencyclidine (PCP)
- opiates (heroin)
- cocaine
- methadone
- amphetamines.

(The technology permits testing of other substances of abuse on the same equipment.)

Beginning at 7:00 a.m. each morning, the Agency is generally able to collect urine samples and complete an entire day's lock-up (an average of 70 arrestees, but sometimes as high as 120) by 9:30 or 10:00, and have the results available to the judicial officer when the "arraignment court" commences at 11:30. All test results are entered into the Agency's online computer system.

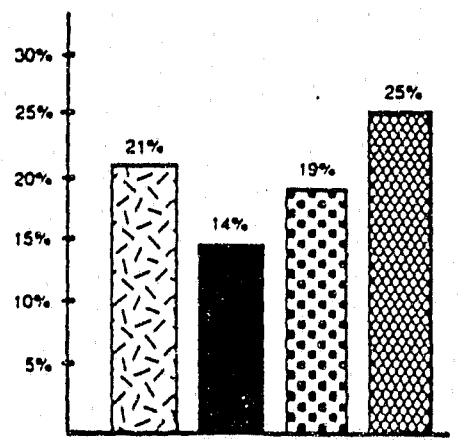
Very few defendants refuse to give a urine sample when requested. Why? Because they are told that the test result will be used *only* for determining their conditions of release. The results are not used as evidence on the underlying charge. While defendants have a right to refuse to give a sample (just as they have a right to refuse to be interviewed by the Pretrial Services Agency), in practice they realize there is little to be gained by this maneuver. Since the court considers this information vital to informed decisionmaking, refusal to provide a sample usually results in any nonfinancial release for the defendant being conditioned on submitting a urine sample, with appropriate placement based on the results.

Having this information available for the defendant's first appearance has meant that judges are now much better equipped to assess the risk posed by the pretrial release of an individual. Prior to the implementation of this program, many drug users slipped through the system, their drug use undetected. As a result, no conditions were set to deal with the problem, and their pretrial conduct (at least with respect to drug use) went unmonitored. As a group, drug users in the District of Columbia have consistently been found to be disproportionately involved in pretrial misconduct—as measured by rearrests while on release or failure to appear in court. (See Figure 2.)

Judges are well aware that drug users pose increased risks if released, and they are sensitive to the public safety concerns of the community. But judges traditionally have felt the frustration of having very few options. The District of Columbia jail, like most other urban jails, is already seriously overcrowded. There are long waiting lists for the few good treatment programs that exist.

Figure 2.

Pretrial rearrest rates of released arrestees, by urine test results (June 1984–January 1985)



Source: Toborg Associates, Inc.

Against this background, the Pretrial Services Agency stepped forward to offer a new and hitherto untested option—regular drug testing as a *condition of release*, the second component of the Agency's drug detection services.

Regular drug testing as a condition of release

Perhaps the most significant aspect of the new testing program was the development of regular drug testing as a condition of release. The goal of this aspect of the program was simple—to *reduce* the use of drugs, thereby *reducing* (it was hoped) the increased risks of pretrial misconduct posed by the release of drug users. The program was premised on earlier research and the recognition that drug users do not change their habits simply because somebody tells them to. For the program to deter drug use, releasees would have to be held accountable for violations.

To translate this concept into reality, the Agency carefully designed a program of drug testing with close supervision and real sanctions for violations. Defendants are released with a specific, court-ordered condition to refrain from illegal drug use. (Drug users who request treatment are referred to appropriate treatment facilities.)

Once enrolled in the testing program, defendants are initially scheduled to report weekly on a specific day. Defendants *must* report according to their testing schedule. Samples will not be accepted on any other day. They are told that a failure to report for a test is just as serious as a positive test. They sign an appointment slip *each time* they report, so there can never be any ambiguity or confusion about their obligation.

The Agency's automated records system maintains the defendant's entire history of test results, which is reviewed each time he or she appears. A staff member observes urine sample collection to avoid the possibility of tampering or substituting someone else's urine.

The court is immediately notified of those defendants who fail to report as

directed. Positive test results lead to sanctions, which escalate if drug use continues. Initially, those who continue to use drugs are placed on an intensified or more frequent testing schedule and are once again warned of the consequences of continued drug use. Further violations lead to a request for a hearing before the releasing judge.

It is in the area of sanctions that the greatest changes in criminal case processing have occurred—changes that contributed substantially to the success of the program. The Pretrial Services Agency actively encourages the court to hold "show cause" hearings, i.e., hearings where the defendant is directed to show cause why he or she should not be held in contempt for violating the court's release conditions. Furthermore, the Agency recommends that should the defendant be found guilty of violating conditions of release, short jail sentences, followed by re-release, be imposed.

This method ensures certainty of punishment. The more traditional approach of revoking release and setting a money bond, on the other hand, may not result in any detention of the defendant, and may in fact be a welcome alternative to the requirement of twice-weekly trips to the courthouse to submit a urine sample. If the program is to have the intended deterrent effect, defendants must know that violations will be detected and punishment will follow.

Once armed with reliable and timely information, the judges of the District of Columbia's Superior Court were more than willing to use the program first as a release option for those drug users who might not otherwise be considered for release, and then as the mechanism to enforce court orders and hold defendants accountable for their conduct.

Hearings *were* held, and defendants *were* held in contempt of court and punished. Quickly, the word got around that the court was serious about enforcing its orders, and defendants began to act accordingly.

Predictably, not all drug users abide by the release conditions, even though they know the consequences. But what the program offers the court is an accurate method for determining who among the vast numbers of drug-abusing defendants will comply with the program and who will not. After first determining (through the "lock-up" testing) the group posing the highest risk if released, the court is then able to utilize an "early warning" mechanism to identify those who cannot or will not refrain from drug use. With the backing of a scientifically reliable test, the court can and does take action against this "sub-set" of drug users.

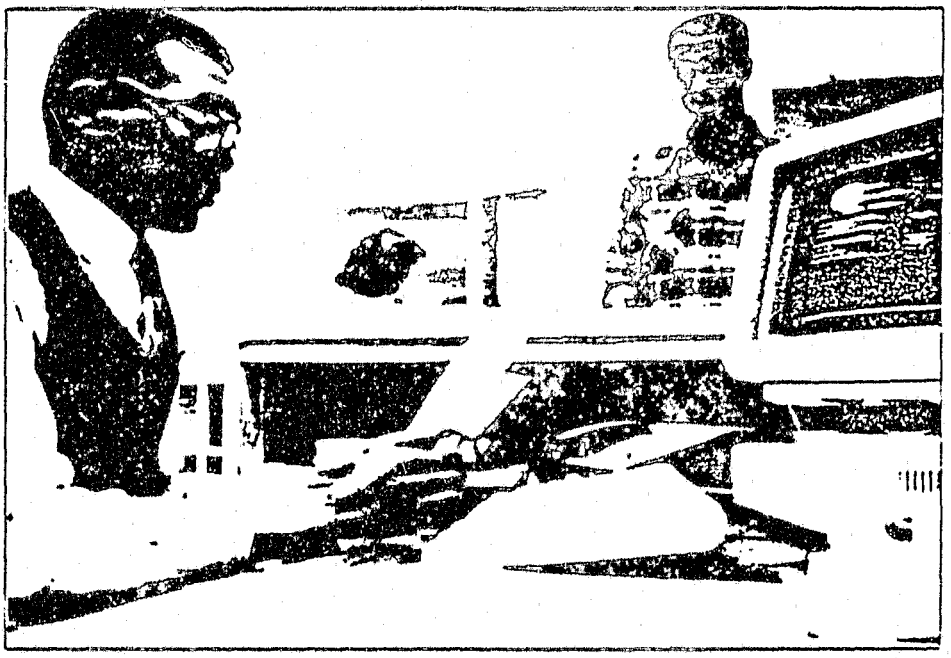


Photo courtesy of NIJ

Pretrial Services Agency staff member enters the results of drug testing on the computer.

The evaluation team has confirmed the validity of this "signaling" mechanism. Of all those placed in the Agency's program of regular drug testing, the individuals that either never showed up or dropped out after one, or two, or three appointments, had very high rearrest rates (33 percent for no-shows and 30 percent for early drop-outs). Those who stayed with the program for at least four drug tests had substantially lower rearrest rates (14 percent)—so low, in fact, that they posed no higher risk of rearrest than the group of *non*-drug users.

In other words, for this group of releasees, the intervention of the program and the willingness of the judges to put some teeth into it succeeded in eliminating the *additional* risk associated with drug use. It strengthened the concept of conditional release, providing hard evidence that as an alternative to incarceration, the technique can operate without burdening the community with additional risks. At a time of serious jail crowding, the benefits of such a program have been substantial and have led to the further development of an intensive pretrial supervision program, of which drug testing is an important component.

Photo courtesy of NIJ

The late Chief Judge H. Carl Moultrie I was instrumental in establishing the drug testing unit in the D.C. Superior Court.

Drug testing by special court order

The foregoing has described the use of the testing program as a risk assessment mechanism to assist judges at the defendant's initial appearance, and as a condition of release to monitor the defendant's behavior throughout the pretrial period. Yet another benefit of the program is the ability to provide judges with immediate information on drug use at any time during the court process. With the drug testing facility located in the courthouse, judges can have a defendant tested and pass over the case until the results are ready. This drug testing service often occurs in as little as 10 or 15 minutes and is frequently requested at all stages of criminal case processing, including sentencing.

Testing—an "early warning" system

Not to be overlooked are the benefits of the testing program that go beyond the criminal justice system to the general community.

Once comprehensive testing had begun, it quickly became apparent that the extent of drug abuse was far greater than anyone had imagined. Nearly two out of every three arrestees is a drug user.

The testing also revealed that the nature of the drug problem had shifted. While heroin addiction was still significant, the number of defendants testing positive for PCP was far greater—35 percent compared to 16 percent. Cocaine use was on the rise and eventually eclipsed both opiate and PCP use as the drug of choice. (See Figure 3.)

Only after this program was initiated did the city government begin to realize the extent of PCP and cocaine use in the community. This in turn has led to both a redirection of the city's treatment resources and a substantial increase in the funds appropriated for public education and drug abuse treatment.

Legal issues

Drug testing is an issue much in the news and is often the subject of legal or constitutional challenges. Thus, the experience of the District's drug testing program with respect to legal challenges is useful for other jurisdictions to know.

The program has faced challenges. That it is still in operation after 2½ years is due in no small part to the care with which the program was set up. Most of the legal issues fall into three categories. These are:

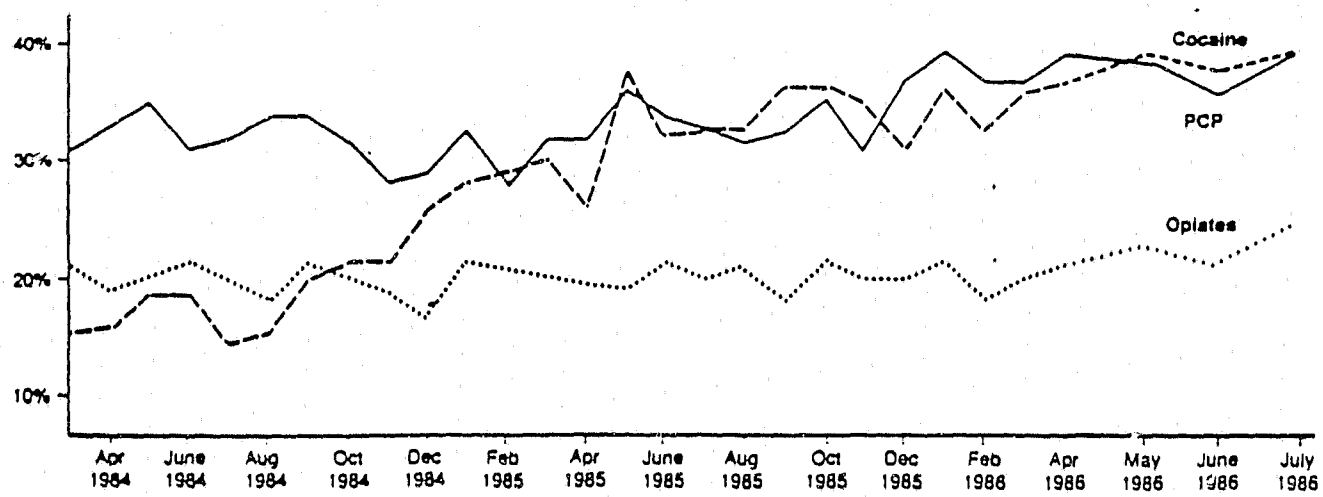
1. The constitutionality of collecting urine samples.
2. Challenges to the reliability of the technology.
3. Challenges based on chain of custody.

The first and most important issue deals with the admissibility of test results. There is a very important limitation on the use of the drug test. When samples are first collected in the courthouse cellblock, arrestees are told that their test results will be used *only* for determining appropriate conditions of release. Consistent with statutory guidelines governing the use of information in the Agency's files, the results are *not* admissible on the issue of guilt. Since a positive drug test is not used to convict the defendant of any crime, the issue of self-incrimination does not arise. Therefore, challenges raised in other contexts have been avoided.

Once the individual is arraigned on the criminal charges, judges have broad discretionary power to set and enforce conditions of release. And they have been quick to convene show cause hearings to determine if the defendant should be found in contempt of court when the conditions are violated. In this context, the Agency frequently finds

Figure 3.

Arrestees who tested positive for opiates, cocaine, or PCP (Based on 34,687 total tests)



Source: Toborg Associates, Inc.

Photo by John McDonnell, Washington Post

Chief Judge Fred B. Ugast has spearheaded task force efforts to ensure adequate drug treatment services for defendants in Washington, D.C.

itself in court to respond to challenges to either the reliability of the testing procedure or to the chain of custody question.

The question of the reliability of the Emit technology has been carefully scrutinized in at least one lengthy proceeding where expert witnesses were brought in for several days of testimony. (For a general discussion of drug testing technologies, see "Testing to Detect Drug Use," *TAP Alert*, National Institute of Justice.) Since the program uses the stationary equipment (as opposed to the less reliable portable equipment) and follows all of the manufacturer's procedures for calibrating the instrumentation and reconfirming every positive test result, the program has withstood every legal challenge on reliability grounds.

Chain of custody is another issue frequently litigated in drug testing situations. As a result of careful procedures, numerous checks and double-checks, and the fact that the urine sample goes almost immediately from the defendant to the testing equipment next door, the information has *never* been invalidated on the grounds of sloppy chain of custody procedures.

Program operating costs

The cost of setting up and operating a comprehensive drug testing program in a criminal justice context depends on a variety of factors. For how many drugs does the jurisdiction wish to test? Obviously, a screen for five drugs like that employed in the District of Columbia does cost more than screening for two or three drugs. How much time is available to analyze the urine samples? If a large number of samples must be processed quickly, more staff and more equipment will be needed. Will the drug testing facility remain open during extended hours to accommodate releasees with jobs or other commitments? What kind of management information system exists to maintain the test results consistent with the highest standards of data integrity? Will the drug detection program provide related services to the court, such as referrals to treatment facilities? All these issues must be addressed before arriving at a realistic assessment of the costs of operating such a program.

The costs of running a drug testing program can be broken into four categories of expenses: the testing equipment, the recordkeeping system, chemical reagents, and staff.

Testing equipment is available from several manufacturers in a variety of configurations. The instrumentation chosen by the Pretrial Services Agency was purchased at a price of approximately $16,000 per unit.

The costs of maintaining an efficient and easily accessible information system should not be underestimated. In the District of Columbia, the Agency modified its existing mainframe computer system to handle its information needs. Smaller jurisdictions might find personal computer-based systems feasible.

About half of the program's operating budget is allocated to personnel. The unit is open 12 hours per day, 6 days per week. The other half of the annual budget goes for chemical reagents and associated items needed to do the actual tests. For the five-drug screen employed by the program, the cost in chemical reagents and supplies is approximately $7.00 per test, which includes the cost of reconfirming positive results.

In considering costs, a relevant question is: What does it cost *not* to have a drug testing capability? Providing judicial decisionmakers with accurate data is certainly a value. And, as the research has indicated, data on drug use are perhaps the most relevant pieces of information because they correlate so strongly with those factors uppermost in a judge's mind—risk of flight and likelihood of rearrest.

As the NIJ-sponsored research has demonstrated, drug users are substantially more likely to be rearrested than nonusers. Should judges make release decisions without this information? Should judges have to rely on what the defendant chooses to divulge, without scientific verification, knowing that *most* of the problem will go undetected? Finally, having documented the value of regular drug testing as an "early warning" system of trouble, do we really want to continue operating in the dark?

A final point on costs: most criminal justice systems are operating within tight local budgets. The fact that almost every jurisdiction is facing a jail crowding crisis does not make the situation any easier. While a program such as the District's is no panacea for either the drug problem or the jail crowding problem, it *does* strengthen the system of conditional release—a necessary prerequisite for any strategy to reduce jail crowding.

In the District of Columbia, the drug detection program of the Pretrial Services Agency was seen as so important that it is now operating with full local funding. There has been an unequivocal determination that the program, while not cheap, is less expensive than the alternative of *not* having one.

NIJ

APPENDIX E

Department of Corrections: Pilot Program
for Pretrial Services f r Misdemeanants

PILOT PROGRAM:

PRETRIAL SERVICES

FOR

MISDEMEANANTS

DEPARTMENT OF CORRECTIONS
Division of Adult Community Corrections
Community Alternatives Office

JULY 8, 1988

Introduction

The PreTrial Services Program for Misdemeanants is part of the Governor's recently announced package of alternatives to ease overcrowding in local jails. The pretrial option has received support from the Virginia State Crime Commission, the District Court Services Steering Committee, and the Sheriff's Conference on Overcrowding.

The main objective of this program is to provide the General District Court Judges and the Commonwealth Attorneys with appropriate information to make release decisions. The goal is to enhance public safety by providing assurances that offenders who are dangerous remain in jail pending trial, and those that are considered unlikely to reoffend while in the community are released. Another objective is to provide a mechanism whereby failure to appear rates are drastically reduced, thereby saving court costs in issuing capiases and processing offenders.

The project assumes that General District Court Judges are releasing as many misdemeanants as possible with little or no information. The review of the offender in this program occurs when the Judge has made the decision to hold the offender in jail pending trial.

The Department of Corrections contact for further information on this pilot program is:

Mr. C. Ray Mastracco, Jr., Deputy Director
Virginia Department of Corrections
Division of Adult Community Corrections
P.O. Box 26963
Richmond, Virginia 23261
804-674-3107

Or

Ms. Dee Malcan, Chief of Operations
Virginia Department of Corrections
Division of Adult Community Corrections
P.O. Box 26963
Richmond, Virginia 23261
804-674-3242

PROGRAM DESCRIPTION

The basic concept evolves around direct participation of the Commonwealth Attorney's office. Localities to participate were selected based on overcrowding, pretrial population size, interest from Commonwealth Attorneys, and a need to pilot in each area of the state, both in urban and suburban areas.

The basic model calls for a Pretrial Investigator to be housed in the Commonwealth Attorney's office. This Investigator provides case file management for court processes, conducts background checks, recommends release or no release (with or without any special conditions) to the Commonwealth Attorney, and is the court liaison regarding docketing the cases in this program.

If released, the offender will be released to a Community Surveillance Officer who will make face to face contact every two weeks and telephone contact on alternate weeks. The Officer will conduct drug/alcohol screening once a month, if ordered by the Court as a condition of release. The Officer also provides written and verbal reminders to the offender of the pending Court date during the pretrial period.

The Community Surveillance Officer will maintain a running record of contacts, drug test results, and any reports needed by the Commonwealth Attorney. When the case is scheduled for trial, the Officer will send a copy of these reports to the Investigator. Upon completion of the pretrial period, the Officer will submit a data form on the case to Corrections as part of the evaluation process for the pilot program.

SITES SELECTED

The following areas have been selected based on the criteria discussed in the introduction:

ARLINGTON COUNTY

CHESTERFIELD COUNTY

CITY OF NORFOLK

PRINCE WILLIAM COUNTY

CITY OF ROANOKE(to be combined with the County of Roanoke and the City of Salem)

GENERAL PLAN OF ACTION TO IMPLEMENT PROGRAMS

1. MEET WITH COMMONWEALTH ATTORNEY(S) AND SHERIFF(S) TO DESIGN PROGRAM AND PROGRAM OBJECTIVES.

2. COMMONWEALTH ATTORNEY AND SHERIFF TO GAIN LOCAL SUPPORT FOR THE PROGRAM (JUDICIAL, LOCAL GOVERNMENT OFFICIALS, ETC.).

3. DEVELOP CONTRACT, BUDGET, EVALUATION CRITERIA, FUNDING MECHANISM AND ACTION PLAN.

4. REVIEW PACKAGE WITH CRIME COMMISSION STAFF, DOC STAFF, AND OTHER APPROPRIATE OFFICIALS (ex. contract form approval from Attorney General's Office).

5. NEGOTIATE, SIGN AND IMPLEMENT CONTRACT.*
   *Community Surveillance Officers will be hired in accordance with caseload size.

REPORT OF THE
VIRGINIA STATE CRIME COMMISSION

Victims and Witnesses of Crime

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

House Document No. 10

COMMONWEALTH OF VIRGINIA
RICHMOND
1988

COMMONWEALTH of VIRGINIA

POST OFFICE BOX 3-AG
RICHMOND, VIRGINIA 23208

IN RESPONSE TO
THIS LETTER TELEPHONE
(804) 225-4534

ROBERT E. COLVIN
EXECUTIVE DIRECTOR

VIRGINIA STATE CRIME COMMISSION
General Assembly Building
910 Capitol Street

November 9, 1987

To: The Honorable Gerald L. Baliles, Governor of Virginia,
and Members of the General Assembly:

House Joint Resolution 225, agreed to by the 1987 General Assembly, directed the Virginia State Crime Commission "to evaluate the effectiveness of current services provided to victims and witnesses of crime throughout the Commonwealth of Virginia and make any recommendations the Commission finds appropriate." In fulfilling this directive, a comprehensive study was conducted by the Virginia State Crime Commission. I have the honor of submitting herewith the study report and recommendations on Victims and Witnesses of Crime.

Respectfully submitted,

Elmon T. Gray
Chairman

ETG/sab

Respectfully Submitted

by the

Virginia State Crime Commission

From the Senate of Virginia:

Elmon T. Gray, Chairman
Howard P. Anderson
William T. Parker

From the House of Delegates:

Robert B. Ball Sr., Vice Chairman
Raymond R. Guest Jr.
Theodore V. Morrison Jr.
A.L. Philpott
Warren G. Stambaugh
Clifton A. Woodrum

Appointments by the Governor

L. Ray Ashworth
William N. Paxton Jr.
George F. Ricketts Sr.

Attorney General's Office

H. Lane Kneedler

Subcommittee

Studying

Victims and Witnesses of Crime

Members:

Senator William T. Parker, Chairman
Delegate Raymond R. Guest Jr.
Mr. H. Lane Kneedler, Attorney General's Office
Mr. William N. Paxton Jr.
Reverend George F. Ricketts Sr.
Delegate Warren G. Stambaugh
Delegate Clifton A. Woodrum

Staff:

Robert E. Colvin, Executive Director
Phyllis H. Price, Ph.D, Research Associate
Kimberly A. Morris, Executive Secretary

Department of Criminal Justice Services:

John F. Mahoney, Crime Victims Specialist
Mandie M. Patterson, Manager, Victim Services Program

Attorney General's Office:

Marla L. Graff, Assistant Attorney General

Acknowledgement

The members wish to express particular gratitude to the victims and families of victims whose courage and sense of justice brought them to testify before the subcommittee. We also wish to thank the many volunteers who give generously of their time to ease the burden of victims of crime.

Table of Contents

Appendices

SUBCOMMITTEE STUDYING ISSUES PERTAINING TO VICTIMS AND WITNESSES OF CRIME

I. Authority for the Study

House Joint Resolution 225, agreed to by the 1987 General Assembly, directs the Virginia State Crime Commission "to (i) evaluate the effectiveness of current services provided to victims and witnesses of crime throughout the Commonwealth of Virginia, (ii) to study the concept of a Bill of Rights for Victims and Witnesses of Crime, and (iii) to make any recommendations the Commission finds appropriate" (Appendix B). Delegate V. Thomas Forehand Jr. of Chesapeake and Delegate John G. Dicks III of Chesterfield were the patrons of the resolution.

Section 9-125 of the Code of Virginia establishes and directs the Virginia State Crime Commission (VSCC) "to study, report and make recommendations on all areas of public safety and protection." Section 9-127 of the Code of Virginia provides that "The Commission shall have the duty and power to make such studies and gather information and data in order to accomplish its purposes as set forth in § 9-125 ..., and to formulate its recommendations to the Governor and the General Assembly." Section 9-134 of the Code of Virginia authorizes the Commission "to conduct private and public hearings, and to designate a member of the Commission to preside over such hearings." The VSCC, in fulfilling its legislative mandate, undertook the Victims and Witnesses of Crime Study as directed by House Joint Resolution 225.

II. Members Appointed to Serve

During the April 13, 1987 meeting of the Crime Commission, Senator Gray appointed Senator William T. Parker of Chesapeake to serve as the chairman of the Subcommittee on Victims and Witnesses of Crime. Members of the Crime Commission who served on the subcommittee are:

Senator William T. Parker of Chesapeake, Chairman
Delegate Raymond R. Guest Jr. of Front Royal
Mr. H. Lane Kneedler (Attorney General's Office)
Mr. William N. Paxton Jr. of Richmond
Reverend George F. Ricketts Sr. of Richmond
Delegate Warren G. Stambaugh of Arlington
Delegate Clifton A. Woodrum of Roanoke

III. Background

The criminal justice system has, according to many, emphasized the rights of the accused and the convicted while forgetting those of crime victims and witnesses. In the last decade, however, federal and state governments have enacted laws and are conducting studies designed to improve the system's treatment of victims and witnesses and, for victims, to attempt some recompense for their losses. Primary among the accomplishments are victim and witness assistance programs and victims compensation funds.

As early as 1976, Virginia had established its Criminal Injuries Compensation Fund, and in 1984 set up a Victim and Witness Assistance Program.

In that same year, HJR 105 (Appendix C) requested law-enforcement agencies, Commonwealth's attorneys, and courts to provide fair treatment to crime victims and witnesses.

The Judicial Council of Virginia and the Judicial Conference of Virginia adopted these practices and published "A Statement of Principles and Recommended Judicial Practices to Assure Fair Treatment of Crime Victims and Witnesses" (Appendix D). In 1986, Virginia amended its sexual assault statutes to include sex-neutral and marital rape provisions. Also in 1986, both HB 792 and HB 848 proposed a Victims Bill of Rights whose specifications parallel those of the Justice Department's Model Legislation (Appendix E). By 1987, Virginia had enacted legislation which, if reenacted in 1988, permits videotaping certain children's depositions, thereby drawing Virginia closer to the federal Model Legislation; however, Virginia, like other states, must still decide how far and how fast it wishes to comply with the model. Appendix G summarizes the model's provisions and each state's degree of compliance.

IV. Scope of the Study

The study included the following topics:

--- Crime victims compensation
--- Funding of victim-witness services
--- Victim input in the sentencing process
--- Victim input in the parole process
--- Confidentiality of designated victim counseling
--- Feasibility of a Bill of Rights for victims
--- Other issues brought forward at public hearings

Although the study focused on legislative initiatives, the subcommittee recommended administrative or other actions to improve services for and treatment of victims and witnesses.

Four crime victims issues, the hearsay rule, videotaping testimony in child sex abuse cases, distribution of court assessments, and restitution are being studied by a House and Senate joint courts subcommittee, pursuant to HJR 319 (1987), and the Department of Planning and Budget, pursuant to Item 17 of the 1987 Appropriations Act. The Crime Commission subcommittee did not duplicate the work of these studies.

V. Recommendations

Pursuant to HJR 225 (1987), the subcommittee studying victims and witnesses of crime examined the Crime Victims Compensation Program, victim/witness services, the feasibility of enacting a crime victims bill of rights, and specific victim/witness issues. The Virginia State Crime Commission met on November 5, 1987 in Richmond, Virginia and received the report of the subcommittee. After careful consideration, the findings and recommendations of the subcommittee were adopted by the Commission.

The Commission reaffirms support for the Principles and Recommended Judicial Practices and urges administrators of the criminal justice system to abide by its provisions.

Crime Victims Compensation Program

1. Amend §19.2-368.18 to raise assessments for the Criminal Injuries Compensation Fund to establish a fee of twenty dollars for each conviction of a Class 1 or Class 2 misdemeanor under Title 18.2 except for drunkenness or disorderly conduct; and a fee of thirty dollars for any crime of treason, rape, robbery or any felony. The current fee is fifteen dollars for both classes of offenses.

2. The drunk driving exclusion in § 19.2-368.18 should be deleted, thereby subjecting drunk drivers to a $20 misdemeanor assessment. Victims of drunk drivers should be included in the compensation program.

3. Amend §19.2-368.11:1(E) to eliminate the $100 deduction and establish that all awards between $100 and the $15,000 maximum will be paid with no amount deducted. A claim for less than $100 would not be eligible for compensation.

4. The Division of Crime Victims' Compensation Division should supply the Crime Commission with a report, at least quarterly, on the status of the compensation fund, the number of new claims received each month, and the number of claims not settled within three months.

5. The Department of Planning and Budget is conducting a study pursuant to item 17 of the 1987 Appropriation Act of the fines, fees, court costs and restitution ordered by district and circuit courts. The Department of Planning and Budget should examine the feasibility of placing the criminal injuries fund second in line in order of distribution priority. It is now subordinate to both court costs and fines.

6. The Division of Crime Victims Compensation should develop and promulgate written guidelines for eligibility, claims denial, and appeals procedures, and seek input on the effectiveness of its brochure. The Division should comply with the Administrative Process Act and the Crime Commission should review the guidelines before publication.

7. The Division should have its telephone number moved from the listing under "Industrial Commission" to "Crime Victims Compensation." The subcommittee commends the Division on having already accomplished this.

8. Billing directions should be attached to physical evidence recovery kits (PERK), to read, "Attention Health Care Provider: The person subject to this examination for the purpose of collecting evidence shall not be liable for the cost of this examination. Contact the local law enforcement agency to determine who shall pay the bill."

9. The subcommittee supports the budget request for two additional claims examiner positions for the Division.

Victim/Witness Assistance Programs

1. A resolution should be presented to the General Assembly for passage to encourage all localities to establish a program to assist victims of crime.

2. Amend Title 19.2 by adding a statute which outlines the basic minimum standards for an accredited victim-witness program. This statute should also provide that a program must be accredited to be eligible for participation in state funding and that DCJS will administer the funding and accreditation. Notification of victims of changed court dates should be included in the standards. DCJS should submit an impact statement to address this proposed legislation.

3. A resolution should be developed to recommend that all law enforcement agencies provide in-service training on victimization for all law enforcement officers and to recommend that the Department of Criminal Justice Services, in its validity review of mandated basic recruit training, include victimology training.

Victim Impact Statements

1. The Virginia State Crime Commission should continue the subcommittee on victims and witnesses of crime. Among other issues, it should continue the study of mandating the right of victims of personal crime, with the victim's consent, to have a victim impact statement considered as part of the presentence report.

Parole Input

1. As a second topic for continued study, the subcommittee should further examine this issue before making a final recommendation, especially in regard to the dilemma of protecting the public while protecting the prisoner's right to know the bases of parole decisions.

2. Future recommendations should be based on such considerations as:

   a. A review of the Board's current procedures

   b. The victim's right to provide input in parole decisions

   c. The responsibility for notifying victims as a function of local agencies and courts

   d. The responsibility of persons wanting to submit a statement to keep the Board apprised of their addresses

   e. A requirement for receiving the input statement within 30 days after the person's receiving notification of the parole hearing

   f. Those giving input to the Board should be notified of the Board's decision to parole or not to parole.

Confidentiality of Designated Victim Counseling

The issue of counselor confidentiality, along with victim impact statements and parole input statements, should be carried over for further study by the subcommittee.

Crime Victims Bill of Rights

Virginia has a variety of provisions for victims already in place and additional ones are proposed or are being studied. The codification of Virginia law places these in segmented portions of the Code of Virginia. As an alternative to recodifying all of these provisions into a single bill of rights, the Crime Commission should identify the best source of funds for publication and distribution of a booklet which would clearly list, summarize and bring together in one document crime victims laws in Virginia.

Additional Recommendations

1. Employer intercession for victims' and witnesses' court attendance: Section 18.2-465.1 (Penalizing employees for service on jury panel) should be amended to include victims and witnesses.

2. Address protection: A section should be added to Chapter 15 (Trial and Its Incidents) of Title 19.2 so that the addresses of victims of crimes against the person shall not be elicited in testimony unless the court determines that the address is necessary to establish an element of the offense or is otherwise relevant to the crime.

3. Separate waiting areas: The subcommittee should continue its study of this issue and, until additional information is collected, include the provision of separate waiting areas, where possible, in the standards for victim/witness assistance programs.

4. Victims' and family members' right to attend trial: This issue should be included in the continued study.

5. Hospital protocol for rape victims: The Crime Commission should update and republish for distribution to all hospital emergency rooms the Crime Commission publication "Hospital Protocol for Treatment of Sexual Assault Victims" and request the assistance of the Virginia Hospital Association in distributing the document.

6. Handbook for sexual assault victims: The Crime Commission publication "Criminal Sexual Assault: A Handbook for Victims" should be reviewed and updated with the assistance of the Department of Criminal Justice Services. The booklet should be printed and distributed to all interested parties.

VI. Work of the Subcommittee

The subcommittee held three public hearings (July 30 in Roanoke, August 13 in Fredericksburg, and September 2 in Chesapeake), one extensive staff briefing, which took place as part of the first public hearing, and a work session in Richmond on September 22, 1987. In addition, the subcommittee reviewed crime victim studies and legislation from other states, as well as over 200 responses to a 44-question survey mailed statewide to judges, Commonwealth's attorneys, probation and parole officers, law enforcement officers, crisis center directors, and victim/witness assistance program coordinators.

A. Testimony and survey

Of some 75 people who testified, whether representing offices or organizations or speaking as victims or surviving family members, all supported the victims compensation program and victim/witness assistance programs, and all expressed hope that both programs could be expanded. Testimony and the survey revealed, however, that the compensation program would be improved by clearer, more specific written guidelines for eligibility and filing claims than those stated in § 19.2-368.4 et seq. of the Code. Survey results also showed that written compensation guidelines supplied to victim/witness offices would be helpful to victims and those assisting them.

B. Research

Virginia Law - The National Organization for Victim Assistance (NOVA), in its 1985 publication Victim Rights and Services: A Legislative Directory, recommends 50 crime victim/witness issues for legislative attention. Although Virginia has not yet enacted a Victims Bill of Rights, such legislation has been introduced and many of its provisions are already covered either by statute or by voluntary adherence to the suggestions in "A Statement of Principles and Recommended Judicial Practices to Assure Fair Treatment of Crime Victims and Witnesses," a brochure issued jointly by the Judicial Council of Virginia and the Judicial Conference of Virginia (Appendix D). Appendix F lists, in numerical order, the Virginia Code sections related to victims issues.

The Law in Other States - Victims Rights and Services: A Legislative Directory also identifies victim-witness issues and their status in each state (Appendix G). At the time of publication (1985), 28 states had enacted legislation which provided funding for services; 44 had enacted compensation legislation; 39 had enacted legislation providing for victim impact statements; and 31 had enacted victims bills of rights. More up-to-date information appears in Volume I of the National Association of Attorneys General publication, Crime Victims Seminar 1987, which compiles victim-witness laws enacted in each state in 1986 or introduced in 1987 (Appendix G-1).

Federal Law - Federal initiatives and legislation benefiting victims and witnesses include the following:

1. The Omnibus Victim and Witness Protection Act of 1982

   This act provides for:

   a. Mandatory victim impact statements containing all financial, social, psychological and medical effects of the crime on the victim, as part of federal pre-sentence reports;

   b. Protection of federal victims and witnesses from intimidation;

   c. Payment of restitution by offenders to victims of federal crimes;

   d. Guidelines for fair treatment of victims and witnesses in federal crimes; and

   e. A provision prohibiting a felon from profiting from the sale of the story of his crime (sometimes referred to as the Son of Sam provision).

2. The President's Task Force on Victims of Crime - Appointed, on April 23, 1982, the Task Force, chaired by Lois Haight Herrington, reviewed literature on victimization, interviewed professionals working with victims and heard testimony from crime victims, their friends and relatives. Hearings were conducted in Washington D.C., Boston, Denver, San Francisco, St. Louis and Houston.

   The Task Force completed its report in December 1982 and formally presented it to the President in January 1983. This report contained sixty-eight recommendations for action by, among others, criminal justice agencies, hospitals, bar associations and the private sector. One of the recommendations was to provide federal funding for victims' compensation and services provided to victims.

3. The Victims of Crime Act of 1984 - This assistance was made possible when Congress enacted the Comprehensive Crime Control Act of 1984. One of the components of this act is the Victims of Crime Act of 1984, which provides federal financial assistance to qualified state compensation programs and financial assistance to states for support of programs which provide services to crime victims. In Virginia, the Department of Criminal Justice Services (DCJS) has been designated to administer the victim services program. The compensation program is administered by the Industrial Commission and its Division of Crime Victims' Compensation.

4. The Justice Assistance Act of 1984 - A second component of the Comprehensive Crime Control Act is the Justice Assistance Act of 1984. This Act provides federal financial assistance to eighteen designated target areas of proven effectiveness. Assistance to victims of and witnesses to crime was one of the target areas. DCJS, which also administers these federal funds, awarded approximately $138,000 to fifteen local victim assistance programs in FY 85-86, and VOCA funds became available the following year.

5. Office of Justice Programs - The Office for Victims of Crime, created in July 1983, is part of the Office of Justice Programs, which is the agency charged with implementing the task force recommendations. This is being done, in part, by the establishment of a national resource center and the development of model legislation and training grants.

   Training programs for professionals have been developed in conjunction with various organizations, including the National Sheriffs' Association, the National Organization of Black Law Enforcement Executives, the National Judicial College, the National Organization for Victim Assistance, and the National Association of State Directors of Law Enforcement Training.

Parallel or Similar Studies in Virginia

In Virginia, several studies concerning crime victims and witnesses have been published. A 1979 study, conducted by the Crime Commission, outlines a hospital protocol for treatment of sexual assault victims. Another Crime Commission study, Victim-Witness Programs in Virginia (1983), and a DCJS study, A New Initiative for the Old Dominion: Victim-Witness Assistance Programs in Virginia, survey existing programs and recommend actions to strengthen them. This study was up-dated in 1986 as Victim/Witness Programs: Balancing the Scales. The Department of Planning and Budget is conducting one study on fines, costs, and restitution. The Joint Legislative Audit and Review Commission has begun a study that will include the Industrial Commission, the agency that administers the Criminal Injuries Compensation Fund. Both the Industrial Commission and the House Appropriations Committee have completed studies regarding Virginia's participation in VOCA. A legislative study on victims and witnesses was completed in 1986. This document (SD 15), "Crime Victims' Compensation," whose legislative proposals were enacted, recommended expanding the provisions of Chapter 21.1 (Compensating Victims of Crime) of Title 19.2 to extend the tolling for claims involving a minor or mentally incompetent person, to lengthen the time for filing appeal applications, to redefine methods for calculating awards, and to specify ways of disseminating information about the program. A joint subcommittee of the House and Senate Courts of Justice Committees established by House Joint Resolution 319 (1987) is currently studying the hearsay rule and videotaping testimony in child sexual assault cases.

VII. Discussion of Issues

A. Crime Victims Compensation Program

Current Law and situation

Virginia enacted a crime victims compensation law (§§ 19.2-368.1 through 19.2-368.18) in 1976, and the Industrial Commission's Division of Crime Victims Compensation began receiving claims in July 1977. The fund paid $1,210,959 in claims in FY 1986-87. The following chart summarizes the situation for FY 1988.

FY 88 Expected Revenues

$ 29,000	Carryover
300,000	Special Appropriation
780,000	Fees Collection
325,000	Federal Grant
$1,434,000	Total

Expected Expenditures
$2,000,000 Total

FY 88 Deficit
$566,000

Because of the increased publicity brought about by § 19.2-368.17, the increase in victim assistance programs, expanded eligibility criteria in § 19.2-368.4 (surviving parents and certain family members of offenders are now eligible for awards), and extending the statute of limitations for reporting crimes against children (§ 8.01-229), the program will deplete its resources by the end of this year. Not only is the program's future jeopardized, but its current operation is impaired as a result of inadequate funding, delayed arrival of federal funds, unexpectedly low revenues from court assessments combined with an unexpectedly high number of claims (843 in FY 86-87; 494 in FY 85-86), and insufficient staff. Hence, a reassessment of funding for crime victim compensation is urgent (Appendix H).

Findings

Public testimony and the survey reveal unanimous support for the Crime Victims Compensation Program; however, with increased public awareness of the program, demands for money and for time to process claims now far exceed available funds and personnel. Victims whose claims are granted sometimes must wait 6 months or more before they receive money, and those who appeal decisions and win may wait a year. In addition, both victims and victim assistance personnel find application and appeal processes cumbersome and confusing, and the eligibility requirements narrow and ambiguous. To reduce delays and frustration, victims and victim counselors pressed for additional funds and the development and dissemination of written guidelines explaining eligibility and appeals.

Speakers also requested that the $100 deductible on compensation claims be removed, and that a lower limit of $100 be established for claim eligibility, so that any eligible claim of between $100 and $15,000, the upper limit for compensation payments, would be completely reimbursed.

Of particular impact was testimony concerning inclusion of DUI victims in victim compensation coverage. Research of other states' crime compensation laws indicates that such victims account for only ten percent of claims payment. Appendix H provides a financial analysis of the proposals for establishing financial stability in the compensation program.

Conclusion

The subcommittee concludes that crime victims compensation funds are inadequate to meet demands, that victims and those working with them lack sufficient information to file claims in the clearest, most expeditious manner possible, that the $100 deductible for compensation claims provides an undue hardship on many victims, that inclusion of DUI offenders in the fee assessment will improve the financial status of the program, and more importantly that inclusion of DUI victims will improve the equity of the program's treatment of victims.

Victim/Witness Programs

Current law and situation

Victim/witness programs, first established in Portsmouth in 1976, assist all crime victims, especially victims of violent crimes, in reducing the trauma of victimization, understanding the complexities of the criminal justice system, and filing for victim compensation programs. Until 1984, only six such programs existed in Virginia. Funds made available that year through continuing state appropriations and in 1986 through the federal Victims of Crime Act enabled Virginia to expand the locally operated programs (§ 9-173.3), so that currently 32 programs now provide some level of service to 60% of Virginia's population. The Department of Criminal Justice Services administers these programs.

In addition to providing funding and technical assistance to localities, DCJS has also:

1. Designed and printed a handbook for crime victims.

2. Designed and printed a handbook for witnesses of crime.

3. Written and filmed a videotape for law enforcement officers about their roles in assisting crime victims.

4. Provided regional training for teams from localities to educate them about coordinating their services to assist crime victims.

The Department is currently in the process of:

1. Revising, in conjunction with the Crime Commission, the publication "Sexual Assault: A Handbook for Victims," originally published by the Crime Commission in August, 1981.

2. Developing victim assistance model policies and procedures for, among others, law enforcement, prosecution and victim service providers.

3. Developing victim assistance training curriculums for law enforcement, judiciary, Commonwealth's attorneys and victim service providers.

4. Developing a resource manual for victim/witness coordinators to assist them in performing their duties. This manual will include chapters on victims compensation, victim impact statements, and program management.

5. Developing a statewide assessment to determine which localities are appropriate for victim assistance programs and the level of staffing needed by each locality to provide appropriate services to crime victims.

6. Assisting localities wishing to develop victim assistance programs.

7. Working closely with the Virginia Network for Victims and Witnesses in activities designed to assist those providing services to crime victims in Virginia.

8. Working on a task force which is developing a model for victim impact statements.

9. Developing, in conjunction with the Parole Board, a brochure for crime victims which describes the parole process.

As a result of these Departmental and programmatic initiatives, the demand for victim/witness services now exceeds the ability to supply them.

Findings

Testimony, surveys, and research reveal widespread, unanimous support for victim services. While victims who testified at the public hearings expressed profound disillusionment with the criminal justice system's disregard for victims, every person complimented victim service coordinators for their helpfulness. Some remarked that the only professionals to treat them compassionately were the coordinators, and that without their efforts, victims would have been even more helpless in dealing with the criminal justice system and, more importantly, in restoring their lives. Testimony also disclosed that law enforcement agencies and Commonwealth's attorneys frequently lack the time and personnel necessary to provide victims with more than minimal attention, once the basic legal issues have been dealt with.

Conclusion

The Commission concludes that additional victim assistance services are essential to assure victims of support and guidance in criminal justice proceedings and to alleviate burdens on Commonwealth's attorneys' offices and law enforcement agencies.

Victim Impact Statements

Current law and situation

Section 19.2-299.1 currently makes inclusion of a victim impact statement discretionary with the court, and there is no provision that requires victims to be informed that they can request that such a statement be included as part of the presentence report, whether or not the judge chooses to allow it in determining the sentence. According to statistics furnished by the Department of Criminal Justice Services, victim impact statements are requested by the court in approximately 20 percent of personal offense cases.

House Bill 848 (1986) proposed mandating victim impact statements at the request of the victim; however, the proposal was defeated. One objection raised was potential sentencing inequities.

A Supreme Court ruling in 1987 (John Booth, Petitioner v Maryland) found victim impact statements unconstitutional in capital murder cases since the introduction of a potentially inflammatory statement might prejudice the sentence and thereby result in "cruel and unusual punishment." Research indicates that no victim impact statements were used in Virginia in capital offenses in 1986.

Findings

Testimony regarding inclusion of victim impact statements in presentence reports remains divided. Some feel that the statements should be included for every serious crime; some feel that they should be included only with the victim's consent; and others oppose their inclusion altogether.

According to a 1987 table published by the National Association of Attorneys General, 32 states currently require victim impact statements, and that association supports inclusion of the statement, with the victim's consent, in the presentence report. Victims overwhelmingly support the opportunity to express themselves to the court through the use of victim impact statements. Some probation and parole officers, who would prepare the statements, find themselves already overburdened, claiming that each victim impact statement would require five to six hours to complete. Others, however, counter that they already prepare them and that they usually require only 30 minutes to one hour. The subcommittee heard testimony from one chief probation and parole officer who testified that probation and parole officers in his area personally interviewed victims of violent offenses. It was also noted that a task force composed of representatives of probation and parole, Commonwealth's attorneys, law enforcement, and victim/witness assistance programs was currently developing a victim impact statement form.

Conclusions

Because of the complexity of the issue and the intense feelings surrounding it, the subcommittee needs additional time to study the legal, economic, and staffing implications of mandating crime victims' right to victim impact statements.

Parole Input and Notification

Current law and situation

Although § 53.1-155 requires a prerelease investigation and § 53.1-160 requires prerelease notice to be given to certain officials, the Virginia Code has no provision requiring notification of a victim that a prisoner's parole hearing has been scheduled or that the prisoner has been released. The Parole Board has initiated a procedure whereby victims can request such notification (Appendix I). Victims are also allowed to submit a written statement detailing the effects the crime had on them and expressing their opinion regarding the prisoner's parole. Like the compensation program's promotional efforts, the Parole Board's publicizing its willingness to consider input statements has met with unexpected acceptance, with over 4,000 input forms and letters received in 1986 and even more anticipated for current and future years.

Findings

The Parole Board has a program that, despite an occasional unfortunate oversight, keeps up with existing demands. The Board defines itself as a "citizen representative," and this priority has created an agency that is responsive and sensitive to victims. Testimony from parole officers and victims disclosed that a victim's awareness of the opportunity for input and for notification of release varies according to the locality. It was also pointed out that when victims are threatened by prisoners, not being notified of a parole hearing or release can result in the wrong parole decision, unnecessary fear for the victim and, of course, actual peril to the victim.

Conclusions

Judging from the response to the Board's notification program, the subcommittee concludes that victims will use the program if they know about it. If its popularity continues to grow, however, and all indications are that it will, without additional staff the success of the program will crumble under an increasingly difficult burden of handling victim input information. Again, because of the issue's complexity, the subcommittee felt that more time is required to study this issue.

Finally, the subcommittee commends the Virginia Parole Board for its initiative and voluntary attentiveness to the needs of victims of crime.

Counselor Confidentiality

Current law and situation

Although § 8.01-400.2 provides for counselor confidentiality in civil cases, no parallel provision exists in criminal law. In one 1987 case (Pennsylvania, Petitioner v. Ritchie), the U.S. Supreme Court ruled that such confidentiality violated a defendant's right to information that might have changed the outcome of his trial had it been disclosed.

Findings

Both victims and counselors testified to the necessity for allowing counselor confidentiality, especially in sex crime cases. Counselors admit, however, that the profession itself has not completely defined the limits of the term "counselor" nor fully identified which workers the definition should include. In addition, questions regarding the defendants' rights remain incompletely answered.

Conclusions

Because of the legal complexities of counselor confidentiality, the subcommittee needs more time to examine this issue.

Crime Victims Bill of Rights

Current law

Although Virginia has a number of statutes benefiting crime victims (Appendix F) and encourages adherence to "Principles and Recommended Practices" (Appendix D), the Code of Virginia does not include a particular chapter setting out crime victims laws.

Findings

Testimony was divided on this issue: victims usually spoke in favor of a bill of rights; some attorneys, concerned about potential governmental liability, opposed it. Conversations with victims advocates in Connecticut, Massachusetts, Minnesota, and Wisconsin revealed that, to date, no suits have been filed against state or local governments. States usually avoid liability by including a nonliability provision in their victims bills of rights, a practice that in some measure may reduce the law's effectiveness. Despite the disclaimer, however, proponents feel that a bill of rights does improve the treatment of victims. Victims were especially concerned that information regarding victims laws be made more accessible and widespread.

Conclusions

While recognizing the value of testimony supporting a crime victims bill of rights, the subcommittee noted that Virginia already has various victim laws, that the subcommittee will be proposing new ones, and that more are under study. The need remains, however, for a single source document to identify existing provisions for victims of crime. The subcommittee also concluded that victims and those who work with them could more readily use this single source of victims laws, rather than search for specific provisions throughout the Code of Virginia.

Notification - Court Dates

Current law and situation

No provisions exist to require that victims and witnesses be notified promptly of court date changes. Notifying victims and witnesses of changes varies according to the individual Commonwealth's attorney's discretion.

Findings

Testimony and the survey revealed that victims regard the failure to notify them of changes in court dates as perhaps the greatest frustration and inconvenience of the criminal justice process. Victims complain that they must leave work, sometimes at their expense, or hire babysitters only to discover that the trial has been postponed. This practice not only inconveniences and costs victims and witnesses, but it also costs the Commonwealth, which is required by §§ 19.2-278, 19.2-329, 19.2-330, and 19.2-331 to pay witness expenses when witnesses are summoned by the state.

Commonwealth's attorneys respond that their workload is so enormous, especially in rural areas where there may be only one part-time attorney to prosecute every criminal case, that notifying all victims and witnesses of changed court dates in advance would be impossible. Also, they point out, they often learn of the postponement only when they arrive at court.

Victim/witness assistance coordinators have testified that they would notify victims and witnesses of the schedule changes, thereby removing the burden from Commonwealth's attorneys. Here again, however, the rural area remains unserved unless new victim/witness assistance programs are established.

Conclusions

The Commission concludes that notification of court dates is an area that needs reform. The Commonwealth should seek to relieve the burden of those individuals who must take off from work in order to testify before the criminal courts of this state. Further, localities which establish victim-witness programs should make notification of continuances a priority.

Victim/Witness Intimidation/Protection

Current law and situation

Virginia has certain statutes already in place to protect victims and witnesses. Section 18.2-460 punishes obstruction of justice by threats, force, or intimidation as a Class 1 misdemeanor and, in drug cases, as a Class 5 felony. Section 19.2-120 allows judges discretion to deny bail when an accused represents a danger to society.

No statutes exist to cover address protection, provision of separate waiting areas, police protection, and notification of escape. Throughout the state the media have cooperated in protecting the names and addresses of sex crime victims; however, the provision of the other forms of protection varies from locality to locality.

Findings

Little information emerged in the public hearings to suggest that, prior to conviction, intimidation posed a problem for most victims and witnesses. No one reported overt court room threats and, although victims were angry and frustrated that defendants were allowed to go free on bond, few speakers admitted feeling threatened. The survey, however, revealed that some victims are threatened by defendants both before and after conviction. Moreover, victims may feel so threatened that they will not report the crime or testify in public. To try to allay these fears, judges routinely deny bail when an accused does appear to be a threat to society or to a particular person. No complaints arose about media publication of names and addresses of victims, but victims, especially when they had moved from the site of a crime, preferred not to have to state their new address in court.

Testimony and survey results show that separate waiting areas for victims and defendants, and their respective witnesses, form a major concern for victims. Although many courts can provide separation, courts with less adequate facilities sometimes lack a clear solution to this problem.

The Commission found no evidence of police protection inadequacy. Victims did complain, however, that no one notified them when a prisoner escaped. The Commission determined that escape notification sometimes occurred through the Commonwealth's attorney's office, but this practice was voluntary and varied by locality.

Conclusions

The subcommittee concluded that many laws, when they are enforced, already exist to ensure protection of victims and witnesses. The subcommittee was concerned over a victim's being required to reveal his or her address, especially if the victim relocated after the offense in order to reintroduce stability and a sense of security in his or her life. Also noted by the subcommittee was that creativity and initiative by judges and other court officials in providing separate waiting areas for defendants, victims and their respective witnesses and family members, could overcome facility configuration constraints in some cases.

APPENDIX A

Legislative Proposals

1. A BILL to amend and reenact §§ 19.2-368.2, 19.2-368.11:1 and 19.2-368.18 of the Code of Virginia, relating to the Criminal Injuries Compensation Fund.

2. SENATE JOINT RESOLUTION requesting the establishment of crime victim and witness assistance programs by local governing bodies.

3. A BILL to amend the Code of Virginia by adding in Title 19.2 a chapter numbered 1.1, consisting of a section numbered 19.2-11.1, relating to standards for crime victim and witness assistance programs.

4. A BILL to amend and reenact § 18.2-465.1 of the Code of Virginia, relating to penalizing employees for jury duty or court appearances; penalty.

5. A BILL to amend the Code of Virginia by adding in Article 1 of Chapter 16 of Title 19.2 a section numbered 19.2-266.2, relating to nondisclosure of the addresses of crime victims.

SENATE BILL NO. ..... HOUSE BILL NO. .....

A BILL to amend and reenact §§ 19.2-368.2, 19.2-368.11:1 and 19.2-368.18 of the Code of Virginia, relating to the Criminal Injuries Compensation Fund.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-368.2, 19.2-368.11:1 and 19.2-368.18 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-368.2. Definitions.--For the purpose of this chapter:

1. "Commission" shall mean the Industrial Commission of Virginia.

2. "Claimant" shall mean the person filing a claim pursuant to this chapter.

3. "Crime" shall mean an act committed by any person in the Commonwealth of Virginia which would constitute a crime as defined by the Code of Virginia or at common law. However, no act involving the operation of a motor vehicle which results in injury shall constitute a crime for the purpose of this chapter unless the injuries <u>(i)</u> were intentionally inflicted through the use of such vehicle <u>or (ii) resulted from a violation of § 18.2-266</u> .

4. "Family," when used with reference to a person, means (1) any person related to such person within the third degree of consanguinity or affinity, (2) any person residing in the same household with such person, or (3) a spouse.

5. "Victim" means a person who suffers personal physical injury

or death as a direct result of a crime.

§ 19.2-368.11:1. Amount of award.--A. Compensation for Total Loss of Earnings: An award made pursuant to this chapter for total loss earnings which results directly from incapacity incurred by a crime victim shall be payable during total incapacity to the victim or to such other eligible person, at a weekly compensation rate equal to sixty-six and two-thirds percent of the victim's average weekly wages. The total amount of weekly compensation shall not exceed $200. The victim's average weekly wages shall be determined as provided in § 65.1-6.

B. Compensation for Partial Loss of Earnings: An award made pursuant to this chapter for partial loss of earnings which results directly from incapacity incurred by a crime victim shall be payable during incapacity at a weekly rate equal to sixty-six and two-thirds percent of the difference between the victim's average weekly wages before the injury and the weekly wages which the victim is able to earn thereafter. The combined total of actual weekly earnings and compensation for partial loss of earnings shall not exceed $200 per week.

C. Compensation for Dependents of a Victim Who Is Killed: If death results to a victim of crime entitled to benefits, dependents of the victim shall be entitled to compensation in accordance with the provisions of §§ 65.1-65 and 65.1-66 in an amount not to exceed the maximum aggregate payment or the maximum weekly compensation which would have been payable to the deceased victim under this section.

D. Compensation for Unreimbursed Medical Costs, Funeral Expenses, Services, etc.: Awards may also be made on claims, or portions of claims based upon the claimant's actual expenses incurred

as are determined by the Commission to be appropriate, for (i) unreimbursed medical expenses or indebtedness reasonably incurred for medical expenses; (ii) expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the victim would have performed, for the benefit of himself and his family, if he had not been a victim of crime; (iii) expenses in any way related to funeral or burial, not to exceed $1,500; (iv) expenses attributable to pregnancy resulting from forcible rape; (v) any other reasonable and necessary expenses and indebtedness incurred as a direct result of the injury or death upon which such claim is based, not otherwise specifically provided for.

~~E. Any award made pursuant to this section shall be subject to a deduction of $100 from any and all losses, except that an award to a person sixty-five years of age or older shall not be subject to any deduction. Payments under this chapter~~ To qualify for an award under this chapter, a claim must have a minimum value of $100, and payments for injury or death to a victim of crime, to the victim's dependents or to others entitled to payment for covered expenses shall not exceed $15,000 in the aggregate.

§ 19.2-368.18. Criminal Injuries Compensation Fund.--A. There is hereby created a special fund to be administered by the Comptroller, known as the Criminal Injuries Compensation Fund.

B. Where any person is convicted, after July 1, 1976, ~~of any crime of~~ by a court with criminal jurisdiction of (i) treason, or any other felony, ~~or of~~ or (ii) any offense punishable as a Class 1 or Class 2 misdemeanor under Title 18.2 , ~~except a violation of Article 2 (§ 18.2-266 et seq.), Chapter 7, of Title 18.2 or drunkenness or disorderly conduct, by any court with criminal~~

~~jurisdiction, there shall be imposed an additional cost, in the case,~~ with the exception of a public drunkenness or disorderly conduct violation, a cost shall be imposed in addition to any other costs required to be imposed by law ~~, of the sum of fifteen dollars~~ . This additional cost shall be thirty dollars in any case under item (i) and twenty dollars in any case under item (ii) of this subsection. Such additional sum shall be paid over to the Comptroller to be deposited into the Criminal Injuries Compensation Fund. Under no condition shall a political subdivision be held liable for the payment of this sum.

C. No claim shall be accepted under the provisions of this chapter when the crime which gave rise to such claim occurred prior to July 1, 1977.

D. Sums available in the Criminal Injuries Compensation Fund shall be used for the purpose of payment of the costs and expenses necessary for the administration of this chapter and for the payment of claims pursuant to this chapter.

~~E. No claim shall be accepted by the Commission under this chapter until July 1, 1977.~~ All revenues deposited into the Criminal Injuries Compensation Fund, and appropriated for the purposes of this chapter, shall be immediately available for the payment of claims.

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SENATE JOINT RESOLUTION NO.....

Requesting the establishment of crime victim and witness assistance programs by local governing bodies.

WHEREAS, every year thousands of crimes are committed in Virginia which result in injury or loss to an untold number of men, women and children; and

WHEREAS, the physical, emotional and financial suffering of these victims and witnesses and their families is sometimes overlooked by the agencies which comprise our criminal justice system; and

WHEREAS, the major emphasis of the criminal justice system thus far has been the apprehension, prosecution and rehabilitation of the accused; and

WHEREAS, although positive steps are currently underway in Virginia through the Criminal Injuries Compensation Fund and other initiatives, additional steps are needed; and

WHEREAS, it is the civic responsibility of all citizens to become involved in the criminal justice system; and

WHEREAS, the General Assembly in 1984 authorized the Department of Criminal Justice Services to award grants for the purpose of assisting in the funding of local programs to serve crime victims and witnesses; and

WHEREAS, thirty-two localities in Virginia have initiated local programs to assist victims and witnesses of crime; and

WHEREAS, the General Assembly, in recognizing the importance of

citizen cooperation to the general effectiveness of the criminal justice system, finds that all crime victims and witnesses in the criminal justice system should be treated with dignity, respect, courtesy and sensitivity; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the General Assembly by this resolution calls upon all local governing bodies to establish, operate and maintain assistance programs to help victims and witnesses of crime in dealing with the complexities of the criminal justice system and in coping with the trauma and emotional toll to which such persons are subjected; and, be it

RESOLVED FURTHER, That the Clerk of the Senate prepare a copy of this resolution for presentation to all local governing bodies in the Commonwealth that they may be apprised of the sense of the General Assembly.

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SENATE BILL NO. ..... HOUSE BILL NO. .....

A BILL to amend the Code of Virginia by adding in Title 19.2 a chapter numbered 1.1, consisting of a section numbered 19.2-11.1, relating to standards for crime victim and witness assistance programs.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 19.2 a chapter numbered 1.1, consisting of a section numbered 19.2-11.1, as follows:

CHAPTER 1.1.

CRIME VICTIM AND WITNESS ASSISTANCE PROGRAMS.

§ 19.2-11.1. Establishment of crime victim-witness assistance programs; funding; minimum standards.--A. Any local governmental body which establishes, operates and maintains a crime victim and witness assistance program which is accredited by the Department of Criminal Justice Services shall be eligible for participation in state funding for such program pursuant to § 9-173.3 of this Code.

B. To qualify for accreditation, local victim and witness assistance programs shall observe the following guidelines:

1. In order that victims and witnesses receive protection from harm and threats of harm arising out of their cooperation with law-enforcement, prosecution or defense efforts, they shall be provided with information as to the level of protection available and be assisted in obtaining this protection from the appropriate authorities.

2. Victims shall be informed of financial assistance and social services available as a result of being a victim of a crime, includ information on how to apply for assistance and services.

3. Victims and witnesses shall be provided, where available, a separate waiting area during court proceedings that affords them privacy and protection from intimidation.

4. Victims shall be assisted, to the extent possible, in having any stolen property held by law-enforcement agencies for evidentiary purposes returned promptly.

5. Victims and witnesses shall be provided with appropriate employer intercession services to ensure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances.

6. Victims and witnesses shall receive prompt advance notification, whenever possible, of judicial proceedings relating to their case.

7. Victims shall be assisted in seeking restitution in accordance with the laws of the Commonwealth where the offense results in damage, loss, or destruction of the property of the victim of the offense or in cases resulting in bodily injury or death to the victim.

8. Victims and witnesses shall be expeditiously notified by appropriate personnel of any changes in court dates.

9. Victims of crime shall be notified of alternatives available regarding the use of victim impact statements at sentencing and victim imput in the parole process.

Additionally, such programs shall adhere to such other standards as may be promulgated by the Department of Criminal Justice Service

SENATE BILL NO. ..... HOUSE BILL NO. .....

A BILL to amend and reenact § 18.2-465.1 of the Code of Virginia, relating to penalizing employees for jury duty or court appearances; penalty.

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-465.1 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-465.1. Penalizing employee for court appearance or service on jury panel.--Any person who is summoned to serve on jury duty or any victim of or witness to a crime who is to appear in a court of law when such criminal case is heard shall neither be discharged from employment, nor have any adverse personnel action taken against him, nor shall he be required to use sick leave or vacation time, as a result of his absence from employment due to such jury duty or court appearance , upon giving reasonable notice to his employer of such court appearance or summons. Any employer violating the provisions of this section shall be guilty of a Class 4 misdemeanor.

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SENATE BILL NO. ..... HOUSE BILL NO. .....

A BILL to amend the Code of Virginia by adding in Article 1 of Chapter 16 of Title 19.2 a section numbered 19.2-266.2, relating to nondisclosure of the addresses of crime victims.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 1 of Chapter 16 of Title 19.2 a section numbered 19.2-266.2 as follows:

§ 19.2-266.2. Nondisclosure of victim's address.--Unless the court determines that the address of a crime victim is an element of the crime or otherwise relevant in a criminal proceeding, a victim of a crime against a person shall not be required to reveal his address in any criminal proceeding.

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APPENDIX B

HJR 225

GENERAL ASSEMBLY OF VIRGINIA -- 1987 SESSION

HOUSE JOINT RESOLUTION NO. 225

Directing the Virginia State Crime Commission to study crime victim-witness service

Agreed to by the House of Delegates, February 8, 1987
Agreed to by the Senate, February 19, 1987

WHEREAS, public respect and support for the criminal justice system requires that it be perceived as balanced and fair, not only to those accused and convicted of committing crimes but also to those who are victims and witnesses of crimes; and

WHEREAS, protecting the rights of victims and witnesses of crime need not infringe upon the constitutional rights of those accused and convicted of committing crimes; and

WHEREAS, this Assembly, by way of prior enactments and resolutions, has previously affirmed its support for the rights of crime victims and witnesses; and

WHEREAS, there is a need to evaluate the effectiveness of current victim-witness services in view of the increasing number of bills introduced each legislative session dealing with victim-witness issues and to review various proposals that have been made regarding a "Bill of Rights for Victims and Witnesses of Crime"; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia State Crime Commission is directed to (i) evaluate the effectiveness of current services provided to victims and witnesses of crime throughout the Commonwealth of Virginia, (ii) to study the concept of a "Bill of Rights for Victims and Witnesses of Crime," and (iii) to make any recommendations the Commission finds appropriate.

The Commission shall employ whatever methods of inquiry it shall deem necessary including, but not limited to, the conducting of public hearings throughout the Commonwealth and the employment of additional, temporary staff. The Department of Criminal Justice Services, through its Victim-Witness Program section, shall lend its expertise and resources to the Commission in completing this study.

The Commission shall complete its study and submit its recommendations, if any, no later than December 1, 1987.

The direct costs of this study are estimated to be $8,315 and such amount shall be allocated to the Virginia State Crime Commission from the general appropriation to the General Assembly.

APPENDIX C

HJR 105

Fair treatment for crime victims and witnesses

GENERAL ASSEMBLY OF VIRGINIA • 1984 SESSION
HOUSE JOINT RESOLUTION NO. 105

Whereas every year thousands of crimes are committed in Virginia which result in injury or loss to an untold number of men, women and children; and

Whereas the physical, emotional and financial suffering of these victims and witnesses and their families are sometimes overlooked by the agencies which comprise our criminal justice system; and

Whereas the major emphasis of the criminal justice system thus far has been the apprehension, prosecution and rehabilitation of the accused; and

Whereas Virginia spends millions of dollars on the perpetrators of crime from their arrest through their release from prison but spends little to assist victims and witnesses in restoring their lives and property; and

Whereas although positive steps are currently underway in Virginia through the Criminal Injuries Compensation Fund, additional steps are needed; and

Whereas it is the civic responsibility of all citizens to become involved in their criminal justice system; and

Whereas the General Assembly, in recognizing the importance of citizen cooperation to the general effectiveness of the criminal justice system, finds that all crime victims and witnesses in the criminal justice system should be treated with dignity, respect, courtesy and sensitivity; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That the General Assembly of Virginia by this resolution calls upon all law-enforcement agencies, attorneys for the Commonwealth and courts to strive to provide dignified, respectful, courteous and sensitive treatment to victims of crime and witnesses for both the Commonwealth and the defense and to pursue the following objectives in a manner no less vigorous than the protections afforded criminal defendants:

1. That victims and witnesses receive protection from harm and threats of harm arising out of their cooperation with law-enforcement, prosecution or defense efforts, and be provided with information as to the level of protection available.

2. That victims be informed of financial assistance and social services available as a result of being a victim of a crime, including information on how to apply for assistance and services.

3. That victims and witnesses be provided, where available, a separate waiting area during court proceedings that affords them privacy and protection from intimidation.

4. That victims have any stolen property held by law-enforcement agencies for evidentiary purposes returned promptly, unless there is a compelling law-enforcement purpose for retaining it.

5. That victims and witnesses be provided with appropriate employer intercession services to ensure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances.

6. That victims and witnesses receive prompt advance notification, whenever possible, of judicial proceedings relating to their case.

7. That victims be awarded restitution in accordance with the laws of the Commonwealth where the offense results in damage, loss, or destruction of the property of the victim of the offense or in cases resulting in bodily injury or death to the victim.

8. That the Commonwealth make training and information available to criminal justice agencies emphasizing the proper and complete assistance that should be afforded to victims and witnesses of crime; and, be it

Resolved further That the Clerk of the House of Delegates is requested to forward a copy of this resolution to the Executive Secretary of the Supreme Court, the Commonwealth's Attorneys' Association and the Department of Criminal Justice Services for distribution to all judicial, prosecutorial and law-enforcement agencies in the Commonwealth, that they may be apprised of the sense of the General Assembly of Virginia.

APPENDIX D

Recommended Judicial Practices in Virginia

PREAMBLE

We, as members of the Virginia judiciary, consistent with and mindful of our neutral role as judges, believe that we should play a leadership role in ensuring that all persons coming before the courts—victims, all witnesses and defendants—are treated with courtesy, respect and fairness.

The principles and recommended practices hereinafter set out represent the judiciary's commitment to exercising that leadership role and to providing fair, dignified and respectful treatment for all persons and parties appearing in and before the courts of this Commonwealth. In adopting and espousing these principles and practices, we have been guided by the policy of the General Assembly of Virginia as set forth in House Joint Resolution 105, adopted in the 1984 Session, and by the Statement of Recommended Judicial Practices adopted in December, 1983, by the National Conference of the Judiciary on the Rights of Victims of Crime.

PRINCIPLES AND RECOMMENDED JUDICIAL PRACTI(

PRINCIPLES AND RECOMMENDED JUDICIAL PRACTICES

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1 Victims and witnesses should be well informed about how the criminal justice system operates, what their rights are, what they can expect from the system, what the system expects from them, how their cases are proceeding, and the services and assistance available to them.

A. Judges should encourage the development of procedures whereby law enforcement officers, defense attorneys, Commonwealth's attorneys, clerks of court, and other appropriate personnel routinely inform victims and witnesses of the following:

1. How the criminal justice system operates;
2. What they can expect from the criminal justice system;
3. What the criminal justice system expects from them;
4. What the Commonwealth's victim compensation program offers and how to apply;
5. What public and community services and financial assistance are available and how to obtain them;
6. Who to contact (and how) to learn the status of the proceedings in which they are involved;
7. Who to contact (and how) concerning their safety and protection, especially relative to threats; and
8. Information concerning the physical layout of the courthouse, parking, public transportation, witness fees, availability of child care, etc.

B. Judges should encourage appropriate justice system officials to establish procedures whereby victims and witnesses will receive timely information concerning the proceedings in their cases. The following should be considered:

1. If requested, Commonwealth's attorneys should make information available to victims, preferably by an on-call system, of all bail, pretrial, trial and post-trial hearings;
2. All witnesses should be provided timely notice of hearings, continuances and delays. To the extent practicable, consistent with the orderly administration of justice, the waiting time of witnesses should be minimized;
3. If requested, Commonwealth's attorneys should promptly notify victims of serious crimes of judicial decisions to release the defendant from custody;
4. Commonwealth's attorneys should inform victims prior to trial concerning any diversion or plea-bargain agreement; and
5. Commonwealth's attorneys should inform victims of (and explain) the final disposition of their cases.

2 Victims should be allowed, where appropriate, to attend and to participate in all of the judicial proceedings.

A. To facilitate victim participation, judges should encourage, and, where appropriate, use their authority, to:

1. Require that victim impact statements be prepared prior to sentencing in all appropriate cases;
2. Allow the victim or the victim's family to remain in the courtroom when it will not interfere with the defendant's right to a fair trial;
3. Provide interpreter and translator services for victims and witnesses while they are involved in the judicial process.

B. Judges should grant continuances or delays only for good cause and state the reasons for granting a continuance.

3 Victims and witnesses should receive protection from harm and threats of harm arising out of their cooperation with law enforcement, prosecution, and defense efforts.

A. Judges should require that:

1. Bail, in appropriate cases, be conditioned on defendants' having no direct or indirect contact with victims or prosecution witnesses; and

2. Access to the addresses of victims and witnesses, upon a showing of good cause, be limited.

B. Judges should encourage and foster the following practices:

1. Whenever possible, and when circumstances require it, provision for separate waiting rooms for defense and prosecution witnesses;

2. Where a witness' safety is a special concern, appropriate officials make provision for special transportation and protection while traveling to and from the courthouse;

3. Where appropriate, notification by the parole board to the judge, the prosecutor, and the victim prior to the release of an offender of a serious crime; and

4. Victims and witnesses, in appropriate cases, be advised by Commonwealth's attorneys or other appropriate justice system officials that if they agree to be interviewed prior to trial by opposing counsel or investigators, they may insist on interviews being conducted at neutral locations.

4 When it will not interfere with a defendant's rights to a fair trial, consideration should be given to special or unusual needs of a victim or witness.

A. Judges should encourage attorneys to bring to the attention of the court any special or unusual needs of a victim or a witness. These needs may include:

1. Trial scheduling considerations;

2. Courtroom arrangements to provide extra protection, provided the right of confrontation is not abridged;

3. An individual of the victim's choice to accompany him/her in closed criminal or juvenile proceedings, and in camera proceedings, provided the victim's testimony is not compromised.

5 To the maximum extent possible, victims and witnesses should be protected from financial and economic hardship.

A. Judges should:

1. Award restitution to victims in accordance with the laws of the Commonwealth. If restitution is not awarded, the reasons should be stated;

2. Encourage or order the prompt return of stolen property or property held as evidence, unless there is a compelling law enforcement purpose for retaining it or unless the case is on appeal; and

3. Assure that, when requested, witnesses receive allowances authorized by law.

B. Judges should promote the following practices:

1. Informing the public generally of the importance of supporting the witnesses' participation in court proceedings; provision of appropriate employer intercession services to ensure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances; and encouraging the adoption of legislation to provide witnesses with the same protection from adverse actions by employers as customarily is given jurors; and

2. Compliance by the Commonwealth's attorney with Sections 18.2-67 and 19.2-165.1 of the Code of Virginia which provide that victims of rape are not to be charged for examinations and other procedures for collecting and preserving evidence.

6 These Principles and Recommended Judicial Practices are subject to existing Rules of Court, statutes, and constitutional provisions

APPENDIX E

Model Legislation - Presidential Task Force

STATE LEGISLATIVE STATUS CHART

The chart on the following page compares existing legislation in each state to the Proposed Model Legislation implementing recommendations of the President's Task Force on Victims of Crime and the Attorney General's Task Force on Family Violence. It is intended to provide an overview of the extent to which state legislation meets those recommendations in the nation as a whole as well as in individual states.

Although a substantial effort was made to ensure the accuracy of the chart, some discrepancies may have resulted from incomplete or out-of-date information. A master chart will be kept up-to-date as new legislation is passed, and we would appreciate any information you can give us with regard to newly enacted laws dealing with these Task Force recommendations.

In analyzing existing legislation, a determination was made as to whether a law was in complete or substantial compliance, partial compliance, or noncompliance with Task Force recommendations. Partial compliance in the following categories was based on these criteria:

- Victim/witness address protection - Privacy of some victims (children, victims of sexual assault) is protected, but no general protection is extended to all victims; or protection is extended during some, but not all proceedings.
- Privileged victim counseling - At least some, but not all, victim counseling is privileged.
- Victim hearsay - Hearsay of some (e.g., children) but not all victims is admissible in preliminary hearings.
- Pretrial detention - bail can be denied only when the current charge is accompanied by prior convictions or the accused is on pretrial release for another offense. (The chart does not take into account pretrial detention in capital cases because it is almost always authorized.)
- Open parole hearings - Hearings are open to victims, but not the general public.
- Limit parole authority - Guidelines limit parole board discretion, but parole still can substantially reduce sentence.
- Employee sex-offense arrest records - Records are available on some, but not all, child-care employees; or conviction records, but not necessarily arrests, are available.
- Limit judicial discretion - Mandatory sentences must be imposed for some crimes; or guidelines exist but they allow for wide discretion.
- Victim impact statements - Statements are optional, not required.
- Statute of limitations - The period has been extended only one year.
- Child competency - Present law allows most children to testify but some will still be presumed incompetent, and others will be allowed to give only unsworn testimony.

An individual legislative analysis has been prepared for each state, citing and summarizing existing law concerning Task Force recommendations. Please contact Dan Eddy or Tom Swan, at (202) 628-0435, to receive any information or provide corrections or updates to the chart.

+ COMPLETE OR SUBSTANTIAL COMPLIANCE

– PARTIAL COMPLIANCE

o NONCOMPLIANCE

PROPOSED MODEL LEGISLATION ON VICTIMS OF CRIME

	ALABAMA	ALASKA	ARIZONA	ARKANSAS	CALIFORNIA	COLORADO	CONNECTICUT	DELAWARE	FLORIDA	GEORGIA	HAWAII	IDAHO	ILLINOIS	INDIANA	IOWA	KANSAS	KENTUCKY	LOUISIANA	MAINE	MARYLAND	MASSACHUSETTS	MICHIGAN	MINNESOTA	MISSISSIPPI	MISSOURI	MONTANA	NEBRASKA	NEVADA	NEW HAMPSHIRE	NEW JERSEY	NEW MEXICO	NEW YORK	NORTH CAROLINA	NORTH DAKOTA	OHIO	OKLAHOMA	OREGON	PENNSYLVANIA	RHODE ISLAND	SOUTH CAROLINA	SOUTH DAKOTA	TENNESSEE	TEXAS	UTAH	VERMONT	VIRGINIA	WASHINGTON	WEST VIRGINIA	WISCONSIN	WYOMING
VICTIM/WITNESS ADDRESS PROTECTION	o	o	o	o	–	o	–	+	o	o	o	–	o	o	–	o	–	o	o	–	–	+	–	o	o	o	o	–	o	o	o	–	o	o	–	o	+	–	o	o	–	o	o	o	o	o	o	–	–
PRIVILEGED VICTIM COUNSELING	o	o	o	o	–	o	+	o	+	o	o	o	+	o	+	o	+	o	–	o	+	+	+	o	o	o	o	o	–	+	o	o	o	o	o	o	o	+	o	o	o	o	o	+	o	o	o	o	+
VICTIM HEARSAY ADMISSIBLE IN PRELIMINARY HEARINGS	o	o	+	o	o	+	o	+	+	+	+	o	+	+	+	–	+	+	o	+	o	o	+	+	–	+	+	–	+	+	+	o	o	+	o	–	–	+	+	+	–	o	o	+	+	o	+	+	o	+
PRETRIAL DETENTION AUTHORIZED FOR DANGEROUS DEFENDANTS	o	o	+	–	+	–	o	o	–	–	–	o	+	–	o	o	o	o	o	–	–	+	o	o	o	o	o	–	o	o	–	–	o	o	o	o	o	o	–	o	o	–	–	–	+	o	o	+	o
OPEN PAROLE HEARINGS	+	o	–	+	+	+	–	–	+	o	o	+	–	+	+	o	+	–	+	o	–	–	o	–	+	+	+	+	–	–	o	–	–	+	–	+	–	o	–	+	+	+	+	o	–	–	o	o	o
LIMIT PAROLE AUTHORITY	o	–	o	o	+	–	+	o	+	o	o	o	–	–	–	o	o	o	+	–	o	o	+	o	–	–	o	o	o	–	–	o	–	o	o	o	–	–	o	o	–	o	o	+	o	–	o	–	o
LIMIT JUDICIAL DISCRETION IN SENTENCING	o	–	–	o	+	–	o	o	+	o	+	o	–	–	o	o	o	o	o	–	–	+	+	o	o	o	o	o	o	+	+	o	+	o	o	o	o	–	–	o	o	o	o	–	o	+	o	–	o
EMPLOYEE SEX-OFFENSE ARREST RECORDS AVAILABLE TO BUSINESSES	–	–	–	o	–	o	–	o	–	–	o	o	–	–	–	o	–	o	o	–	–	o	–	o	–	–	o	–	o	o	o	–	o	o	o	o	–	o	–	o	o	o	–	o	o	–	–	o	o	o
REQUIRE VICTIM IMPACT STATEMENTS AT SENTENCING	o	+	+	o	–	+	+	+	+	–	o	–	+	+	+	+	+	+	+	+	+	–	+	–	+	–	+	+	+	–	–	+	–	o	+	+	+	+	+	–	–	+	+	o	+	–	+	+	+	o
PRESUMPTION OF CHILD COMPETENCY	+	+	o	+	–	+	+	+	–	o	+	o	+	o	+	o	o	o	+	+	o	o	–	+	+	o	+	+	+	o	+	–	o	+	o	+	+	+	o	+	+	+	o	+	o	o	o	+	+	o
EXTEND STATUTE OF LIMITATIONS FOR OFFENSES AGAINST CHILDREN	+	+	o	o	o	+	o	o	+	o	o	+	o	o	–	+	o	o	o	+	o	o	+	o	o	o	o	o	+	o	o	o	o	o	o	o	+	o	o	o	o	o	+	o	o	o	o	+	o	o
LEGISLATION INTRODUCED	AL	AK	AZ	AR	CA	CO	CT	DE	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY

Revised: 2/87

APPENDIX F

Existing Virginia Victims Legislation

Appendix F

Cited Code Sections

2.1-549 through 2.1-553.2 - Division for Children
8.01-229 - Suspension or tolling of statute of limitations
8.01-375 - Exclusion of witnesses in civil cases
8.01-400.2 - Communications between counselors .... and clients
9-173.3 - Victim and witness assistance programs
14.1-99, 14.1-189 through 14.1-195 - Payment of witness costs
16.1-244 - Concurrent jurisdiction (child custody)
16.1-253.1, 16.1-253.2 - Protective orders
18.2-61 - Rape
18.2-67 - Depositions - Criminal Sexual assault
18.2-67.01 - Videotaped depositions
18.2-67.1 through 18.2-67.2:1 - Sexual assault
18.2-119 - Trespass
18.2-456, 18.2-460, 19.2-120 - Intimidating witnesses
19.2-164, 19.2-164.1 - Interpreters for witnesses
19.2-165.1 - Payment of medical fees in criminal cases
19.2-270.1 - Use of photographs as evidence in certain larceny and burglary prosecutions
19.2-276 - Payment of witness costs
19.2-299.1 - Victim impact statements
19.2-303, 19.2-305, 19.2-305.1 - Restitution
19.2-329 through 19.2-336 - Payment for witness costs
19.2-368.2 through 19.2-368.18 - Crime victims compensation
19.2-389 - Criminal history record information
52-31 through 52-34 - Missing Children Information Clearinghouse
53.1-131, 53.1-180, 63.1-198.1 - Restitution
63.1-198.2, 63.1-199 - Criminal records checks - child care facilities
63.1-248.2 through 63.1-248.16 - Child abuse and neglect
63.1-315 through 63.1-319 - Spouse abuse services
65.1-23.1 - Sexual assault victims - workers' compensation

APPENDIX G

Summary of Crime Victims Legislation by State

Summary of State Crime Victims Legislation—July 1985

Alabama - Minnesota

KEY

I—Introduced S.[illegible] X—Enacted Legislation
B—Bill of Rights B/X—Bill of Rights/Individual Statute

LEGISLATION	TOTAL (50 States)	AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN
1. Funding for Services	28[1]	X	X	X	X	X	B/X	X	X	–	X	–	–	–	X	X	–	–	X	–	I	–	B	–	X
2. Funding/ Domestic Violence	49	X	X	X	X	X	X	X	X	–	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
3. Funding/Sexual Assault	19[2]	X	X	–	–	X	X	–	X	–	–	X	–	–	X	–	X	–	–	–	X	X	–	I	X
4. Compensation	44[3]	X	X	X	X	X	X	X	X	X	X	–	X	–	X	X	X	X	X	.	–	X	X	X	X
5. Bill of Rights	31[4]	–	X	–	X	X	X	–	X	–	X	–	–	X	X	X	–	–	–	X	X	–	X	X	X
6. Victim/Witness Information	29	–	B	–	B	B	B	X	B	–	B	–	–	B	–	–	–	–	–	–	B	X	B	B	
7. Protection from Intimidation	27	X	B	–	B/X	X	B/X	–	B/X	–	B	–	–	X	–	–	–	X	–	–	B	–	B	–	B
8. Property Return	25	–	–	–	B/X	X	B/X	–	B	–	B	–	–	B	B	–	X	X	–	–	B	–	B	–	–
9. Secure Waiting Areas	18	–	–	–	B	X	B	–	B	–	–	–	–	–	B	–	–	–	–	–	–	–	B	–	–
10. Employer Intercession	22	–	B	–	B	X	B	–	B	–	B	–	–	–	X	X	–	–	–	–	–	–	B	B	–
11. Creditor Intercession	3	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	B	–	–
12. Speedy Disposition/Trial	10[5]	–	–	–	–	X	B	–	B	–	–	–	–	–	–	–	–	–	–	–	–	–	B	–	–
13. Victim Impact Statement	39	–	B	X	X	B	B	X	X	–	B/X	X	–	B	X	X	X	X	–	B	B	X	B	B	B
14. Victim Statement of Opinion	6	–	–	–	–	B	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	B	–	B
15. Allocution/ Oral Statement Sentencing	19	–	–	–	–	B	B/X	X	–	–	B	X	–	B	X	X	–	–	–	–	B	–	B	B	B
16. Plea Bargain Participation/ Consultation	11	–	–	X	–	–	–	–	–	–	B	–	–	–	–	X	–	–	–	–	–	–	–	B	–
17. Court Attendance	9[6]	X	–	–	X	–	–	–	–	–	B	X	–	–	–	X	–	–	–	–	–	X	–	B	–
18. Parole Hearing/VIS	21	X	B	X	X	X	X	–	–	–	–	X	–	B	B	–	–	–	I	–	–	X	X	B	–
19. Parole Allocution	15	–	–	X	X	X	X	–	X	–	–	–	–	B	B	–	–	–	I	–	–	–	X	B	–
20. Restitution/ General	50	X	X	X	X	X	B/X	X	X	–	B	X	X	B/X	X	X	X	X	X	X	B/X	X	B	B	B
21. Restitution a Condition of Probation/ Parole/ Work Release	31	X	X	X	X	X	X	X	–	–	B/X	X	–	–	–	–	X	X	–	X	E	X	–	I	B
22. Mandatory Restitution	30	X	–	X	X	B/X	X	–	X	–	B	–	–	B	–	X	X	X	X	–	B	–	–	–	–
23. Notification/ Court Proceedings/Schedule Changes	24	–	B	X	B	–	B	X	B	–	B	–	–	–	–	–	–	–	–	X	–	–	B	B	–
24. Notification/ Pre-Trial Release	9	–	–	–	–	–	B	–	–	–	B	–	–	–	B	–	–	–	–	–	–	–	–	–	–
25. Notification/Bail	4	–	–	–	–	–	–	–	–	–	–	–	–	–	B	–	–	–	–	–	–	–	–	–	–

FOOTNOTES:

[1] Funding includes general appropriations, fines, penalty assessments and executive department appropriations.
[2] The National Coalition Against Sexual Assault (NCASA) estimates that 34 states have sexual assault funding.
[3] Arkansas law permits compensation on a county basis; Utah's compensation program only covers drunk driving victims; Nebraska's program did not receive funding for FY 85—86 due to state budgetary problems.
[4] Indiana and Oklahoma have passed a package of legislation considered an omnibus Victim Rights statute; Oregon's Victim Rights are outlined in the victim services funding statute.

Summary of State Crime Victims Legislation – July 1985

Alabama - Minnesota *(continued)*

KEY

I – Introduced Bills
B – Bill of Rights
X – Enacted Legislation
B/X – Bill of Rights/Individual Statute

LEGISLATION	TOTAL (50 States)	AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN
26. Notification/ Plea Agreements	11	–	B	–	–	–	–	–	–	–	B	–	–	–	–	X	–	–	–	–	–	–	–	–	B
27. Notification/ Sentencing	15	–	–	X	–	B	–	X	–	–	B	–	–	–	B	–	–	–	–	X	B	–	–	B	B
28. Notification/ Final Disposition	13	–	–	–	–	–	–	–	–	–	B	–	–	–	–	–	–	–	–	–	–	–	B	–	–
29. Notification/ Parole/ Hearings	28	X	B	X	X	B	X	X	–	–	B	X	X	B/X	B/X	X	–	–	–	–	–	X	X	B	B
30. Notification/ Pardon	10	–	B	–	–	–	–	–	–	–	–	–	–	B	–	–	–	–	–	–	–	–	–	–	B
31. Notification/ Work Release	9	–	B	–	–	–	–	–	X	–	–	–	X	–	B	–	–	–	–	–	–	–	–	–	–
32. Notification/ General Release/Felony	17	–	–	–	–	–	B	X	–	–	–	–	X	B	B	X	–	–	–	–	–	–	B	B	B
33. Notification/ Escape	10	–	–	–	X	X	–	–	–	–	–	–	–	B	B	–	–	–	–	–	–	–	B	B	–
34. Counselor Confidentiality/ General	3	–	–	–	–	–	–	X	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
35. Counselor Confidentiality/ Domestic Violence	13	–	–	–	–	I	–	X	–	–	–	–	–	–	–	–	X	–	–	–	–	X	–	X	–
36. Counselor Confidentiality/ Sexual Assault	18	–	–	–	–	X	–	X	–	–	X	–	–	–	X	–	X	–	–	–	X	–	X	X	X
37. Victim Privacy/ Address Protection	4	–	–	–	–	X	–	–	–	–	–	–	–	B	–	–	–	–	–	–	–	X	–	B	–
38. Notoriety-for-Profit	32	X	X	X	–	X	B	X	B/X	–	X	X	–	X	X	X	X	–	X	X	–	–	X	–	X
39. Children's Bill of Rights	3[7]	–	–	–	–	–	–	–	–	–	I	–	–	–	–	–	X	–	–	–	–	–	–	–	–
40. Child Videotaped/ Closed Circuit Testimony & Depositions	24	X	–	–	X	X	–	X	X	–	–	X	X	–	–	X	X	X	X	X	–	X	I	I	–
41. Children/Funding Services	7	–	X	–	X	–	–	–	–	–	–	–	–	X	–	–	X	–	X	–	–	–	–	–	–
42. Child Competency	9	X	–	–	–	X	–	–	–	–	–	–	–	X	–	–	X	–	–	–	–	–	–	–	X
43. Missing Children's Act	12	X	–	–	X	–	–	X	X	–	X	–	–	X	–	–	–	–	X	–	–	X	I	–	–
44. Child/Statute Limitations	6[8]	–	X	–	–	X	–	–	–	–	–	–	–	X	I	–	X	–	–	–	–	–	–	–	X
45. Child/Background Check	6	X	X	–	–	X	–	–	–	–	–	–	–	–	–	–	–	–	X	–	–	–	–	–	X
46. Child/Hearsay Admissibility	10	–	X	X	X	X	X	–	–	–	–	–	X	–	–	–	–	I	–	–	–	–	–	–	X
47. Child Speedy Trial	4	–	–	–	X	–	–	–	–	–	–	–	–	–	–	–	X	–	–	–	–	–	–	B	–
48. Child Privacy Protection	4	X	–	–	–	–	–	–	–	–	–	–	–	–	–	–	X	–	–	–	–	–	–	–	–
49. Child Counselor/Court Proceedings	10	–	–	–	X	–	B	–	–	–	B/X	–	X	X	–	–	X	X	–	–	–	–	–	–	–
50. Domestic Violence/ Protection Orders	17	X	X	X	–	X	–	–	–	–	X	X	–	–	–	–	X	–	X	I	–	–	–	–	X

FOOTNOTES:

[7] Iowa enacted a package of Children's Rights in 1985 considered to comprise a Children's Bill of Rights.

[8] California law provides that the statute of limitations for all felonies is to be determined by the severity of the crime. 1984 amendments eliminated

Summary of State Crime Victims Legislation—July 1985
Mississippi - Wyoming

KEY

I—Introduced Bills X—Enacted Legislation
B—Bill of Rights B/X—Bill of Rights/Individual Statute

LEGISLATION	MS	MO	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY
1. Funding for Services	–	X	–	–	–	–	X	–	X	X	–	X	X	X	X	X	X	–	–	X	–	–	X	X	–	X	–
2. Funding/ Domestic Violence	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	–	X	X	X	X	X	X	X	X
3. Funding/Sexual Assault	–	–	–	–	X	–	–	X	–	X	–	X	–	–	X	–	X	–	–	X	–	I	X	–	–	–	–
4. Compensation	–	X	X	X	X	I	X	X	X	X	X	X	X	X	X	X	X	–	X	X	X	I	X	X	X	X	X
5. Bill of Rights	–	–	X	X	X	–	I	–	X	I	–	X	X	X	X	X	X	–	–	X	X	X	X	X	X	X	–
6. Victim/Witness Information	–	–	–	B	B	–	–	–	B	–	–	B	X	X	B/X	B	B	–	–	B	B	B	B	B	B	B	–
7. Protection from Intimidation	–	–	–	B	B/X	–	X	–	B/X	–	–	B	X	–	B	B	B	–	–	B	B	–	B	B	B	B/X	–
8. Property Return	–	–	–	B	B	–	–	–	B/X	–	–	B	X	X	B	B	B	X	–	–	–	–	B	B	B	B	–
9. Secure Waiting Areas	–	–	–	B	B	–	–	–	B	–	–	B	X	–	B	B	B	–	–	–	–	–	B	B	B	B	–
10. Employer Intercession	–	–	–	B	–	–	–	–	B/X	–	–	B	X	X	–	B	B	–	–	–	B	–	B	B	B	B/X	–
11. Creditor Intercession	–	–	–	–	–	–	–	–	B	–	–	–	–	–	–	–	B	–	–	–	–	–	–	–	–	–	–
12. Speedy Disposition/Trial	–	–	–	B	X	–	–	–	–	–	–	–	–	X	–	–	B	–	–	X	–	–	–	–	–	B	–
13. Victim Impact Statement	–	–	X	X	X	X	X	X	X	–	–	B/X	X	X	B	B	B	–	–	B	–	B	X	B	B	X	–
14. Victim Statement of Opinion	–	–	–	–	–	–	–	–	X	–	–	B	–	–	–	B	–	–	–	–	–	–	–	–	–	–	–
15. Allocution/ Oral Statement Sentencing	–	–	–	–	–	X	I	–	–	–	–	B	–	–	–	B	–	–	–	B	–	B	–	B	B	–	–
16. Plea Bargain Participation/ Consultation	–	–	–	X	–	–	–	–	B	–	–	–	–	X	–	I	B	X	–	–	B	–	–	–	B	–	–
17. Court Attendance	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	B	–	–	–	B	–	–	–
18. Parole Hearing/VIS	–	–	–	X	X	X	X	–	X	–	–	B	–	–	I	X	B	–	–	B	–	–	–	–	–	–	–
19. Parole Allocution	–	–	X	X	X	X	X	–	–	–	–	B	–	–	I	I	–	–	–	–	–	–	–	–	–	–	–
20. Restitution/* General	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	–	B	X	X	X	B/X	B	B	B	B	X	X
21. Restitution a Condition of Probation/ Parole/ Work Release	X	–	X	X	X	–	–	X	X	X	–	–	–	–	B/I	X	–	X	–	X	X	B	–	–	B	X	X
22. Mandatory Restitution	–	X	X	–	X	–	I	X	–	X	–	–	X	–	B	–	B	X	X	X	X	B	B	B	B	–	X
23. Notification/ Court Proceedings/Schedule Changes	–	–	–	B	B	–	–	–	B	–	–	B/X	X	–	B	B	B	–	–	B	B	–	B	B	B	B	–
24. Notification/ Pre-Trial Release	–	–	–	–	B	–	–	–	B	–	–	–	–	–	–	B	B	–	–	–	–	–	–	–	B	B	–
25. Notification/Bail	–	–	–	–	–	–	–	–	B	–	–	–	–	–	–	B	–	–	–	B	–	–	–	–	–	–	–

FOOTNOTES:

[5] State Judicial policy in Oregon states that no civil case is allowed to go forth if a criminal trial is pending.
[6] Florida currently has a citizens' initiative pending to make court attendance a constitutional change.
*Courts in all 50 states plus the District of Columbia have the authority to order restitution to the victim at least in certain cases. Applicable statutes are cited, otherwise it falls within the inherent authority of the court.

Summa[illegible] of State Crime [illegible]ctims Legislation—July 1995
Mississ[illegible] - Wyoming *(continued)*

KEY

I—Introduced Bill X—Enacted Legislation
B—Bill of Rights B/X—Bill of Rights/Individual Statute

LEGISLATION	MS	MO	MT	NE	NV	NH	NJ	NM	NY	NC	[illegible]	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY
26. Notification/ Plea Agreements	–	–	B	X	–	–	–	–	B	–	–	–	–	–	–	–	B	–	–	B	–	S	–	–	B	–	–
27. Notification/ Sentencing	–	–	B	–	–	–	–	–	B	–	–	–	–	–	–	–	B	–	–	–	–	B	–	B	B	–	–
28. Notification/ Final Disposition	–	–	B	B	B	–	–	–	B	–	–	B	–	–	B	B	B	–	–	–	–	–	–	B	B	B	–
29. Notification/ Parole Hearings	X	–	–	–	–	–	–	X	X	–	–	B	X	–	B	B/X	B	–	–	B	X	–	–	B	–	–	–
30. Notification/ Pardon	–	–	–	–	X	–	–	–	X	–	–	–	X	–	B	–	B	–	–	–	–	–	–	B	–	B	–
31. Notification/ Work Release	–	–	–	–	–	–	–	–	X	–	–	–	–	–	B	B	B	–	–	–	–	–	–	B	–	–	–
32. Notification/ General Release/Felony	–	–	–	B	B/X	–	–	X	X	–	–	–	–	–	B	B	B	–	–	–	–	–	–	B	–	–	–
33. Notification/ Escape	–	–	–	–	X	–	–	X	I	–	–	–	–	–	–	–	B	–	–	–	–	–	–	B	–	–	–
34. Counselor Confidentiality/ General	–	–	–	–	–	–	–	–	X	–	–	X	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
35. Counselor Confidentiality/ Domestic Violence	–	X	–	X	–	X	–	–	X	–	X	X	–	–	–	–	–	–	–	X	–	–	–	–	X	–	X
36. Counselor Confidentiality/ Sexual Assault	–	–	–	–	–	X	X	–	X	–	–	X	–	–	X	–	–	–	–	X	X	–	–	X	–	–	X
37. Victim Privacy/ Address Protection	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	I	–
38. Notoriety-for-Profit	–	–	X	X	–	–	X	X	X	–	–	B/X	X	–	B/X	X	X	–	X	X	X	–	–	X	–	X	–
39. Children's Bill of Rights	–	–	–	–	–	–	–	–	–	–	–	–	–	–	I	–	–	–	–	–	–	–	–	X	–	X	–
40. Child Videotaped/ Closed Circuit Testimony & Depositions	–	X	–	–	X	X	–	X	X	–	–	I	X	–	I	–	B	–	X	X	X	–	–	–	–	X	–
41. Children/Funding Services	–	–	–	–	X	–	–	–	–	–	X	–	–	–	I	–	–	–	–	–	–	–	–	–	–	–	–
42. Child Competency	–	–	–	–	–	–	–	–	–	–	–	–	X	–	–	–	–	X	–	–	X	–	–	–	–	X	–
43. Missing Children's Act	–	X	–	–	–	–	–	–	I	–	–	–	–	–	I	–	X	–	–	X	–	–	X	–	–	–	–
44. Child/Statute Limitations	–	–	–	–	–	–	–	–	–	–	–	–	–	–	I	–	–	–	–	–	X	–	–	–	–	–	–
45. Child/Background Check	–	–	–	–	–	–	–	–	–	–	–	–	–	–	X	–	–	–	–	–	–	–	–	–	–	–	–
46. Child/Hearsay Admissibility	–	–	–	–	–	–	–	–	–	–	–	–	X	–	I	–	–	–	–	X	X	–	–	–	–	–	–
47. Child Speedy Trial	–	–	–	–	–	–	–	–	–	–	–	–	–	–	I	–	–	–	–	–	–	–	–	–	–	X	–
48. Child Privacy Protection	–	–	–	–	–	–	–	–	X	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–	X	–
49. Child Counselor/Court Proceedings	–	–	–	–	X	–	–	–	–	X	–	–	–	–	I	–	–	–	–	–	–	–	–	–	–	X	–
50. Domestic Violence/ Protection Orders	–	–	–	–	–	–	X	–	X	–	X	–	X	–	X	–	X	–	–	X	–	–	–	X	–	–	–

APPENDIX G-1

1986-87 Victim/Witness Laws and proposed legislation

ENACTED IN 1986

Illinois

Iowa

Kansas

Kentucky

Maryland

Massachusetts

Minnesota

Missouri

New Hampshire

North Carolina

Oregon

Pennsylvania

Rhode Island

APPENDIX H

Financial Analysis of Proposed Compensation Fund Changes

Crime Victims Compensation
Financial analysis of Proposed Changes

I. Increase fee assessment on class 1 and 2 misdemeanors from the current $15 to $20; and increase fee assessment on felonies from the current $15 to $30.

Class 1 and 2 misdemeanors	40,727
$5 fee increase	x $5
	$203,635
All felony cases	10,831
$15 fee increase	x $15
	$162,465
Net Change	$366,100

II. Assess DUI offenders at proposed misdemeanors fee rate and include DUI victims in Compensation.

36,987	convictions (85% of arrests)
$20	fee
$739,653	Revenue expected
-200,000	Claims expected (10% of $2 million)
$539,653	Net Change

Criminal Injuries Fund Statistical Comparison

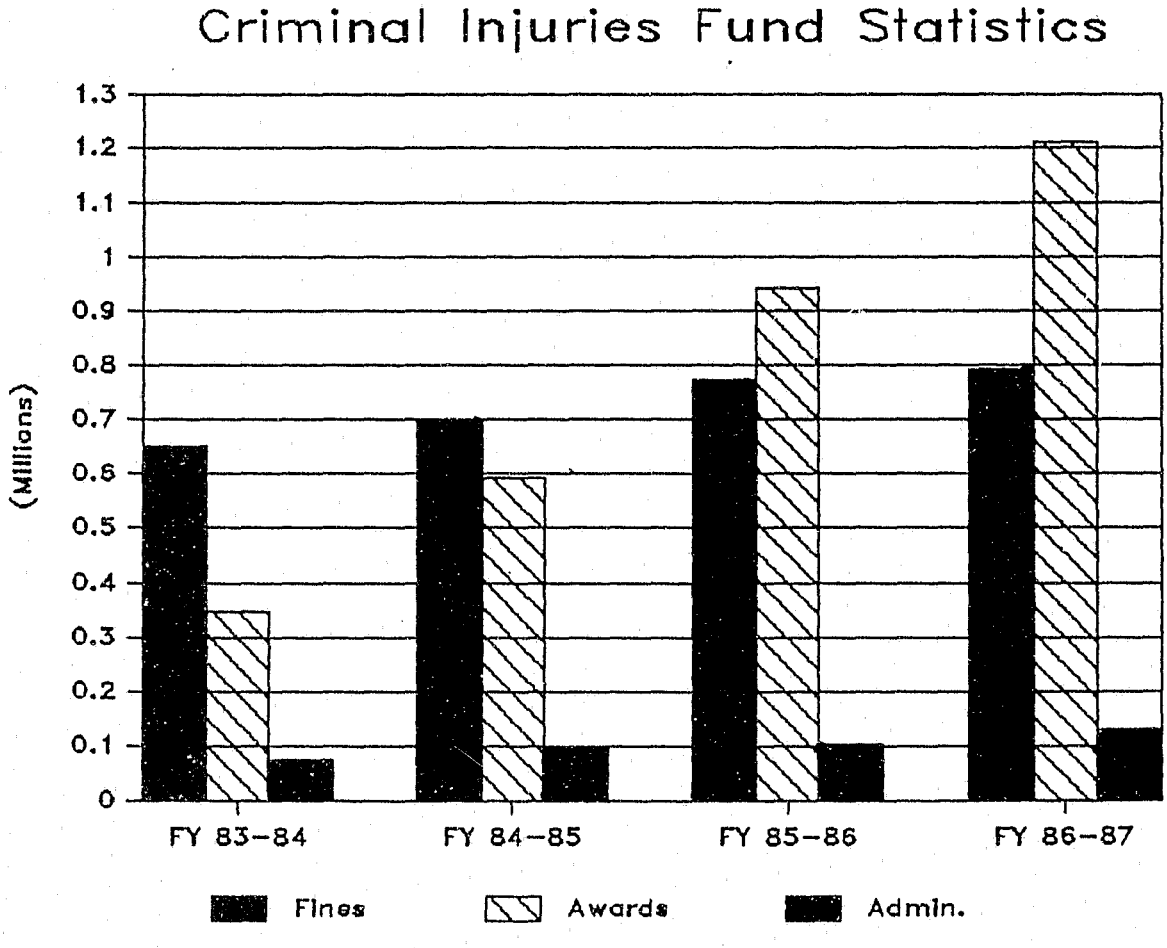
	FY 83-84	FY 84-85	FY 85-86	FY 86-87
Number of Claims Established	257	309	494	843
Number of Claims Denied	80	93	111	338
Number of Claims Awarded	236	289	408	714
Maximum Awards	21	15	17	34
Emergency Awards	1	3	19	41
Supplemental Awards	72	80	124	200
Funds Available	2,160,914	1,462,931	1,756,589	1,532,063
Cash Balance	1,496,573	737,884	772,412	709,914
Fund *	650,289	698,844	773,365	792,946
VOCA Grant	---	---	186,000	---
Restitution	14,052	26,078	23,313	27,881
Tax Set-Off	---	125	1,499	1,322
Subrogations	---	---	---	---
Total Expenditures	423,030	690,519	1,046,675	1,341,565
Claims	347,380	594,307	943,539	1,210,959
Administrative	75,650	96,212	103,136	130,606
Cash Balance Year End	737,884 *	772,412	709,914	** 190,498

* $1,000,000 was transfered to the General Fund in FY 83-84

** $ 351,993 in awards are pending. Funds are expected in FY 87-88 to cover these outstanding awards

Criminal Injuries Fund Statistical Comparison

	FY 83-84	FY 84-85	FY 85-86	FY 86-87
Fines	$650,298	$698,844	$773,365	$792,946
Awards	$347,380	$594,307	$943,539	$1,210,959
Admin.	$75,650	$96,212	$103,136	$130,606



APPENDIX I

Parole notification procedures and form

COMMONWEALTH of VIRGINIA

Virginia Parole Board
Koger Executive Center
Culpeper Building, 2nd Floor
1606 Santa Rosa Road
Richmond, Virginia 23288
(804) 281-9601

September 1, 1987

Mr. Robert Colvin, Executive Director
Virginia State Crime Commission
910 Capitol Street
Post Office Box 3-AG
Richmond, Virginia 23208

Dear Mr. Colvin:

I am enclosing, for your records, a package of materials regarding procedures for victims to give input, and receive information concerning parole consideration for offenders. I thought this might be useful reference material for the Commission's sub-committee on victims of crime.

In May, 1985 the Virginia Parole Board initiated a Victim Input Program to ensure a systematic means of providing an opportunity for input from victims and other interested persons and to provide them with parole consideration schedules, Board decisions and other appropriate information when such information has been requested. The Board has been highly successful in its objective of responding to all such requests with accuracy and timeliness. The Board established the program on a priority basis within existing resources. However, since its inception in 1985, the program and demands on the agency in all areas have grown to the point that we have not been able to continue to absorb the costs and workload involved in properly operating our Victim Input Program.

Last year the Board received over 4,000 Victim Input forms and letters and it is anticipated that this figure will substantially increase as the public awareness of the program increases. Moreover, it has become necessary for increasingly more of my time, and that of other professional staff, to be spent on Victim Input matters as the program develops a greater degree of sophistication and as its use members of the public and criminal justice officials (i.e. Commonwealth's Attorneys, other victim input programs) widens. With this increased use, the

responsibility of maintaining the degree of success experienced in the past is quickly becoming overwhelming to the point of jeopardizing the integrity of the entire program.

Because of this, the Board will be requesting of the General Assembly, the funds to establish a Victim Input Coordinator position with support staff and technologically advanced equipment to facilitate more efficient and responsive operation of the program in keeping with the demands for assistance from victims and others.

I hope this information is of some use to you and the sub-committee. If I can provide further information, or assistance in any way, please do not hesitate to ask.

Sincerely yours,

B. Norris Vassar
Chairman

BNV:drs

Enclosure

COMMONWEALTH of VIRGINIA

Virginia Parole Board
Koger Executive Center
Culpeper Building, 2nd Floor
1606 Santa Rosa Road
Richmond, Virginia 23288
(804) 281-9601

May 6, 1985

MEMORANDUM

TO: Virginia Circuit Court Judges and Commonwealth's Attorneys

FROM: B. Norris Vassar, Chairman

RE: Victim Notification of Parole Consideration

The Virginia Parole Board invites, encourages and welcomes from all sources, including victims and their families, all information which might aid the Board in making decisions regarding parole release. However, it does not appear that the Board's policy regarding this point is widely known.

While the indications are that most victims of crime and family members prefer no further involvement with the matter after court disposition, some would wish to be notified and to provide information to the Parole Board regarding parole consideration if they knew of the Board's interest in having their input.

Accordingly, I am requesting your assistance in getting the word to victims, particularly victims of violent crimes, that the Parole Board desires and encourages them to provide any information they feel should be considered in connection with the Board's responsibility to assess the offender for release suitability upon his or her eligibility, and to request notification of the consideration schedule as well as the decision, if they wish to have this information. Persons interested may submit information to the Board at any time after an offender who is eligible for parole consideration is sentenced. Indeed, the earlier the information is provided the better, since it would also be on hand for use by the Department of Corrections in assessing the offender for suitability for programs such as "trusty" status, furlough, and work release.

The attached form is suggested as a way of alerting the Board to any such desire. As the form indicates, a written statement or letter may be submitted at any time and the interested person may request to be notified of the parole consideration schedule for the offender and the results of the consideration. The interested person may also elect to appear before the Board to give information directly. In either case, the Board would be most anxious to accommodate any interested person in this fashion and wish them to know that.

I am attaching several copies of a form which can be used by victims and any other persons interested in providing information to the Board, or requesting information from the Board, relative to parole consideration for an offender. I am also attaching copies of the general parole calculation tables along with current and historical parole release statistics to assist you in explaining the parole system to interested persons.

Your help and any suggestions you may make regarding the Board's efforts to make victims aware of its policy in this area would be much appreciated.

BNV:dlt

Enclosures

VIRGINIA PAROLE BOARD
1606 Santa Road Road
Richmond, Virginia 23288

VICTIM INPUT FORM

Under Virginia Parole Board policy, it is your right as a victim or (other interested party) of a crime to provide information to the Board which you feel might assist the Board when it is required to make a determination about parole release suitability for the offender.

You may submit a written statement or letter which will be filed for use by the Board and/or you may request to be notified of the parole consideration schedule so as to submit a statement and/or appear before a representative of the Board at that time. you may also elect, simply, to be notified of the parole decision(s).

Please indicate any interest you have in pursuing this matter by filling in the information requested, checking one of the categories below and entering your address and phone number in the space provided.*

OFFENDER: _____
(Full Name)

COURT: _____

CONVICTION: _____
(Crime)

SENTENCE: _____
(Length)

(List information for each codefendant on separate sheet)

__ I am forwarding a written statement herewith for inclusion in the record of the above offender for use in parole consideration(s).

__ I wish to be notified, at the address below, of the parole consideration schedule for the offender listed with this form prior to such consideration by the Board.

__ I wish to be notified at the address below, of the parole decision(s) in the case of the offender listed with this form.

Victim or Interested Party: _____
(Name)

_____
(Street)

_____
(City, State, Zip Code)

*Be sure to notify Board of address changes if you request notification of the consideration schedule and/or the decision.

140258

REPORT OF THE
VIRGINIA STATE CRIME COMMISSION ON

Victims and Witnesses Of Crime

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

HOUSE DOCUMENT NO. 62

COMMONWEALTH OF VIRGINIA
RICHMOND
1990

MEMBERS OF THE VIRGINIA STATE CRIME COMMISSION 1989

From the Senate of Virginia:

Elmon T. Gray, Chairman
Howard P. Anderson
Elmo G. Cross, Jr.

From the House of Delegates:

Robert B. Ball, Sr., Vice Chairman
V. Thomas Forehand, Jr.
Raymond R. Guest, Jr.
A. L. Philpott
Warren G. Stambaugh
Clifton A. Woodrum

Appointments by the Governor:

Robert C. Bobb
Robert F. Horan, Jr.
George F. Ricketts, Sr.

Attorney General's Office:

H. Lane Kneedler

COMMONWEALTH of VIRGINIA

VIRGINIA STATE CRIME COMMISSION

General Assembly Building

IN RESPONSE TO
THIS LETTER TELEPHONE
(804) 225-4534

ROBERT E. COLVIN
EXECUTIVE DIRECTOR

January 16, 1990

TO: The Honorable L. Douglas Wilder, Governor of Virginia, and Members of the General Assembly:

House Joint Resolutions 48 and 184, agreed to by the 1988 General Assembly, directed the Virginia State Crime Commission to continue the study authorized by HJR 225 (1987), which charged the Crime Commission "to evaluate the effectiveness of current services provided to victims and witnesses of crime throughout the Commonwealth of Virginia and make any recommendations the Commission finds appropriate." Because several of the issues required extensive legal analysis which could not be completed within the first year, and other issues arose over the year, the Commission agreed to continue its examination of victims and witnesses of crime pursuant to §9-125 of the Code of Virginia.

In completing the directives of HJR 48 and HJR 184 (1988), I have the honor of submitting herewith the study report and recommendations on Victims and Witnesses of Crime.

Respectfully submitted,

Elmon T. Gray
Chairman

ETG:sc

Subcommittee Studying

VICTIMS AND WITNESSES OF CRIME

Members

Delegate Warren G. Stambaugh, Chairman
Mr. Robert C. Bobb
Senator Elmo G. Cross, Jr.
Delegate V. Thomas Forehand, Jr.
Delegate Raymond R. Guest, Jr.
Mr. H. Lane Kneedler
Reverend George F. Ricketts, Sr.
Delegate Clifton A. Woodrum

Staff

Robert E. Colvin, Executive Director
D. Robie Ingram, Staff Attorney
Sylvia A. Coggins, Administrative Assistant

Mandie M. Patterson, Victims Services Section Chief
Department of Criminal Justice Services

Phyllis H. Price, Ph.D., Research Associate
Division of Legislative Services

CONTENTS

VIRGINIA STATE CRIME COMMISSION

SUBCOMMITTEE STUDYING ISSUES PERTAINING

TO CRIME VICTIMS AND WITNESSES

I. AUTHORITY FOR AND MEMBERSHIP OF THE STUDY

This report is a continuation of the studies called for by House Joint Resolution 225 (1987), sponsored by Delegate V. Thomas Forehand, Jr., of Chesapeake and Delegate John G. Dicks III of Chesterfield, and House Joint Resolution 48 (1988), sponsored by Delegate Clifton A. Woodrum of Roanoke. The earlier resolution produced House Document 10 (1988) and the later one, House Document 8 (1989). Although the Commission did not sponsor a formal resolution to continue the study into 1989, members felt that several unresolved issues merited more detailed examination and, pursuant to authority granted by §9-125 of the Virginia Code, conducted this study.

In addition, House Joint Resolution 184 (1988), sponsored by Delegate Howard E. Copeland of Norfolk, requested the Joint Legislative Audit and Review Commission (JLARC), in its study of the Division of Crime Victims' Compensation (CVC), to review the claims process and to consider transferring CVC to the Department of Criminal Justice Services (DCJS). The resolution also directed the Crime Commission to assist in studying the treatment of victims in the criminal justice system. (See Appendix A for authorizing legislation.) The JLARC report recommended that CVC submit to the Crime Commission on May 1, 1989, and November 1, 1989, a report on its progress in implementing the JLARC recommendations for improving the operation of CVC.

Membership on the subcommittee remains the same as for the 1988 study and is listed in the preliminary pages.

II. EXECUTIVE SUMMARY

A. Background

On January 16, 1990, the full Crime Commission adopted the report and recommendations of the subcommittee studying victims and witnesses of crime. This report is a continuation of the crime victim-witness studies created by House Joint Resolution 225 (1987), House Joint Resolution 48 (1988), and House Joint Resolution 184 (1988). It considers four issues: a testimonial privilege for sexual assault and domestic violence counselors; courtroom attendance for victims or their survivors; profits from crime laws; and crime victims' compensation.

B. Issues

The primary questions surrounding the first three issues were constitutional: Would enactment of such laws violate defendants' first, fifth, sixth, and fourteenth amendment rights? Literature and case law suggest that testimonial privileges and courtroom attendance laws can be structured and

applied in such manners that neither the victims' nor the defendants' rights suffer. Other states now have testimonial privileges for sexual assault/domestic violence counselors. Seventeen states entitle a victim or his representative to be present in the courtroom during the trial. Although literature is replete with articles assailing the constitutionality of "Son of Sam" laws, case law upholds them; and forty-three states and Congress have enacted them.

Victims' compensation issues had been extensively studied by the Joint Legislative Audit and Review Commission and reported on in House Document 17 (1989). Consequently, this report only summarizes the findings of that investigation and, pursuant to House Joint Resolution 184, reviews the Division of Crime Victims' Compensation responses to the JLARC recommendations, which dealt with funding, program management, and administrative placement. Appendix B of this report is the Industrial Commission's detailed transmittal letter accompanying its final response to JLARC recommendations. Crime Commission legislative proposals focus on program management to expand eligibility coverage, raise the funeral reimbursement award, and ensure confidentiality of information CVC receives from law-enforcement agencies.

C. Recommendations

1. Testimonial Privilege for Sexual Assault and Domestic Violence Counselors

Postpone introducing legislation to enact a limited privilege for sexual assault and domestic violence counselors. The privilege would have extended to qualified crisis center workers who had undergone at least 30 hours of appropriate counseling training. It was limited by requirements that counselors report suspected child abuse and neglect pursuant to §63.1-248.3 and the intent to commit a felony. Standards for qualified sexual assault crisis counselors submitted by Virginians Alligned Against Sexual Assualt, VAASA, appears as Appendix E. The postponement was requested by VAASA.

2. Courtroom Attendance

Amend §19.2-265.1 (exclusion of witnesses) to permit a victim, a parent or guardian of a minor victim, or the parent of a homicide victim to remain in court during the trial. The entitlement to remain in court rests with the judge, who makes the decision outside the jury's presence.

3. Profits from Crime

Enact a profits from crime law to delay, restrict, or prevent the criminal author's receipt of profits gained through the publication, in any form, of accounts of his crime. The proposed legislation requires notice to interested parties, an opportunity for the defendant to show cause why his profits should not be escrowed, escrow by the Division of Crime Victims' Compensation, filing of a civil suit by the victim, and disposition of funds after a five-year period or, if longer, after the final disposition of a civil suit against the defendant or the final disposition of the defendant's appeals. If the victim does not sue for the proceeds, and after the expiration of the previously

mentioned periods, the defendant will receive twenty-five percent and the Criminal Injuries Compensation Fund will receive seventy-five percent of the profits.

4. Crime Victims' Compensation

a. Amend §19.2-368.3 (powers and duties of the Industrial Commission) to restrict the use of information received by CVC to the purposes specified in the section and to permit latitude for the submitting agencies as to the extent and form of the information submitted. This recommendation ensures confidentiality of records.

b. Amend §19.2-368.4 (persons eligible for awards) to enable any victim to collect from CVC so long as the award will not unjustly enrich the offender even if the victim resides with or is married to the offender. Eligibility is also extended to Virginians who are victimized in states having no CVC program eligible pursuant to VOCA guidelines. These changes bring Virginia's statute into compliance with the new VOCA eligibility requirements and are essential if Virginia is to retain substantial federal grants to the CVC program.

c. Amend §19.2-368.11:1 (amount of award) to raise the victim funeral expense reimbursement from $1500 to $2000.

d. Amend §19.2-368.2 (definitions) to include in the definition of "victim" robbery, abduction, and attempted robbery and abduction victims. This amendment allows these victims to collect counseling expenses from CVC when their injury is emotional and not necessarily physical.

III. SCOPE AND PURPOSE OF THE STUDY

In addition to the issues relating to the Division of Crime Victims' Compensation, facing the subcommittee this year were two carry-over issues and one new topic:

- A testimonial privilege for sexual assault and domestic violence counselors, carried over from House Document 10 (1988);
- Courtroom presence of victims and witnesses during trial, carried over from House Document 8 (1989); and
- The profits from crime law, also known as "Son of Sam," "no profit," "nonprofit," and "notoriety for profit" laws

Before the subcommittee acted on the questions of counselor privilege and the presence of victims and witnesses in the courtroom during trial, the members wanted to examine more closely other states' laws and case law, and to allow counselors time to formulate a definition of "counselor" that would not exclude the volunteers essential to the treatment of sexual assault and domestic violence victims. Citizen testimony, particularly from the parents of Sandy Cochran, a Virginia state trooper killed in the line of duty, convinced the subcommittee to include criminal profits laws in the final study of crime victim-witness issues.

A fourth issue, crime victims' compensation, came under the subcommittee's continued scrutiny as a result of House Joint Resolution 184 (1988).

IV. ACTIVITIES OF THE SUBCOMMITTEE

In addition to reviewing information from 1987-1988 public hearings, the subcommittee updated its nationwide survey of victim laws, examined constitutional and case law regarding the current issues, reviewed progress on improvements within the Division of Crime Victims' Compensation and considered several JLARC recommendations as partial bases for proposed legislation, heard additional testimony and held four 1989 meetings (July 28, August 14, September 19, and November 14) before submitting to the full Crime Commission its final crime victim-witness report on December 19, 1989.

V. BACKGROUND

Responding to a national movement for improved treatment of victims and witnesses by the criminal justice system, the subcommittee studied, in the past two years, a number of the issues that occupied the 1982 President's Task Force on Victims of Crime and for which the National Association of Attorneys General, in cooperation with the American Bar Association, created model legislation. These include such topics as crime victims' compensation, funding of victim-witness services, victim input in sentencing and parole processes, confidentiality of designated victim counseling, the feasibility of a victims' Bill of Rights, separate waiting areas for prosecution and defense witnesses, hospital protocol for sexual assault victims, and courtroom attendance for victims and witnesses. Among the most far-reaching of the legislation enacted as a result of Crime Commission work are the following measures.

A. House Document 10 (1988)

The most significant changes brought about by this study were improvements in financing the Criminal Injuries Compensation Fund, whose revenues had not kept pace with the number of claims filed. Other issues, which were closely tied to various constitutional rights, were continued for more detailed study.

1. Crime Victims' Compensation: Virginia Code Sections 19.2-368.2, 19.2-368.11:1, and 19.2-368.18 were amended to raise court assessments from $15 to $20 for Class 1 and 2 misdemeanors and to $30 for felonies, to be disbursed to the Criminal Injuries Compensation Fund; to assess drunk drivers $20 in court costs and to include their victims in victims' compensation coverage; and to delete the $100 deductible for claims, so that no claims of less than $100 are paid, but if a claim amount is between $100 and $15,000, the full amount of the claim will be paid (House Bill 399, Patron: Woodrum).

2. Employer Intercession: Virginia Code Section 18.2-465.1 was amended to prohibit employers from penalizing victims and witnesses for absence from work due to required court attendance (House Bill 412, Patron: Stambaugh).

3. Model Victim Assistance Program: Section 19.2-11.1 was added to establish minimum standards for Victim Assistance Programs which receive state

funding administered by the Department of Criminal Justice Services. (House Bill 410, Patron: Stambaugh).

Other accomplishments include relocating the Crime Victims' Compensation Division's telephone listing from "Industrial Commission" to "Crime Victims' Compensation," and revising the Crime Commission's publication, Hospital Protocol for Treatment of Sexual Assault Victims, and updating the Crime Commission's publication, "Sexual Assault: A Handbook for Victims."

B. House Document 8 (1989)

The 1989 report reflects outstanding progress in alleviating the problems that victims and their advocates brought to the subcommittee's attention. The laws enacted in 1989 statutorily expand the victim's participation in legal processes, augment his sense of control over the outcome of the trial, and increase victim protection.

1. Victim Input Into Parole Decisions

a. Virginia Code Section 19.2-299 was amended to require probation and parole officers to send written notification to victims of personal offenses that they have the right to submit parole input information to the Parole Board and to receive notice of hearing and release dates from the Board (House Bill 1372, Patron: Stambaugh).

b. Virginia Code Section 19.2-299.1 was amended to require, upon request of the attorney for the Commonwealth and with the consent of the victim, victim impact statements in cases of abduction, malicious wounding, robbery, and criminal sexual assault. Capital crimes, because of the Booth v. Maryland and Harris v. Maryland decisions regarding cruel and unusual punishment, fall outside the purview of victim impact statement laws. In Virginia, for crimes other than those cited, victim impact statements remain discretionary with the court (House Bill 1374, Patron: Stambaugh).

2. Victim-Witness Protection

a. Virginia Code Section 19.2-269.2 was amended to allow judges, on motion of the defendant or the attorney for the Commonwealth, to prohibit disclosure of the current address or telephone number of a victim or witness if the court determines the information to be immaterial to the trial (House Bill 1373, Patron: Stambaugh).

b. Virginia Code Section 53.1-160 was amended to require the Department of Corrections, on written request of any victim of the offense for which the prisoner was incarcerated, to notify the victim of the prisoner's forthcoming release (House Bill 1371, Patron: Stambaugh).

c. House Joint Resolution 282 (Stambaugh) reminded localities to provide separate waiting areas for witnesses for the prosecution and for the defense and to include separate witness rooms in their plans for new courthouses.

House Documents 10 (1988) and 8 (1989), the Crime Commission's 1987 and 1988 annual reports respectively, contain further discussion of these measures

as well as of ancillary legislation recommended by the Commission members or proposed by other legislators.

C. House Document 17 (1989)

House Document 17 is the JLARC study of the Division of Crime Victims' Compensation. Its twenty-six recommendations focus on expediting claims, clarifying appeal procedures, solving problems CVC has experienced in management and in collecting information, and finding alternative sources for CVC revenues (Appendix B).

VI. ISSUES

A. Testimonial Privilege for Sexual Assault and Domestic Violence Counselors

Counselor privilege laws, which protect from disclosure information revealed by a client to a therapist during professional treatment, generally include the following characteristics:

- They base their definition of "confidential communication" on John Wigmore's criteria for confidentiality.
- Whether or not they require licensure and/or compensation for the therapist, they require at least a certain number of hours (usually 40) of training in counseling victims, that the counselor be "engaged" in a victim treatment center, that the counselor be supervised by a professional (a licensed or certified practitioner), and that the confidential communication be part of professionally recognized treatment.
- The counseling center cannot be part of a law-enforcement agency.
- They exclude from the privilege any information regarding child abuse, perjury, evidence that the victim is about to commit a crime, or records regarding the communication if the victim sues the counselor or agency.
- Fifty percent provide for in camera review, upon motion of prosecution or defense, to determine if the information is material to the case.
- They protect identifying information about the counseling center.
- Depending on the state, the counselor or victim claims the privilege, but only the victim can waive it.

1. Existing Law

a. Federal provisions: Research did not uncover any federal law or rule

strictly governing privileges for psychotherapists. Stephen R. Smith, in the Kentucky Law Journal, observes that Federal Rule of Evidence 501 provides for a different rule of evidence depending on whether a case is based on state law (a diversity case) or federal law (a federal case). In cases in "'which state law supplies the rule of decision, the privilege shall be determined in accordance with State law.' In federal cases, to which federal law applies, privileges are governed 'by the principles of common law as they may be interpreted by the courts of the United States in the light of reason and experience.' Therefore, even in states with strong privileges, federal cases in federal court may not have any medical or psychotherapy privilege at all."[1]

In the federal Victims of Crime Act, 42 U.S.C. §3789g stipulates that "no recipient of assistance under the provisions of this title shall use or reveal any research or statistical information furnished under this title by any person and identifiable to any specific private person for any purpose other than the purpose for which such information was obtained in accordance with this title. Such information and copies thereof shall be immune from legal process and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings." Persons violating this provision are subject to a fine of up to $10,000. In addition, 42 U.S.C. §10604 allows the federal government to terminate or suspend payment of VOCA funds to any state that fails to comply with the act.

Although the Federal Register for May 18, 1989, reports that VOCA guidelines issued pursuant to the statutes should assure the confidentiality of information that victims reveal to crisis intervention counselors working for victim services programs receiving funds authorized under VOCA, interpretation of the statue remains open to question.

b. State Law: Depending on point of view, the last few years have brought either slow but steady progress or slow but steady erosion. In 1987, twelve states had counselor privilege statutes; by 1988, sixteen had the privilege; and currently, according to the Crime Commission's most recent survey and the U.S. Department of Justice's 1986 proposed model legislation for crime victims, twenty-three states have enacted some form of such privilege. Most states, whether by statute or rule of evidence, have limited the privilege to licensed or certified therapists, including social workers.

Massachusetts (Ch. 233, §20J) and Michigan (§2157) have chosen another method to protect confidential communications, refusing to admit as evidence communications to sexual assault and domestic violence counselors without prior written approval of the victim. A number of other states, e.g., California (§1035.4-8), Connecticut (Public Act 429), Illinois (Ch. 8, §8031), Iowa (§236A), Maine (Title 16, §53-A), Minnesota (§595.02), New Hampshire (§173), New Jersey (§2A), New Mexico (§31-25-1ff), Pennsylvania (§5945.1), Utah (§78-24-8), Washington (§70.125.065), and Wyoming (§§1-12-16 and 14-3-210), all specifically mention sexual assault and domestic violence counselors, rape crisis counselors or victim counselors in their privilege laws. Indiana's Code (Ch. 6, §35-37-6-1ff) particularly includes volunteers of victim counseling centers. Although Pennsylvania law does not mention "volunteers" per se, §5945.1 grants the privilege to the sexual assault counselor, defined as "a person who is engaged in any office, institution or

center defined as a rape crisis center under this section, who has undergone 40 hours of sexual assault training and is under the control of a direct services supervisor of a rape crisis center, whose primary purpose is the rendering of advice, counseling, or assistance to victims of sexual assault." Hence, the Pennsylvania statute defines counselor by training and "engagement" with a center, not by licensure, certification, or compensation. The North Carolina legislature has just begun a two-year study of domestic violence, rape, and battered women which may examine privilege for these victims' counselors.

c. Virginia Law: At this point, Virginia has no counselor privilege statute that applies to criminal cases. Virginia law, however, recognizes the validity of privilege statutes for counselors in §8.01-400.2, which establishes a psychotherapist privilege in civil cases, but the counselor, social worker, or psychologist must be licensed; item 23 of §2.1-342 (the Freedom of Information Act) exempts from the act but not from evidence "confidential records, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses;" and §18.2-67.7 (Virginia's rape shield law) declares inadmissible, in criminal cases, "general reputation or opinion evidence of the complaining witness's unchaste character or prior sexual conduct." The judge, however, may determine that the evidence is admissible. Virginia law also recognizes the validity of privileges in criminal law. Section 19.2-271.5 grants a priest penitent privilege for the accused "where such person so communicating (in confidence and to the minister in his professional capacity) such information about himself or another is seeking spiritual counsel and advice relative to and growing out of the information so imparted." None of the protections, of course, necessarily include information victims reveal to counselors during treatment.

2. Objections to Counselor Privilege

Opponents to a counselor privilege argue that such a provision violates a defendant's Sixth Amendment right to confront adverse witnesses and to have compulsory process for obtaining witnesses in his favor. Fifth and Fourteenth Amendment guarantees to due process may also be incidentally nullified.

According to a 1987 Suffolk Law Review case comment by Kathryn A. O'Leary, even in camera review does not meet the requirements of the Sixth Amendment.[3] She discusses Commonwealth v. Two Juveniles, 397 Mass. 261, 491 N.E. 2d 234 (1986) in which the Massachusetts Supreme Court considered whether two codefendants accused of rape were entitled to an in camera inspection of privileged communications between the victim and her sexual assault counselor, regardless of the victim's absolute privilege against disclosure of the communication. When the victim went to the hospital after the rape, she talked with the hospital's sexual assault counselor. The defense attorney for the boys sought an in camera inspection of the records of the visit to determine if they contained exculpatory evidence. The trial judge refused, finding the counselor privilege absolute. On appeal, the Massachusetts Supreme Court did not consider the constitutionality of the issue raised by the absolute privilege, but "held that a determination of the statute's constitutionality first requires fully litigated factors and then, if the defendant can make a required preliminary showing of a legitimate need for

access to that communication it is within the trial judge's discretion to resolve the matter." The court rejected the defendants' assertion that in any case involving a privilege "at least some of the communication will be relevant and materially related to the crime, and that the mere possibility that the communication might aid the accused is sufficient to overcome the privilege."[4] The court concluded that exceptions to the privilege must be determined case by case.

O'Leary feels that this decision creates a "double hurdle" that defendants must overcome "to vindicate their right to confrontation. Defendants must make an undefined preliminary showing of need for the privileged communication before a trial court will consider exercising its discretion and examine the information in camera." Moreover, once the court has examined the information, the court alone decides if it will be helpful to the defendant.[5]

Another case, Pennsylvania v. Ritchie, 1347 U.S. 18 (1987), also challenged the counselor privilege's comportment with the Sixth Amendment. Pennsylvania §5945.1, which carries an in camera review provision, exempts sexual assault counselors' child abuse records from disclosure. When Ritchie was convicted of sexually abusing his thirteen-year-old daughter and his case was appealed to the United States Supreme Court, it was found that the trial court did not inspect the records and that the records of the Children and Youth Services Department could have contained information that might have changed the outcome of this trial, i.e., that his Sixth Amendment right to obtain witnesses and information in his favor and his Fifth and Fourteenth Amendment rights to due process had been compromised. As a result, the Supreme Court, while agreeing that "a defendant's right to discover exculpatory evidence does not include the unsupervised authority to search the State's files and make the determination of the materiality of the information," found that:

> "(a.) Due process requires in camera inspection of the privileged communications by the trial court.
>
> (b.) Evidence contained in the privileged materials which is material to the defense (must) then be made available to the defendants.
>
> (c.) If the defendants request specific information from within the privileged information, the trial court does not have unlimited discretion in deciding whether to (release it to the defense)."[6]

These opinions, the court felt, would ensure a fair trial by protecting the defendant's right to relevant information, the victim's right of privacy, and the state's interest in protecting the confidentiality of certain information.

With regard to item (c.), O'Leary notes that "(t)he court recognized the inherent difficulties in requesting unseen information but nevertheless rejected the notion that privileged information be treated similarly to evidence precluded from trial by rape shield laws by giving defendants access to the material before arguing for its admissibility."[7]

Hence, O'Leary defines three objections to a counselor privilege, regardless of in camera inspection:

a. The defense must establish a right of access to a right, e.g., prove that the evidence is material to the trial.

b. The court alone decides if the evidence will be helpful to the defendant, i.e., the judge may well be unfamiliar with the "theory of defense" and as a result fail to recognize the importance of seemingly insignificant or irrelevant information.

c. There are no consistent guidelines for relevance, and determinations of relevance are left to case-by-case decisions.[8]

3. Support for Counselor Privilege

Advocates of the privilege contend that the in camera provision satisfies Fifth, Sixth and Fourteenth Amendment requirements and, as shown in the Two Juveniles and the Ritchie cases, the U.S. Supreme Court seems to agree. Not only do the two decisions uphold the privilege, but the Ritchie case upholds it with reference to a governmental agency, the Pennsylvania Children and Youth Services Department. As part of the decision quoted earlier, the Supreme Court in its Ritchie decision affirmed that "(t)o allow full disclosure to defense counsel in this type of case would sacrifice unnecessarily the States' compelling interest in protecting child abuse information."

An Illinois Supreme Court case, People v. Foggy, 500 N.E. 2d 1026, 1991, app. 3d 599, 102 Ill. Dec. 925, (1988) tested the constitutionality of the Illinois absolute counselor privilege. Leslie Foggy, convicted of aggravated criminal sexual assault and unlawful restraint, appealed his conviction because the trial court refused to conduct an in camera hearing involving a rape crisis counselor's records. The Illinois Supreme Court affirmed the conviction, holding that "the trial court's refusal to conduct in camera hearing to examine communication made between rape victim and rape crisis counselor, to determine whether records provided source of impeachment, based on absolute statutory privilege of confidentiality of communications between rape victims and rape counselors did not violate defendant's due process rights or his confrontation rights."

Proponents argue that much of the information revealed to counselors is as sensitive and potentially damaging to their clients as sexual molestation information is to children and that such information does not include the victim's every thought, emotion or moment of life history. Public examination, particularly in the atmosphere of a courtroom, it is argued, produces injury to the victim without preserving or advancing the defendant's constitutional guarantees.

In addition, proponents argue that to require confidential information conforming to Wigmore's criteria be publicly revealed violates the victim's right to privacy. In a Virginia case, Farish v. Commonwealth, 2 Va. App. 627 (1986), the court ruled to protect individual privacy. Raymond Eugene Farish appealed his conviction of rape and forcible sodomy when the court refused to

order production of the victim's psychiatric records. The Court of Appeals upheld the conviction, finding "that the defendant failed to demonstrate that the records were material to his defense, and that for this reason, his need for the material was outweighed by the public policy against allowing him to bring out potentially embarrassing and unrelated details of the victim's personal life."

More sweeping in its protection of privacy rights is Griswold v. Connecticut, 381 U.S. 479 (1964), which proclaims "the specific guarantees in the Bill of Rights have penumbras, formed by emanations from these guarantees that help give them life and substance." The decision particularly focuses on the Ninth Amendment, which affirms that "(the) enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people," and remarks that Madison, who introduced the amendment, and other framers of the Constitution feared that without this clause, or with a list of specific rights, other valuable ones not cited would be destroyed, abridged, or ignored.

Less theoretical responses appear in the National Association of Attorney General's (NAAG) model legislation, which notes that the nature of the information a privilege would protect is often hearsay and hence inadmissible anyway. Detailed factual information often is not relevant to treatment and not pursued during treatment. As a result, NAAG continues, counselors might know relatively little about the facts of the case, which facts could be furnished by other witnesses (See Upjohn Co. v. United States, 449 U.S. 383 (1981)) and would not be protected under the statute. In addition, protecting identifying information about the counseling center can be essential to protect the victim and is generally of no value in criminal investigations.[9]

Advocates for counselor privileges raise a subsidiary question: Should the privilege be absolute, whereby no information conveyed in counseling can be disclosed in court, or should the privilege be limited by provisions for in camera review, or confession of intent to commit felonies? As mentioned previously, approximately half of the privilege statutes are absolute and half are restricted. Case law is also divided, with, for example, Commonwealth v. Two Juveniles, Davis v. Alaska, and Matter of Pittsburgh Action Against Rape supporting a limited privilege; and Farish v. Commonwealth of Virginia and Illinois v. Foggy supporting an absolute privilege.

B. Victim-Witness Courtroom Attendance

LeRoy L. Lamborn, in a 1987 article in the Wayne Law Review, closely analyzes the problem of courtroom attendance for crime victims and witnesses. Most of the information here derives from his discussion.[10]

The courtroom attendance laws allow, under various conditions, victims and/or witnesses to remain in court as the trial takes place. While no one seeks to promote witness contamination, virtually all agree that abuses exist in the judicial procedure for excluding witnesses, primarily as a result of a defense strategy that designates victims' family members as witnesses and then has them perfunctorily excluded from the trial. According to Lamborn, courtroom attendance statutes have attempted to remedy the problem in three ways:

- Allow the victim to remain in court throughout the trial.
- Allow the victim to remain in court after he has testified.
- Grant the judge discretion to allow the victim to remain in court.[11]

1. Existing Law

a. Federal Provisions: According to Lamborn, Rule 615 of the Federal Rules of Evidence "grants parties to proceedings an absolute right to exclusion of witnesses. Although some states have adopted the form of this rule, they have retained the common law attitude that permits judicial discretion in excluding witnesses. On the other hand, 'while the burden of persuasion is said to be on the party seeking exclusion, in practice the motion is granted almost as a matter of course.' Rule 615 does not authorize exclusion of three categories of persons: (1) a party who is a natural person, (2) an officer or employee of a party who is not a natural person designated as its representative by the attorney, and (3) a person whose presence is shown by a party to be essential to the presentation of the party's case. The third category has served as the basis not only for expert witnesses remaining in the courtroom, but for victims and parents of child victims attendance as well." (See State v. Eynon, 250 N.W. 2d 658 (Ne. 1977), in which the victim of Eynon's rape and attempted burglary was improperly excluded).[12]

With regard to order of witness appearance, Federal Rule of Evidence 611(a) stipulates that "'(t)he court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.'"[13]

Although the recommendations of the President's Task Force on Victims of Crime in 1982 lack the force of law, they do promote nationwide standards of treatment of crime victims and witnesses. Recommendation 18 urges judges "to allow the victim and a member of the victim's family to attend the trial, even if identified as witnesses absent a compelling need to the contrary." Heeding the recommendation, the National Conference of the Judiciary on the Rights of Victims of Crimes promulgated "Recommended Judicial Practices," a brochure which espouses victim participation in all stages of the trial, the presence of the victim's advisor in the courtroom with the victim without participating in the judicial proceedings, and the presence of the victim or his family in the courtroom when permitted by law and when it will not interfere with the defendant's right to a fair trial. The Judicial Council of Virginia and the Judicial Conference of Virginia also adopted its "Statement of Principles and Recommended Judicial Practices to Ensure Fair Treatment of Crime Victims and Witnesses."

b. State Law: According to the Crime Commission survey and Lamborn's 1987 Wayne Law Review article, seventeen states now permit victims, their families, and/or witnesses to remain in the courtroom under specific conditions (Alabama, §15-14-50 through §15-14-57; Arkansas, §28-1001, Title 16; California, Penal Code §1102.6; Georgia, §38-1703.1; Maryland, Article 27, §620; Michigan, §780.761; Mississippi, §99-36-5; Nevada, §178.571; New Hampshire, Rule of Evidence 615 amendment; New Mexico, §31-24-1 through §31-24-7; North Dakota, §12.1-34-02(11); Ohio, §§2943.041 and 2945.04J;

Oregon, §40.385; South Carolina, §16-3-1530(C)(8); South Dakota, §23-24-7; Texas, Criminal Procedure Code, art. 56.02(b); and Washington, §7.69.030(10).

Alabama and Arkansas grant the right explicitly; New Hampshire and Oregon grant it implicitly in a new exception to the rule for excluding witnesses; Michigan, South Dakota, and Washington grant the victim the right to be present at the trial after he has testified; California, Georgia, Maryland, Mississippi, New Mexico, North Dakota, South Carolina, and Texas grant the judge the discretion to allow the victim to be present throughout the trial. Nevada allows a support person for the prosecuting witness to remain in court. Ohio's laws generally grant victims the right to be present at all stages of the proceedings so long as their presence does not compromise the defendant's constitutional rights. The Ohio legislature is also considering Senate Joint Resolution 6, which proposes a constitutional amendment guaranteeing victims that right.

c. Virginia Law: Section 19.2-265.1 requires that in criminal cases the court "may upon its own motion and shall upon the motion of either the attorney for the Commonwealth or any defendant...(exclude) every witness..." This statute exempts the defendants and agents of corporations or associations from the statute "as a matter of right," but does not exempt a person whose presence is shown by a party to be essential to the presentation of the party's case (the third exception listed in Rule 615 whereby victims have been allowed to attend the trial). Senate Bill 308 (1988) and Senate Bill 627 (1989), which would have allowed victims and/or witnesses, at the judge's discretion, to remain in the courtroom, were defeated.

2. Objections to Exclusion of Witnesses

Dean Wigmore characterizes the exclusionary rule as "one of the greatest engines that the skill of man has ever invented for the detection of lies in a court of justice." Hence, opponents' most basic objection is that witnesses, including victims as witnesses, allowed to remain in the courtroom would be contaminated, whether consciously or unconsciously, intentionally or unintentionally, by testimony of other witnesses and so destroy the possibility for a fair trial.

The possibility for a fair trial is further eroded, opponents continue, by the presence of a victim's friends and family, whose demeanor may influence the jury.

The potential compromise of a fair trial raises at least three constitutional issues. The Sixth Amendment guarantees defendants the rights to confront and cross-examine witnesses, to counsel and to trial by impartial jury. Opponents argue that the courtroom presence of victims and witnesses denies the defense his best means of revealing inconsistencies in testimony. Moreover, calling witnesses or victims to the stand early and then allowing them to remain in court not only hinders the defense attorney's ability to expose lies and inconsistencies, but may prevent him from pursuing an unexpected line of defense and thereby from providing effective counsel to the accused.[14] Finally, jury members made hostile to the defendant by the presence of a victim's family and friends do not constitute an impartial jury.

Lamborn cites two cases which successfully contested the failure to exclude or separate victims. In United States v. Wade, 388 U.S. 218 (1967) where witnesses identifying men in a line-up were not separated, the court held that "each witness should be required to (identify the suspect) separately and should be forbidden to speak to another witness until all of them have completed the process."

In the second case, Commonwealth v. Lavelle, 419 N.E. 2d 1269 (Penn. 1980), the Pennsylvania Court of Appeals affirmed that "(a)fter listening to the testimony of witnesses who previously testified that the defendant was (the culprit), the tellers could have been influenced to testify with a firmer conviction of their recollection of the defendant's physical characteristics and of his identity as the perpetrator of the crime, and could have been less likely to admit doubt about their identification than they would have admitted if they had been sequestered."[15]

3. Support for Exclusion

Advocates for courtroom attendance laws agree with all of the above. They are, they affirm, seeking justice and a fair trial, and do not wish to create a victim of the legal system.

As to the exclusion of witnesses as a right, Dean Wigmore notes that "a few courts concede that sequestration is a demandable right. But the remainder, following the early English doctrine, hold it grantable only in the court's discretion; declaring usually, however, that in practice it is never denied, at any rate in a criminal case."[16] Allowing the "essential person," Rule 615's third exception, to remain in court is left to the judge's discretion. Lamborn suggests, therefore, "that although the accused might not have an absolute constitutional right of exclusion, he might have a constitutional right to exercise to the judge's discretion on the issue."[17] Hence, the constitutional right to automatic exclusion of the victim or his family remains open to question.

This interpretation comports with the position taken by supporters of courtroom attendance laws: that exclusion be open to judicial discretion rather than granted as a matter of constitutional right. In a word, victims and witnesses expect the rule to be applied in "good faith," not "automatically...without regard to the reasons for its existence -- as in the case of defendants' subpoena of the parent who was not present during the murder of his child." Citing the President's Task Force Report, Lamborn observes "that the 'defendant's subpoena of members of victim's family with no intention of calling them is "an abuse of the subpoena process and such subpoenas can be challenged and quashed."'"[18]

Nevertheless, Alabama's courtroom attendance law was challenged in Crowe v. State, 486 So. 2d 351 (Ala. 1984). Here, the Alabama appeals court held that no constitutional rights of the appellant were abridged because of the victim's widow being seated at the prosecutor's table.

Arkansas' court attendance law has also withstood constitutional challenge in Stephens v. State, 720 S.W. 2d 301 (Ark. 1986). In this case, David Stephens was convicted of aggravated robbery, kidnapping, and being a felon in

possession of a firearm. He appealed, alleging that the victim's presence in the courtroom deprived him of the right to a fair trial. The Arkansas Supreme Court, however, ruled that allowing the victim of crime to remain in the courtroom during trial, when material parts of her testimony were based on her own knowledge and could not have been influenced by previous testimony, was not so fundamentally and inherently unfair as to deprive defendant of a fair trial.

With regard to the order of appearance of witnesses, Rule 611 (a) already allows judges to "exercise reasonable control over the order of interrogating witnesses and presenting evidence." Two cases, Geders v. United States, 425 U.S. 80 (1976), and Brooks v. Tennessee, 406 U.S. 605 (1972), held that the trial judge "may determine generally the order in which parties adduce proof."[19] Consequently, the practices of calling victims, if at all practicable, to testify first and of requiring the defense and the prosecution to submit to the court's determination of order of presentation are neither new nor untested.

In practice, advocates contend, victims are seldom recalled to the stand as witnesses and, hence, only rarely would they be influenced by subsequent testimony. Should they be recalled, testimonial influence could be countered by "jury instruction and the closing argument of the defense counsel that in assessing the credibility of the victim the jury may consider the effect of his having heard the testimony of other witnesses."[20]

Supporters affirm that their primary goal is to halt the abuse of labeling a person a witness when he is not, thereby causing undue anguish when he is banished from court proceedings that are of immense importance to him. Since such people are witnesses only by designation rather than by fact, permitting them to remain in the courtroom does not contravene the defendant's right to confront witnesses. Since the investigation and pretrial discovery have already established that they do not have any knowledge of the crime, the defendant's right to cross-examination and counsel will not be breached by their presence during the trial. Moreover, their distance from the crime makes their involvement in evidentiary or defense strategy surprises unlikely.

With regard to prejudicing the jury, supporters point out that family members may sit anywhere that any member of the public may sit unless the individual state law specifies otherwise. Consequently, there need not be any reason for jurors to know their identity. In addition, should victims or their families behave in a disruptive or prejudicial manner, judges have the discretion under common and statutory law to remove them, just as they may remove from the court the defendant and his supporters for similar behavior.

C. Profits from Crime

Profits from crime laws prevent, limit, or delay criminals' receipt of profits gleaned from the sale of their accounts of their crimes. In response to the David Berkowitz murders and his $200,000 contract with McGraw-Hill, the New York legislature enacted the first "Son of Sam" law in 1977. Since then, forty-three other states and Congress have adopted similar legislation. While the measures vary in wording and individual provisions, they generally encompass the following characteristics:

- The publisher or person making the contract must turn over any money due the accused or convicted person to a state agency, the attorney general, the state treasurer, or the crime victims' compensation board.

- The agency establishes an escrow account for the victim, the victim's family, or the crime victims' compensation fund.

- To avoid due process challenges, the law may require notice to the accused or criminal that the state is going to escrow his money and that the person show cause why the state should not do so (South Dakota).

- The agency must advertise, in papers in the county or municipality in which the crime occurred and in surrounding jurisdictions, that escrowed funds will be available to the victims of that particular crime. The notice period is generally once every six months for five years after establishment of the account.

- To collect, the victim usually must file a civil suit against the criminal, or the court may order restitution to be made from the proceeds.

- The victim usually has five years to file suit.

- If the accused is found innocent, all money in the account is returned to him.

- If the accused is found guilty but the victim files no claim and no claims are pending after five years from the time the funds are escrowed, the criminal usually receives the money. Washington, however, retains fifty percent of the profits for the crime victims' compensation fund.

- The accused may use profits for legal defense.

- A closing section usually declares void any action taken by the defendant, such as creating a power of attorney, to defeat the purposes of the law.

1. Existing Law

a. Federal Law: Chapter 232A (Special Forfeiture of Collateral Profits of Crime), Title 18, §3681 of the United States Code prohibits convicted criminals from profiting from the sale of their accounts of their crimes. The law does not prohibit publishers or authors other than the perpetrator or his assigns from profiting from their endeavors. Unlike some state laws, the federal law distributes the escrow account to the crime victims' compensation fund at the expiration of the five-year statute of limitations, remitting no gains to the criminal.

b. State Law: Despite numerous scholarly articles assailing the constitutionality of Son of Sam laws, Congress and 43 states have, as mentioned earlier, enacted laws that attempt to restrict criminals from profiting from their offenses. Although most states' laws differ but slightly, a few include nonconforming provisions. California's §13967(a) allows the court to consider "any economic gain derived by the defendant as a result of the crime" when setting the amount of fines imposed for felony convictions. Indiana requires the person contracting with the felon to pay ninety percent of the proceeds to the state, and permits the offender to petition the state to release funds not only for legal defense, but to relieve his indigence (§16-7-3.7). Maine's nonprofit law requires prisoners to pay twenty-five percent of any income generated from any source to the victims of their crimes (17-A, §1330(2)). Mississippi's law (§99-38-1 et seq.) allows the felon or his minor children to have the money after five years. Nevada, in §217.265, establishes a property lien on three-quarters of the criminal profits, and Washington retains fifty percent of the profits for its crime victims' compensation fund at the end of five years and disburses the other half to the defendant. Only Kansas, New Hampshire, North Carolina, North Dakota, Vermont, Virginia and West Virginia have not enacted profits from crime legislation.

c. Virginia Law: In 1986, House Bill 817, which would have prohibited criminals from profiting from their crimes, was introduced but did not pass.

2. Objections to Profits from Crime Laws

Richard Alan Inz, in the Columbia Journal of Law and Social Problems, argues that criminal profit laws violate §10 of Article 1 of the Constitution, the First, Fifth and Fourteenth Amendments, and implicit constitutional guarantees of the public's right to know information of public interest.[21] Stephen Clark, in the St. Louis University Law Journal, suggests that such laws violate the Copyright Act.[22]

a. U. S. Constitution, Article 1, §10 (Impairment of contracts): Requiring publishers to decide which crimes would fall under the purview of profit from crime laws and to determine whether or not they want to assume the responsibility for this decision impairs their ability to make contracts. Moreover, the loss of profits would chill defendants' interest in entering contracts.

b. First Amendment (Freedom of Speech and the public's right to know): Escrowing a defendant's profits discourages the exercise of his constitutional right to free speech. Moreover, it compromises the public's constitutionally implicit right to know by discouraging the criminal from publishing the account of his crime. In an obscenity case, Stanley v. Georgia, 394 U.S. 557 (1969), the court found it "well established" that the Constitution protects the "right to receive information and ideas, regardless of their social worth...(as) fundamental to a free society."

Opponents argue that heinous crimes are subjects of social interest and concern, more governed by Grosjean v. American Press Company, 297 U.S. 233 (1936) than Chaplinsky v. New Hampshire, 315 U.S. 568 (1942).

Grosjean held that a tax imposed on certain newspapers (analogous here to the withholding of profits) had "the plain purpose of curtailing a selected group of newspapers" (those with a circulation greater than 20,000/week), and that it was "the heart of the natural right of the members of an organized society...to...acquire information about their common interests."

Accounts of crimes, which can be socially instructive, do not fall within the purview of the Chaplinsky ruling, in which the court observed that "it is well understood that the right of free speech is not absolute at all times and under all circumstances." The court goes on to provide examples of such instances: "certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or 'fighting' words--those which by their very utterance inflict injury or tend to incite an immediate breach of the peace."[23]

Inz cites a decision overturning an anti-picketing ordinance to suggest that the statute also violates the free speech provision by being too vague to "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly" (Grayned v. City of Rockford, 408 U.S. 104 (1972)).[24]

c. U. S. Constitution, Fifth Amendment (Deprivation of property without due process): Critics maintain that the law deprives defendants of their property without due process of law. Some states' laws do not include the right to notice and a hearing before the property can be escrowed. Arnett v. Kennedy, 416 U.S. 134 (1974), was a case in which an O.E.O. employee was dismissed without a hearing and, hence, "divested of his property interest" without due process. The Supreme Court stated that once a property interest is found, due process, which requires some form of notice and opportunity for hearing before property can be legally taken, must be afforded. In another decision, North Georgia Finishing, Inc., v. Di-Chem, Inc. (1975), the Supreme Court found that seizure of property to satisfy due process requires (1) notice and opportunity for early hearing, (2) participation of a judicial officer, and (3) allegation of specific facts that warrant the issuance of a writ.[25]

d. U. S. Constitution, Fourteenth Amendment (Equal protection of property): Opponents argue that "profit from crime" statutes deny equal protection to property in that a white collar criminal may garner profits from accounts of his crime, while violent criminals cannot.

In a 1972 case, Police Dept. v. Moseley, 408 U.S. 92 (1972), the Court ruled that when the denial of equal protection "plainly involves expressive conduct within the protection of the First Amendment,...discriminations...must be tailored to serve a substantial government interest." Inz opines that "(t)here is not substantial governmental interest in denying to victims of property or personal non-physical injury the availability of Section 632-A's provisions (New York's Son of Sam statute).[26] This loophole has apparently been closed and the amended law is now the basis for a suit. The Richmond Times Dispatch recently reported that R. Foster Winans is attempting to prevent the New York State Crime Victims' Board from escrowing the $17,000 in royalties that Trading Secrets: Seduction and Scandal at the Wall Street

Journal has earned.

e. Copyright Act: The Copyright Act (§201 (e)) states that "(w)hen an individual author's ownership of a copyright, or of any of the exclusive rights under a copyright, has not previously been transferred voluntarily by that individual author, no action by any governmental body or other official or organization purporting to seize, expropriate, transfer or exercise the rights of ownership with respect to a copyright, or any of the exclusive rights under a copyright, shall be given effect under this title except as provided under title 11 (involuntary transfers in bankruptcy cases)."[27]

Obviously, appropriating royalties violates the act when the Copyright Law makes no exceptions for how the profits were earned. Clark discusses this objection at length, and concludes that amending the act to permit involuntary transfer of royalties from criminals/authors to escrow agencies would be contrary to the public interest. He asserts that "...there may be public policy reasons for maintaining copyright protection for the criminal/author. Literary and artistic works may provide valuable contributions to the field of criminology, they may further the rehabilitation of the criminal, or they may aid in crime prevention. But if the criminal/author is deprived of financial motivation for creating his work, society will likely suffer from the loss of his potential contributions." [28]

3. Support for Profits from Crime Laws

Proponents feel that criminals should not continue to damage their victims by profiting from their crimes, regardless of the importance of constitutional protections which, they assert, are not curtailed by criminal profit laws anyway. Moreover, advocates point out, the Constitution was not designed to ensure that criminals derive profits from their crimes. In a century-old decision, Riggs v. Palmer, 22 N.E. 188 (1889), a case in which an heir poisoned his benefactor, the New York Supreme Court affirmed that "(n)o one shall be permitted to profit by his own fraud, or to take advantage of his own wrong...or to acquire property by his own crime. These maxims are dictated by public policy, have their foundation in universal law administered in all civilized countries, and have nowhere been superseded by statute." These principles were again applied in Pertie v. Chase Manhattan Bank, 307 N.E. 2d 253 (N.Y. 1973), where an heir murdered a donor and then attempted to collect the inheritance.[29]

Advocates also note that the statutes are similar to well-established civil attachment laws whereby a judgment creditor in a civil lawsuit may obtain an attachment order "of a defendant's assets where fraud, waste, concealment, flight or assignment is threatened and such assets are needed to satisfy the expected judgement." Stakeholder laws authorize a government agency to enforce the attachment on behalf of victims who would otherwise rarely have adequate notice or legal resources to pursue a civil attachment.[30]

In contrast to Inz, Joel Rothman, in a 1980 article in the Journal of Criminal Law, demonstrates that criminal profit laws enable "the equitable rights of the victim to be advanced while safeguarding the constitutional rights of the offender,"[31] and he tackles the adversaries on every point.

a. U. S. Constitution, Article I, §10 (Impairment of contracts): The statutes do not encourage or discourage the making of contracts between criminals and media representatives. In fact, Rothman alleges, reputable publishers that might otherwise refuse to contract with heinous criminals, might be persuaded to do so since the proceeds would go to the victims. Administering the profits would require no more effort to channel them to an escrow fund than to the criminal. Opponents of criminal profits statutes assert that publishers may be penalized for deciding wrongly that the profits should be paid to the criminal, rather than to the escrow agency. Rothman disagrees, pointing out that the statute is specific in revealing when to pay the royalties to the state: (1) when the publisher is "contracting for the reenactment of a crime or the expressions of an accused person's thoughts, feelings, opinions, or emotions regarding the crime...(and (2)) when the contract provides for payment to the offender who is charged or convicted of committing the crime which is the subject of the reenactment or expressions, or his representative or assignee."[32]

b. U. S. Constitution, First Amendment (Freedom of Speech and the public's right to know): Since the laws only affect profits, they arguably do not infringe on the offender's freedom of speech or the public's right to information. If the offender wants to publish his account, has found a publisher, and the publication expenses are not his, then his ability to publish is not economically limited. For many sensational crimes, and indeed for most other crimes, information is already amply available through news media. Moreover, the statutes limit neither the defendant's ability to express himself nor what he may say.

Courts, over the years, have separated profit-motivated speech from that which is not. For example, in Breard v. Alexandria, 341 U.S. 622 (1951), the Court upheld an ordinance prohibiting door-to-door solicitation of magazine subscriptions, concluding that, although the distribution of information is protected by the First Amendment, "the selling...brings into the transaction a commercial feature." In a 1978 decision, In re Primus, 436 U.S. 412 (1978), the Court reaffirmed the distinction between commercially motivated speech and "speech which seeks to advance beliefs and ideas. In that case, an ACLU attorney was charged with solicitation for offering to represent without charge a woman who had been sterilized as a condition for receiving public assistance funds." In upholding the lawyer, the Court specifically contrasted the case with Ohralik v. Ohio State Bar Association, 436 U.S. 447 (1978), in which an attorney "had been charged with illegally offering to represent the victims of an automobile accident for his personal gain." In drawing the distinction, the Court stated that:

> "(n)ormally the purpose or motive of the speaker is not central to First Amendment protection, but it does bear on the distinction between conduct that is 'an associational aspect of "expression"...and other activity subject to plenary regulation by government ...' The line, based in part on the motive of the speaker and the character of the expressive activity, will not always be easy to draw..., but that is not reason for avoiding the undertaking."[33]

Rothman specifically refers to the previously described Grosjean case, and notes that reducing advertising revenues, a newspapers' prime income necessary to their existence, would put them out of business and hence destroy lines of communication.[34] This is arguably not applicable to publishers of criminal accounts, and it is contrary to the public interest to subsidize the criminal for his illegal activity.

Moreover, the failure to provide an inducement to speak differs from the creation of a barrier between the speaker and the public. The concept of freedom of speech presupposes a willing speaker; it does not require an inducement to speak: "If the withdrawal of an affirmative inducement to speak...is the only deterrence alleged, it suggests that the speaker is not in fact a 'willing speaker' who is being prevented from speaking." Despite profits from crime laws, communication channels remain open because no barrier is placed between the speaker and the public, and the public's right to know remains unimpaired.[35]

As to the allegation that free speech is collaterally impaired, Rothman discusses United States v. O'Brien, 391 U.S. 367 (1968), which found draft card burning to be protected by the First Amendment. As a result of the case, "the Court established a test to determine when government interests in regulating the 'non-speech' elements of a course of conduct justify incidental limitations on first amendment freedoms. First, the regulation must be within the constitutional power of government. Second, it must further an important or substantial government interest. Third, the government interest furthered by the regulation must be unrelated to the suppression of free expression. Finally, the incidental restriction on first amendment freedoms cannot be greater than is essential to the furtherance of that interest."[36]

Profits from crime laws, avers Rothman, clearly meet these standards:

- The state has the constitutionally granted power to regulate commerce within its borders.
- The government has a substantial interest in preventing unjust enrichment of criminal offenders.
- The interest is unrelated to the suppression of protected expression.
- Although some question remains about the necessity of the five-year limitations period, since most laws have a two or three year one, the longer period gives states extra time to find victims and for them to file claims.[37]

c. U. S. Constitution, Fifth Amendment (Deprivation of property without due process): Objections focus on some states' omission of notice and hearing requirements necessary to meet due process standards. As legislators have become more familiar with the legal tests that criminal profit laws must pass, notice of intent to escrow and an opportunity to show cause why the money should not be seized have been incorporated into the statutes. As mentioned earlier, the statutes can also be regarded as similar to the long-standing laws which enable states to hold property before a judgment has been

rendered. In one case, Fuentes v. Shevin, 407 U.S. 67 (1972), the Court established a test for prejudgment seizure of property: "First, the seizure must be directly necessary to secure an important governmental or general public interest. Second, there must be a special need for very prompt action. Finally, the state must keep strict control over its monopoly of legitimate force -- the person initiating the seizure should be a governmental official for determining, under the standards of a narrowly drawn statute, that the seizure is necessary and justified in the particular case."[38]

According to Rothman, criminal profit statutes meet these criteria: (1) The state has an interest in preventing offenders from profiting by their crimes; (2) if the publisher pays the profits to the criminal, he may disperse the funds before the victim can perfect his suit; and (3) the publisher is a disinterested party, since his profits remain unchanged whether the criminal or the state receives the royalties.[39]

d. U. S. Constitution, Fourteenth Amendment (Equal protection): As states have broadened their "profits from crime" laws to include felons of whatever stripe, Fourteenth Amendment objections have subsided.

e. Copyright Act: Copyright objections to criminal profit laws are essentially arguments concerning freedom of speech and deprivation of property, addressed earlier in the report.

The fact that the copyright law has not been amended or repealed, despite challenges, and that no court cases appear to have been brought under the Copyright Act would suggest that copyright objections are weak.

Assertions that the public "loses" whenever the criminal elects not to tell his story (for profit) are value judgments balanced by knowledge that the public has other channels to the information, that if the criminal is genuinely literary he will find another subject for creative expression, and that the potential for rehabilitation must be weighed against the anti-rehabilitative potential of rewarding a person for his crime.

D. Crime Victims' Compensation

Chapter 21.1 (§19.2-368.1 et seq.) of Title 19.2, enacted in 1976, establishes a Division of Crime Victims' Compensation (CVC) within the Department of Workers' Compensation (DWC) to administer a fund of last resort for those who suffer personal injury or death as a direct result of a crime. Since its creation, the Division has handled a steadily increasing number of claims each year. JLARC data in House Document 17 reveal that claims increased from 200 in 1980 to 900 in 1988, and that awards grew from a little over $400,000 in 1981 to nearly $1.6 million in 1987.

1. JLARC Report and Recommendations

House Document 17, the JLARC report, closely addresses funding, program management, and administrative placement of the Division.

a. Funding

As mentioned earlier in this and previous Crime Commission reports, funding has proved to be a continuing difficulty for the Division. Despite improved accounting procedures, a reserve fund that guarantees administrative funding for the Division, and increased court costs payable to CVC, funding has not kept pace with the amount of awards. Additionally, the amount of federal funding and its arrival time remain uncertain.

To remedy one financial uncertainty of the Division, JLARC recommended improving recordkeeping for appeal and administrative costs. JLARC also listed some options for increasing funds that are available for consideration by the General Assembly, e.g., increasing offender costs, assessing fines not only from felons and misdemeanants but from traffic-law offenders, transferring criminal profits and bail forfeitures to the Fund, using general funds, and charging court filing fees.

b. Program Management

JLARC'S findings often echoed testimony. Underlying the protracted turnaround time for claims are not only delays in receiving information, but an inadequate claim form that fails to explain to applicants CVC requirements for collateral resource and insurance data, for emergency awards, and for specifying the type of benefits requested. In addition, claimants and advocates were often confused by the language on the application form, unclear form letters, and the absence of information in general, a difficulty created by the lack of written guidelines.

Equal confusion existed in the appeal process. Applicants report they were not given enough explanation to understand why their claims were rejected or reduced. In some cases, as a result of an inadvertent effect of Jennings v. Division of Crime Victims' Compensation (1988), applicants formerly eligible for CVC reimbursement received no payments because their collateral resources exceeded $15,000. Because of unclear explanations of procedures for reopening claims and appealing decisions, claimants erroneously reported that the Director heard appeals on claims he had initially rejected.

Twenty-four of JLARC's 26 recommendations focus on program management. In general, JLARC recommended improved communication to victims through publication and dissemination of written program, policy and procedural guidelines; simplifying and clarifying forms claimants must complete; revising form letters in such a way that they solicit only necessary instead of extraneous information; and clearly indicating, in correspondence to victims and in publicity documents, critical deadlines. Recommendations for management improvement and, hence, reduced turnaround time include a review of documentation and forms to assure that only necessary information is solicited, establishment of deadlines, development of faster and improved adherence to office procedures for handling emergency claims, and development of a file checklist and automated file call-up system.

c. Administrative Placement

The JLARC study stated that "(m)ore states locate their crime victims' compensation program within their workers' compensation department or industrial commission rather than [in] other organizational structures. Many

states have also ensured that the structural placement allows for independent investigation, assessment, and decision-making for these types of claims. Virginia's placement of the CVC Division appears to parallel that of other states." JLARC staff reported that CVC's problems were unrelated to its placement, that CVC functions parallel those of DWC more closely than those of other agencies, that transfer alone would not solve the problems, and that a transfer would require additional funds. Hence, the study recommended no transfer.

2. Responses to JLARC's Recommendations

As Appendix B demonstrates, CVC has effected many of the recommendations; however, a number of them required statutory changes. Senate Bill 618, patroned in 1989 by Senator Clive L. DuVal 2d, a JLARC member, addressed recommendations 16, 18 and 19 respectively to restore reimbursement determination to its pre-Jennings method by amending §19.2-368.11:1 and 19.2-368.12; to require the Commission to review, not merely consider, appeals by amending §19.2-368.7; and to extend the time for filing appeals from twenty days to two years also by amending §19.2-368.7 (Appendix C).

Pursuant to Recommendation 23, which requires DWC to submit a progress report to the Crime Commission by May 1, 1989, and a final report by November 1, 1989, on the implementation of JLARC's recommendations, and to the previously cited authority granted by §9-125 and House Joint Resolution 184 (1988), the Crime Commission agreed to sponsor legislation to accomplish Recommendation 6, to clarify that family members of persons responsible for crimes are eligible for CVC reimbursement unless the award will unjustly enrich the offender. Two other amendments designed to expand CVC coverage have also been proposed. To retain eligibility for the VOCA funds to CVC, coverage must be extended to Virginians who are victims of crimes occurring outside of Virginia if the state in which the crime occurred does not have a victims' compensation program deemed eligible pursuant to VOCA guidelines. Testimony over the past two years revealed that injuries from crime include emotional as well as physical injury. Providing reimbursement for counseling seems essential if the Commonwealth, through CVC, is to fulfill its mission to provide "aid, care and support" to victims of crime (§19.2-368.1).

To enable CVC to expedite claims, the subcommittee determined that the Division must have more rapid access to confidential material belonging to law-enforcement agencies and medical examiners, but that the confidentiality of the material must not be compromised. The Crime Commission agreed to sponsor legislation to address these concerns. Hence, legislation must assure such agencies that they will not breach confidentiality by complying with CVC requests. To further expedite claims, testifiers suggested that, due to the extensive nature of information requests, the use of a file checklist would be most effective if commercially printed onto the front of the file, utilizing most of the area.

VII. FINDINGS AND RECOMMENDATIONS

Previous testimony from victims, as reported in earlier studies, has reflected dissatisfaction and disillusionment with the criminal justice

system and with crime victims' compensation procedures. This study, like those of 1987 and 1988, attempts to alleviate these problems through statutory changes; hence, the subcommittee recommends the following actions or legislation, all of which appears in Appendix D. The full Crime Commission met on January 16, 1990 and adopted the report and recommendations of the subcommittee studying victims and witnesses of crime.

A. Testimonial Privilege for Sexual Assault and Domestic Violence Counselors

At the January 16th meeting of the full Crime Commission, the subcommittee withdrew, at the request of Virginia Aligned Against Sexual Assault (VAASA), its preliminary recommendation to establish a limited testimonial privilege for sexual assault and domestic violence counselors. While the subcommittee and VAASA supported the concept; VAASA identified several difficulties in pursuing such legislation at this time and requested postponing action. The full Commission agreed with VAASA's request.

B. Courtroom Attendance

Amend §19.2-265.1 (exclusion of witnesses) to permit a victim, a parent or guardian of a minor victim, or the parent of a homicide victim to remain in court during the trial. The entitlement to remain in court rests with the judge, who makes the decision outside the jury's presence.

C. Profits from Crime

Enact a profits from crime law to delay, restrict, or prevent the criminal author's receipt of profits gained through the publication, in any form, of accounts of his crime. The proposed legislation requires notice to interested parties, an opportunity for the defendant to show cause why his profits should not be escrowed, escrow by the Division of Crime Victims' Compensation, filing of a civil suit by the victim, and disposition of funds after a five-year period or, if longer, after the final disposition of a civil suit against the defendant or the final disposition of the defendant's appeals. If the victim does not sue for the proceeds, and after the expiration of the previously mentioned periods, the defendant will receive twenty-five percent and the Criminal Injuries Compensation Fund will receive seventy-five percent of the profits.

D. Crime Victims' Compensation

1. Amend §19.2-368.3 (powers and duties of Commission) to restrict the use of information received by CVC to the purposes specified in the section and to permit latitude for the submitting agencies as to the extent and form of the information submitted. This recommendation ensures confidentiality.

2. Amend §19.2-368.4 (persons eligible for awards) to enable any victim to collect from CVC so long as the award will not unjustly enrich the offender even if the victim resides with or is married to the offender. Eligibility is also extended to Virginians who are victimized in states having no CVC program complying with VOCA guidelines. These changes bring Virginia's statute into compliance with the new VOCA eligibility requirements and are essential if Virginia is to retain substantial federal grants to the CVC program.

3. Amend §19.2-368.11:1 (amount of award) to raise the victim funeral expense reimbursement from $1500 to $2000, an increase that conforms CVC reimbursement to current funeral costs.

4. Amend §19.2-368.2 (definitions) to include in the definition of "victim" robbery, abduction, and attempted robbery and abduction victims. This amendment allows these victims to collect counseling expenses from CVC when their injury is emotional and not necessarily physical.

1. Stephen R. Smith, "Medical and Psychotherapy Privilege and Confidentiality; On Giving with One Hand and Removing with the Other," 75, Kentucky Law Journal, 75: 393; 523. (1986-1987).

2. Federal Register, 54; 95, 21499-21506 (May 18, 1989).

3. Kathryn A. O'Leary, "Case Comments: Defendants' Sixth Amendment Right to Confrontation - Sexual Assault Counselors," Suffolk University Law Review (Winter, 1987), 1222-1229.

4. Ibid., p. 1228.

5. Ibid., pp. 1228-29.

6. Ibid., p. 1229.

7. Ibid., p. 1229.

8. Ibid., P. 1229.

9. U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime. Victims of Crime: Proposed Model Legislation, Washington, D.C.(1986), p. I-6.

10. LeRoy L. Lamborn, "Victim Participation in the Criminal Justice System," Wayne Law Review, 34:97-220, Fall, 1987.

11. Ibid., pp. 162-166.

12. Ibid., p. 159.

13. Ibid., p. 163.

14. Ibid., pp. 157-58.

15. Ibid., pp. 159-60.

16. Ibid., p. 166.

17. Ibid., p. 159.

18. Ibid., p. 161.

19. Ibid., p. 163.

20. Ibid., p. 163.

21. Richard Alan Inz, "Compensating the Victim from the Proceeds of the Criminal's Story - The Constitutionality of the New York Approach," 14, Columbia Journal of Law and Social Problems, 93, 1978.

22. Stephen Clark, "The Son of Sam Laws: When the Lunatic, the Criminal, and the Poet are of Imagination All Compact," 27, St. Louis University Law Journal, 207, 1983.

23. Inz, pp. 106-110.

24. Ibid., p. 111.

25. Ibid., p. 104.

26. Ibid., p. 118.

27. Clark, p. 212.

28. Ibid., p. 231.

29. Paul S. Hudson, "The Crime Victim and the Criminal Justice System," 11, Pepperdine Law Review, 23; 47, 1984.

30. Ibid., p. 48.

31. Joel Rothman, "In Cold Type: Statutory Approaches to the Problem of Offender as Author," 71, Journal of Criminal Law, 255; 279 Fall, 1980.

32. Rothman, p. 264.

33. Ibid., p. 262.

34. Ibid., p. 263.

35. Ibid., p. 264.

36. Ibid., p. 269.

37. Ibid., pp. 269-270.

38. Ibid., p. 272.

39. Ibid., pp. 272-73.

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A. AUTHORIZING LEGISLATION

HP9059460

1987 SESSION
ENGROSSED

HOUSE JOINT RESOLUTION NO. 225

House Amendments in [ ] - February 8, 1987

Directing the Virginia State Crime Commission to study crime victim-witness services.

Patrons--Forehand and Dicks

Referred to the Committee on Rules

WHEREAS, public respect and support for the criminal justice system requires that it be perceived as balanced and fair, not only to those accused and convicted of committing crimes but also to those who are victims and witnesses of crimes; and

WHEREAS, protecting the rights of victims and witnesses of crime need not infringe upon the constitutional rights of those accused and convicted of committing crimes; and

WHEREAS, this Assembly, by way of prior enactments and resolutions, has previously affirmed its support for the rights of crime victims and witnesses; and

WHEREAS, there is a need to evaluate the effectiveness of current victim-witness services in view of the increasing number of bills introduced each legislative session dealing with victim-witness issues and to review various proposals that have been made regarding a "Bill of Rights for Victims and Witnesses of Crime"; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia State Crime Commission is directed to (i) evaluate the effectiveness of current services provided to victims and witnesses of crime throughout the Commonwealth of Virginia, (ii) to study the concept of a "Bill of Rights for Victims and Witnesses of Crime," and (iii) to make any recommendations the Commission finds appropriate.

The Commission shall employ whatever methods of inquiry it shall deem necessary including, but not limited to, the conducting of public hearings throughout the Commonwealth and the employment of additional, temporary staff. The Department of Criminal [~~Justices~~ Justice Services], through its Victim-Witness Program section, shall lend its expertise and resources to the Commission in completing this study.

The Commission shall complete its study and submit its recommendations, if any, no later than December 1, 1987.

The direct costs of this study are estimated to be [~~$24,050~~ $8,315] and such amount shall be allocated to the Virginia State Crime Commission from the general appropriation to the General Assembly.

Official Use By Clerks	
Agreed to By The House of Delegates	**Agreed to By The Senate**
without amendment ☐	without amendment ☐
with amendment ☐	with amendment ☐
substitute ☐	substitute ☐
substitute w/amdt ☐	substitute w/amdt ☐
Date: _____	Date: _____
_____	_____
Clerk of the House of Delegates	Clerk of the Senate

1988 SESSION

LD4064325

HOUSE JOINT RESOLUTION NO. 48

Offered January 21, 1988

Directing the Virginia State Crime Commission to study crime victim-witness services.

Patrons--Woodrum, Guest, Ball, Van Landingham, Forehand, Moore, Stambaugh and Philpott; Senators: Anderson and Gray

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Referred to the Committee on Rules

WHEREAS, public respect and support for the criminal justice system require that it be perceived as balanced and fair, not only to those accused and convicted of committing crimes but also to those who are victims and witnesses of crimes; and

WHEREAS, protecting the rights of victims and witnesses of crime need not infringe upon the Constitutional rights of those accused and convicted of committing crimes; and

WHEREAS, this Assembly, by way of prior enactments and resolutions, has previously affirmed its support for the rights of crime victims and witnesses; and

WHEREAS, the 1987 General Assembly directed the Virginia State Crime Commission to evaluate services to victims and witnesses of crime and make its recommendations; and

WHEREAS, the Commission conducted a thorough study and made legislative and administrative recommendations, but due to time constraints was unable to complete its examination of several specific complex issues related to victims of crime; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, that the Virginia State Crime Commission is directed to continue its examination of victim impact statements, victim input in the parole process, confidentiality of designated victim counseling, the right of victims' families to be present during the trial, and other issues as the Commission deems appropriate. The Commission shall complete its study and and submit its recommendations, if any, no later than December 1, 1988. The Commission may employ such means, including public hearings and the hiring of additional, temporary staff, as it deems necessary to complete the study. The Department of Criminal Justice Services, through its Victim-Witness Program section, shall assist the Commission in completing this study.

The costs of this study are estimated to be $4,920 and such amount shall be allocated to the Virginia State Crime Commission from the general appropriation to the General Assembly.

Official Use By Clerks	
Agreed to By The House of Delegates	**Agreed to By The Senate**
without amendment ☐	without amendment ☐
with amendment ☐	with amendment ☐
substitute ☐	substitute ☐
substitute w/amdt ☐	substitute w/amdt ☐
Date: _____	Date: _____
_____	_____
Clerk of the House of Delegates	Clerk of the Senate

§ 9-125. **Commission created; purpose.** -- There is hereby created the Virginia State Crime Commission, hereinafter referred to as the Commission. The purpose of the Commission shall be, through the exercise of its powers and performance of its duties set forth in this chapter, to study, report and make recommendations on all areas of public safety and protection. In so doing it shall endeavor to ascertain the causes of crime and recommend ways to reduce and prevent it, explore and recommend methods of rehabilitation of convicted criminals, study compensation of persons in law enforcement and related fields and study other related matters including apprehension, trial and punishment of criminal offenders. The Commission shall make such recommendations as it deems appropriate with respect to the foregoing matters, and shall coordinate the proposals and recommendations of all commissions and agencies as to legislation affecting crimes, crime control and criminal procedure. The Commission shall cooperate with the executive branch of government, the Attorney General's office and the judiciary who are in turn encouraged hereby to cooperate with the Commission. The Commission will cooperate with governments and governmental agencies of other states and the United States. (1972, c. 766.)

1988 SESSION

LD4245442

HOUSE JOINT RESOLUTION NO. 184

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Rules
on February 13, 1988)

(Patron Prior to Substitute–Delegate Copeland)

Requesting the Joint Legislative Audit and Review Commission and the Virginia State Crime Commission to study various aspects of the current system for compensating victims of crime.

WHEREAS, the Department of Criminal Justice Services currently administers 32 locally operated victim/witness programs; and

WHEREAS, in addition to financial and technical assistance, the Department also provides training for these local programs; and

WHEREAS, under the present system of compensation for victims of crimes, many recipients complain of extended delays in receiving compensation; and

WHEREAS, in its recent study, *Victims and Witnesses of Crime* (HD 10, 1988), the Virginia State Crime Commission reported that "both victims and victim assistance personnel find application and appeal procedures cumbersome and confusing"; and

WHEREAS, the Department of Criminal Justice Services may be a more appropriate agency for dealing with the disbursement of funds to individual recipients due to its history of advocacy in this area; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Joint Legislative Audit and Review Commission is requested to study the transfer of the Division of Crime Victims Compensation to the Department of Criminal Justice Services and methods to expedite and improve the process by which claims are reviewed; and, be it

RESOLVED FURTHER, That the Virginia State Crime Commission is requested to study the treatment of crime victims and witnesses in the criminal justice system.

The reports and recommendations, if any, of the Commissions shall be submitted no later than December 1, 1988.

The costs of this study by the Virginia State Crime Commission are estimated to be $9,360 and such amount shall be allocated to the Virginia State Crime Commission from the general appropriation to the General Assembly.

Official Use By Clerks

Agreed to By The House of Delegates		Agreed to By The Senate	
without amendment	☐	without amendment	☐
with amendment	☐	with amendment	☐
substitute	☐	substitute	☐
substitute w/amdt	☐	substitute w/amdt	☐

Date: _____ Date: _____

Clerk of the House of Delegates | Clerk of the Senate

B. DWC/CVC TRANSMITTAL LETTER

COMMONWEALTH of VIRGINIA

DEPARTMENT OF WORKER'S COMPENSATION
INDUSTRIAL COMMISSION OF VIRGINIA
P. O. BOX 1794
RICHMOND, VIRGINIA 23214

October 30,1989

The Honorable Elmon T. Gray
Chairman
Virginia State Crime Commission
General Assembly Building
910 Capital Street
Richmond, Virginia 23219

Dear Senator Gray:

The report of the Joint Legislative Audit and Review Commission (JLARC), review of the Division of Crime Victims' Compensation, House Document No. 17, asked the Department of Workers' Compensation to submit a final report to the Virginia Crime Commission by November 1, 1989 on the progress on implementing its recommendations.

Most of the of recommendaticns in the JLARC staff report has been accepted by CVC and have been implemented. These changes, and other initiatives taken by CVC, have enhanced the program and improved the efficient delivery of benefits to innocent victims of crimes. In addition, CVC has strengthened its association with victim witness coordinators and the Department of Criminal Justice Services.

This final report will discuss JLARC staff's recommendations in certain specific CVC program areas. A

complete appendix containing documents relating to each of the JLARC staff recommendations concludes the report.

The JLARC staff report focused on five aspects of CVC operations: public awareness, internal procedures, forms, statutory considerations, and program management. We will discuss each topic separately.

AWARENESS

The JLARC staff report emphasized the importance of developing public awareness of CVC in those areas of the state not served by victim witness coordinators. Our review of relevant statistical information showed that a statewide promotion of CVC would effectively serve all areas of the state. Brochures, posters, and informational cards and letters have been sent to all Commonwealth attorneys, magistrates, law enforcement agencies and hospital administrators. This information explained the program to them and asked their cooperation in referring victims to CVC.

One of the most effective resources for advising innocent victims of crime of CVC is informed and cooperative law enforcement personnel. The CVC director will continue to seek opportunities to speak at law enforcement training sessions and conferences. In addition, literature describing CVC was distributed at the recent State Fair.

A significant effort has been made to better inform claimants of the policies and procedures of CVC. The CVC program has revised the brochure which is sent to all persons who ask

about the program or file an application for benefits. CVC has received a positive response to the new brochure.

The application form has also been revised and contains information about the program. In order to insure that every claimant is aware of appellate rights, every letter which is sent awarding or denying a claim contains an informational sheet describing the procedure for review before the Industrial Commission and appeals to the Court of Appeals.

Victim witness coordinators have provided valuable assistance to CVC. The CVC director and staff have attempted to foster and maintain strong lines of communication between CVC and victim witness coordinators. CVC held training sessions and distributed written guidelines explaining the program's procedures. CVC has initiated meetings with the Victim Witness Task Force and these have proven to be an effective forum.

PROCEDURE

CVC has thoroughly reviewed all its procedures and the changes recommended by the JLARC staff report have been implemented. New guidelines and procedural manuals for claims handling have been written and existing manuals have been revised and updated. Staff are required to utilize a checklist for file review.

The amount of time it takes for an applicant to receive a decision after submitting an application has steadily decreased. The present average, 41 days, is one of the best in the United States. Because of the current case load and speedy processing time, it has not been necessary for CVC to implement an automated

call-up system. The program will change to an automated system when the circumstances warrant it.

When a claim is denied or an award reduced, the CVC director is providing more information to the applicant explaining the reason for denial or reduction. Where appropriate, the applicant is sent a copy of the relevant code section to explain an adverse decision. The director's decision letter fully explains the reason for the decision while maintaining the confidentiality of information obtained from law enforcement agencies.

The Director and other staff members have improved the program's procedures to insure prompt, informed responses to questions concerning decisions denying or reducing benefits.

CVC has directed special attention to the procedures used for processing emergency awards. The program has recently added a new computer program which will enable the Director to monitor and expedite claims seeking emergency awards.

Applications for emergency awards present difficult problems because the Code requires that a claim show probable entitlement and undue hardship. An applicant for an emergency award must show qualification for the program and documentation of lost wages before an emergency award can be entered. The speed with which an award can be made is dependent on the speed with which information is received from the Commonwealth's attorney, law enforcement agencies, medical care providers and employers. CVC staff tries to promptly obtain the needed information. To this end, the program has worked with sheriff and police departments

to identify "contact" persons within the departments so that information can be obtained by telephone.

The victim witness coordinators have also been advised of the required information and provided appropriate forms so that they may submit necessary information with an application for an emergency award.

CVC will continue to make the quick processing of emergency awards a high priority.

FORMS

All forms used by CVC have been reviewed and many have been revised. JLARC staff recommendations and those from the Victim Witness coordinators have been incorporated in the revisions. Consistent with these recommendations, the initial application has been reorganized and only the information needed for specific type benefits sought is required. All letters to claimants, health care providers, law enforcement agencies and employers have also been reviewed. Where possible letters requesting information have been organized in a check list style with appropriate sections of the Code of Virginia cited.

STATUTES

Two important statutory changes became effective July 1, 1989. Section 19.2-368.11.1, Code of Virginia was amended to permit the payment of cases precluded from an award by the decision of Jennings v. Division of Crime Victims' Compensation, 5 Va. App 536, 365 S.E. 2d 241 (1988). Payments were promptly made in accordance with the retroactive directions of the section. The second change involved Section 19.1-378.7 Code of

Virginia. That section was amended to allow for an extension of the 20 day limitation for filing a request for review when good cause can be shown.

After carefully considering the JLARC staff concern about the application of the family exclusion provision of §19.2-368.2, Code of Virginia, the Commission has concluded that the statute has been properly interpreted and applied. It should be noted that the Commission's interpretation allows for greater flexibility in awarding benefits and is consistent with new federal directives for receiving funding in 1990. Proposed legislation has been presented to the Crime Commission to assure that the section will comply with new requirements mandated by the Victims' of Crime Act and ensure continued federal funding.

The JLARC report suggested changing the current review process to require that every review request is first heard in a formal, evidentiary hearing by a Deputy Commissioner followed by the right of review before the Full Commission. Implementation of this suggestion would require an amendment to §19.2-368.7, Code of Virginia.

The Commission believes that the current review process best complies with the philosophy of the Crime Victims' Program and the legislative intent of §19.2-368.7 and §19.2-368.8, Code of Virginia. We believe the current process fosters the speedy resolution of claims and is consistent with the desire to emphasize the administrative aspects of the program while insuring that the due process rights of the victims are met.

To require a formal evidentiary hearing and opinion by a Deputy Commissioner in all cases followed by the right of review before the Full Commission would add an additional procedural step to the claimant's review process and further delay the receipt of benefits. A claimant would be required to present a case in a formal hearing where stricter compliance with evidentiary rules is required. This is inconsistent with the program' aim: administratively deciding cases as quickly as possible with the least formality.

In addition, contested decisions often involve issues that do not require the taking of additional evidence but only legal determinations. In such cases the Full Commission is the best forum for interpreting the law. In the small number of cases where the Commissioners require additional information, the cases are expeditiously referred for a hearing and returned for a prompt decision.

It should also be noted that the small number of cases any one Deputy Commissioner would hear increases the prospect that inconstancy in the application of the law would occur. The time required of personnel from the Department of Workers' Compensation to schedule and conduct the additional hearing would also increase administrative costs of the CVC program and indirectly decrease federal funding which is based on state expenditures less administrative costs.

MANAGEMENT

The Industrial Commission has delegated direct responsibility to the Chief Deputy Commissioner for the CVC.

This permits greater responsiveness to requests for policy or procedure clarification. To assure that the functions performed by personnel from the Department of Workers' Compensation are properly paid from CVC funds, quarterly time records are being kept. Written policies and guidelines for these employees are currently being developed. These will include specific instructions for activities performed by CVC.

The Director is closely monitoring the execution of procedures and staff productivity. To assure the CVC staff members are informed of the program's policies and procedures, regular training sessions have been instituted. Participation by staff members in meetings with Victims Witness Coordinators will also enhance working relationships.

CONCLUSION

The Crime Victim Compensation Program will continue to expeditiously, conscientiously and cost-efficiently serve innocent victims of crime. The Industrial Commission welcomes and appreciates the assistance provided by the Virginia State Crime Commission and the Joint Legislative Audit Review Commission and looks forward to the continued improvement in the refinement of the delivery of CVC services to the citizens of the Commonwealth.

Respectfully submitted,

William E. O'Neill, Chairman

Charles G. James, Commissioner

Robert P. Joyner, Commissioner

cc: Philip Leone, Director, JLARC

C. SENATE BILL 618 (1989)

SP5413324

1989 SESSION
ENGROSSED

SENATE BILL NO. 618

Senate Amendments in [ ] - February 3, 1989

A BILL to amend and reenact §§ 19.2-368.7, 19.2-368.11:1 and 19.2-368.12 of the Code of Virginia, relating to compensating victims of crime.

Patrons--DuVal, Andrews, Walker, Buchanan and Truban; Delegates: Moss, Putney, Stambaugh, Ball, Quillen, Wilson, Callahan, Parker, Murphy and Smith

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-368.7, 19.2-368.11:1 and 19.2-368.12 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-368.7. Review by Commission.--A. The claimant may, within twenty days from the date of the report, apply in writing to the Commission for ~~consideration~~ *review* of the decision by the full Commission as ~~provided by~~ § ~~65.1-97~~ . *The Commission may extend the time for filing under this section, upon good cause shown, for a period not to exceed two years from the date of the occurrence.*

B. Upon receipt of an application pursuant to subsection A of this section, or upon its own motion, the Commission shall review the record and affirm or modify the decision of the person to whom the claim was assigned. The action of the Commission in affirming or modifying such decision shall be final. If the Commission receives no application pursuant to subsection A of this section, or takes no action upon its own motion, the decision of the person to whom the claim was assigned shall become the final decision of the Commission.

C. The Commission shall promptly notify the claimant and the Comptroller of the final decision of the Commission and furnish each with a copy of the report setting forth the decision.

§ 19.2-368.11:1. Amount of award.--A. Compensation for Total Loss of Earnings: An award made pursuant to this chapter for total loss of earnings which results directly from incapacity incurred by a crime victim shall be payable during total incapacity to the victim or to such other eligible person, at a weekly compensation rate equal to sixty-six and two-thirds percent of the victim's average weekly wages. The total amount of weekly compensation shall not exceed $200. The victim's average weekly wages shall be determined as provided in § 65.1-6.

B. Compensation for Partial Loss of Earnings: An award made pursuant to this chapter for partial loss of earnings which results directly from incapacity incurred by a crime victim shall be payable during incapacity at a weekly rate equal to sixty-six and two-thirds percent of the difference between the victim's average weekly wages before the injury and the weekly wages which the victim is able to earn thereafter. The combined total of actual weekly earnings and compensation for partial loss of earnings shall not exceed $200 per week.

C. Compensation for Dependents of a Victim Who Is Killed: If death results to a victim of crime entitled to benefits, dependents of the victim shall be entitled to compensation in accordance with the provisions of §§ 65.1-65 and 65.1-66 in an amount not to exceed the maximum aggregate payment or the maximum weekly compensation which would have been payable to the deceased victim under this section.

D. Compensation for Unreimbursed Medical Costs, Funeral Expenses, Services, etc.: Awards may also be made on claims , or portions of claims based upon the claimant's actual expenses incurred as are determined by the Commission to be appropriate, for (i) unreimbursed medical expenses or indebtedness reasonably incurred for medical expenses; (ii) expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the victim would have performed, for the benefit of himself and his family, if he had not been a victim of crime; (iii) expenses in any way related to funeral or burial, not to exceed $1,500; (iv) expenses attributable to pregnancy resulting from forcible rape; (v)

any other reasonable and necessary expenses and indebtedness incurred as a direct result of the injury or death upon which such claim is based, not otherwise specifically provided for.

E. Any claim made pursuant to this chapter shall be reduced by the amount of any payments received or to be received as a result of the injury from or on behalf of the person who committed the crime or from any other public or private source, including an emergency award by the Commission pursuant to § 19.2-368.9.

~~E.~~ *F.* To qualify for an award under this chapter, a claim must have a minimum value of $100, and payments for injury or death to a victim of crime, to the victim's dependents or to others entitled to payment for covered expenses *, after being reduced as provided in subsection E.* shall not exceed $15,000 in the aggregate.

§ 19.2-368.12. Awards not subject to execution or attachment; apportionment; reductions.—A. No award made pursuant to this chapter shall be subject to execution or attachment other than for expenses resulting from the injury which is the basis for the claim.

B. If there are two or more persons entitled to an award as a result of the death of a person which is the direct result of a crime, the award shall be apportioned among the claimants.

C. ~~Any award made pursuant to this chapter shall be reduced by the amount of any payments received or to be received as a result of the injury (1) from or on behalf of the person who committed the crime, (2) from any other public or private source, including an award of the Commission as an emergency award pursuant to § 19.2-368.9 of this chapter.~~

~~D.~~ In determining the amount of an award, the Commission shall determine whether, because of his conduct, the victim of such crime contributed to the infliction of his injury, and the Commission shall reduce the amount of the award or reject the claim altogether, in accordance with such determination; provided, however, that the Commission may disregard for this purpose the responsibility of the victim for his own injury where the record shows that such responsibility was attributable to efforts by the victim to prevent a crime or an attempted crime from occurring in his presence, or to apprehend a person who had committed a crime in his presence or had, in fact, committed a felony.

[2. That the provisions of this act shall apply to any claim decided on or after April 1, 1988.]

Official Use By Clerks	
Passed By The Senate	**Passed By The House of Delegates**
without amendment ☐	without amendment ☐
with amendment ☐	with amendment ☐
substitute ☐	substitute ☐
substitute w/amdt ☐	substitute w/amdt ☐
Date: _____	Date: _____
Clerk of the Senate	Clerk of the House of Delegates

D. PROPOSED LEGISLATION

LD0376325

HOUSE BILL NO. 292

Offered January 18, 1990

A BILL to amend the Code of Virginia by adding in Title 19.2 a chapter numbered 21.2, consisting of sections numbered 19.2-368.19 through 19.2-368.22, relating to profits from crime.

Patrons–Stambaugh, Forehand, Woodrum, Ball, Philpott, Guest, Moore, Morgan, Almand, Byrne, Brickley, Van Landingham, Plum, Cranwell, DeBoer, Finney, Abbitt, Harris, E.R., Jackson, Clement, Bennett, Croshaw, Reynolds and Marshall; Senator: Gray

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Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 19.2 a chapter numbered 21.2, consisting of sections numbered 19.2-368.19 through 19.2-368.22, as follows:

CHAPTER 21.2.

PROFITS FROM CRIME.

§ 19.2-368.19. Definitions.–For purposes of this chapter, the following terms shall have the following meanings unless the context requires otherwise:

"Defendant" means any person who pleads guilty to, is convicted of, or is found not guilty by reason of insanity with respect to a felony.

"Division" means the Division of Crime Victims' Compensation.

"Interested party" means the victim, the defendant, and any transferee of proceeds due the defendant under a contract, the person with whom the defendant has contracted, the prosecuting attorney for the Commonwealth, and the Division of Crime Victims' Compensation.

"Victim" means a person who suffers personal, physical, mental, emotional, or pecuniary loss as a direct result of a crime and includes the spouse, parent, child, or sibling of the victim.

§ 19.2-368.20. Order of special forfeiture.–The proceeds received or to be received by a defendant or a transferee of that defendant, from a contract relating to a depiction of his crime in a movie, book, newspaper, magazine, radio or television production, or live entertainment of any kind, or an expression of the defendant's thoughts, opinions, or emotions regarding such crime shall be subject to forfeiture pursuant to Chapter 22 (§ 19.2-369 et seq.) of Title 19.2.

Upon motion of the attorney for the Commonwealth made at any time after conviction of such defendant or his acquittal by reason of insanity and after notice to the interested parties, a hearing upon the motion and a finding for the Commonwealth, the trial court shall order that such proceeds be forfeited.

An order issued under this section shall require that the defendant and the person with whom the defendant contracts pay to the Division any proceeds due the defendant under the contract.

§ 19.2-368.21. Distribution.–A. Proceeds paid to the Division under § 19.2-368.20 shall be retained in escrow in the Criminal Injuries Compensation Fund for five years after the date of the order, but during that five-year period may be levied upon to satisfy:

1. A money judgment rendered by a court in favor of a victim of an offense for which the defendant has been convicted or acquitted by reason of insanity, or a legal representative of the victim; and

2. Any fines or costs assessed against the defendant by a court of this Commonwealth.

B. If ordered by a court in the interest of justice, such escrow fund shall be used to:

1. Satisfy a money judgment rendered in the court hearing the matter, in favor of a victim of any offense for which the defendant has been convicted or for which the defendant has voluntarily and intelligently admitted his guilt, or a legal representative of such victim; and

2. Pay for legal representation of the defendant in criminal proceedings, including the appeals process arising from the offense for which such defendant has been convicted or acquitted by reason of insanity, if so ordered by a court of competent jurisdiction, after motion by the defendant on notice to all interested parties and opportunity for hearing. No more than twenty-five percent of the total proceeds in escrow may be used for legal representation.

C. At the end of the five-year period, the proceeds shall be released from escrow. Twenty-five percent of the funds shall be paid to the defendant and seventy-five percent paid into the Criminal Injuries Compensation Fund. However, (i) if a civil action under this section is pending against the defendant, the proceeds shall be held in escrow until completion of the action or (ii) if the defendant has appealed his conviction and the appeals process is not final, the proceeds shall be held in escrow until the appeals process is final, and upon disposition of the charges favorable to the defendant, the Division shall immediately pay any money in the escrow account to the defendant.

§ 19.2-368.22. Actions to defeat section void.—Any action taken by any person accused or convicted of a felony, whether by way of execution of a power of attorney, creation of corporate entities, or otherwise, to defeat the purpose of this section shall be void.

Official Use By Clerks	
Passed By The House of Delegates	**Passed By The Senate**
without amendment ☐	without amendment ☐
with amendment ☐	with amendment ☐
substitute ☐	substitute ☐
substitute w/amdt ☐	substitute w/amdt ☐
Date: _____	Date: _____
Clerk of the House of Delegates	Clerk of the Senate

1990 SESSION

LD0156325

HOUSE BILL NO. 294

Offered January 18, 1990

A BILL to amend and reenact § 19.2-368.4 of the Code of Virginia, relating to crime victims' awards; eligibility.

Patrons–Stambaugh, Forehand, Woodrum, Ball, Guest, Moore and Almand; Senator: Gray

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Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-368.4 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-368.4. Persons eligible for awards.–A. ~~Except as provided in subsection B of this section, the~~ *The* following persons shall be eligible for awards pursuant to this chapter ~~:~~ *unless the award would directly and unjustly benefit the person who is criminally responsible:*

1. A victim of a crime.

2. A surviving spouse, parent or child, including posthumous children, of a victim of a crime who died as a direct result of such crime.

3. Any person, except a law-enforcement officer engaged in the performance of his duties, who is injured or killed while trying to prevent a crime or an attempted crime from occurring in his presence, or trying to apprehend a person who had committed a crime in his presence or had, in fact, committed a felony.

4. A surviving spouse or child, including posthumous children, of any person who dies as a direct result of trying to prevent a crime or attempted crime from occurring in his presence, or trying to apprehend a person who had committed a crime in his presence or had, in fact, committed a felony.

5. Any other person legally dependent for his principal support upon a victim of crime who dies as a result of such crime, or legally dependent for his principal support upon any person who dies as a direct result of trying to prevent a crime or an attempted crime from occurring in his presence or trying to apprehend a person who had committed a crime in his presence or had, in fact, committed a felony.

B. A person who is criminally responsible for the crime upon which a claim is based, or an accomplice or accessory of such person, shall not be eligible to receive an award with respect to such claim. ~~A member of the family of such person shall also be ineligible to receive an award except as follows: (i) a spouse who is a victim of crime prescribed by Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 and the victim prosecutes the offender, (ii) a spouse if there is a bona fide separation and the victim prosecutes the offender, (iii) incest cases, (iv) cases involving mental derangement, or (v) any case in which the terms of the award can be structured in a manner so that a criminally responsible person does not benefit from the award .~~

C. A resident of Virginia who is the victim of a crime occurring outside Virginia and any other person as defined in subsection A who is injured as a result of a crime occurring outside Virginia shall be eligible for an award pursuant to this chapter if (i) the person would be eligible for benefits had the crime occurred in Virginia and (ii) the state in which the crime occurred does not have a crime victims' compensation program deemed eligible pursuant to the provisions of the federal Victims of Crime Act and does not compensate nonresidents.

1990 SESSION

LD0374325

HOUSE BILL NO. 295

Offered January 18, 1990

A BILL to amend and reenact § 19.2-265.1 of the Code of Virginia, relating to exclusion of witnesses.

Patrons–Stambaugh, Forehand, Woodrum, Ball, Philpott, Guest, Moore and Almand; Senator: Gray

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Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-265.1 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-265.1. Exclusion of witnesses.–In the trial of every criminal case, the court, whether a court of record or a court not of record, may upon its own motion and shall upon the motion of either the attorney for the Commonwealth or any defendant, require the exclusion of every witness ; ~~provided, that~~ . *However,* each defendant who is an individual and one officer or agent of each defendant which is a corporation or association shall be exempt from the rule of this section as a matter of right. *A victim and, in the case of a minor victim, his parent or guardian, and the parents of a homicide victim may, in the discretion of the court, remain during the trial provided the determination by the court shall not be made in the jury's presence.*

Official Use By Clerks	
Passed By The House of Delegates	**Passed By The Senate**
without amendment ☐	without amendment ☐
with amendment ☐	with amendment ☐
substitute ☐	substitute ☐
substitute w/amdt ☐	substitute w/amdt ☐
Date: _____	Date: _____
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Clerk of the House of Delegates	Clerk of the Senate

1990 SESSION

LD0127325

HOUSE BILL NO. 296

Offered January 18, 1990

A BILL to amend and reenact § 19.2-368.3 of the Code of Virginia, relating to powers and duties of the Industrial Commission.

Patrons–Stambaugh, Forehand, Woodrum, Ball, Philpott, Guest, Moore and Almand; Senator: Gray

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Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-368.3 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-368.3. Powers and duties of Commission.–The Commission shall have the following powers and duties in the administration of the provisions of this chapter:

1. To adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of this chapter.

2. ~~To~~ *Notwithstanding the provisions of § 2.1-342 B (1), to* acquire from the attorneys for the Commonwealth, State Police, local police departments, sheriffs' departments, and the Chief Medical Examiner such ~~investigation and~~ *investigative results,* information and data as will enable the Commission to determine if, in fact, a crime was committed or attempted, and the extent, if any, to which the victim or claimant was responsible for his own injury. ~~This~~ *These* data shall include prior arrest records of the offender. *The use of such information received by the Commission shall be limited to carrying out the purposes set forth in this section, and this information shall not be disseminated further. The agency from which the information is requested may submit original reports, portions thereof, summaries, or such other configurations of information as will comply with the requirements of this section.*

3. To hear and determine all claims for awards filed with the Commission pursuant to this chapter, and to reinvestigate or reopen cases as the Commission deems necessary.

4. To require and direct medical examination of victims.

5. To hold hearings, administer oaths or affirmations, examine any person under oath or affirmation and to issue ~~summons~~ *summonses* requiring the attendance and giving of testimony of witnesses and require the production of any books, papers, documentary or other evidence. The powers provided in this subsection may be delegated by the Commission to any member or employee thereof.

6. To take or cause to be taken affidavits or depositions within or without the Commonwealth.

7. To render each year to the Governor and to the General Assembly a written report of its activities.

8. To accept from the government of the United States grants of federal moneys for disbursement under the provisions of this chapter.

Official Use By Clerks	
Passed By	
The House of Delegates	**Passed By The Senate**
without amendment ☐	without amendment ☐
with amendment ☐	with amendment ☐
substitute ☐	substitute ☐
substitute w/amdt ☐	substitute w/amdt ☐
Date: _____	Date: _____
Clerk of the House of Delegates	Clerk of the Senate

LD0130325

HOUSE BILL NO. 297

Offered January 18, 1990

A BILL to amend and reenact § 19.2-368.2 of the Code of Virginia, relating to definitions under the Criminal Injuries Compensation Fund.

Patrons--Stambaugh, Forehand, Woodrum, Ball, Philpott, Guest, Moore and Almand

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-368.2 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-368.2. Definitions.--For the purpose of this chapter:

"Claimant" means the person filing a claim pursuant to this chapter.

~~1.~~ "Commission" ~~shall mean~~ *means* the Industrial Commission of Virginia.

~~2. "Claimant" shall mean the person filing a claim pursuant to this chapter.~~

~~3.~~ "Crime" ~~shall mean~~ *means* an act committed by any person in the Commonwealth of Virginia which would constitute a crime as defined by the Code of Virginia or at common law. However, no act involving the operation of a motor vehicle which results in injury shall constitute a crime for the purpose of this chapter unless the injuries (i) were intentionally inflicted through the use of such vehicle or (ii) resulted from a violation of § 18.2-266.

~~4.~~ "Family," when used with reference to a person, means ~~(1)~~ *(i)* any person related to such person within the third degree of consanguinity or affinity, ~~(2)~~ *(ii)* any person residing in the same household with such person, or ~~(3)~~ *(iii)* a spouse.

~~5.~~ "Victim" means a person who suffers personal physical injury or death as a direct result of a crime *or who suffers personal emotional injury as a direct result of being the subject of a robbery, abduction or attempted robbery or abduction .*

Official Use By Clerks	
Passed By The House of Delegates	**Passed By The Senate**
without amendment ☐	without amendment ☐
with amendment ☐	with amendment ☐
substitute ☐	substitute ☐
substitute w/amdt ☐	substitute w/amdt ☐
Date: _____	Date: _____
Clerk of the House of Delegates	Clerk of the Senate

LD0129325

HOUSE BILL NO. 298

Offered January 18, 1990

A BILL to amend and reenact § 19.2-368.11:1 of the Code of Virginia, relating to the amount of awards from the Criminal Injuries Compensation Fund.

Patrons–Stambaugh, Forehand, Woodrum, Ball, Philpott, Guest, Moore and Almand; Senator: Gray

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Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-368.11:1 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-368.11:1. Amount of award.–A. Compensation for Total Loss of Earnings: An award made pursuant to this chapter for total loss of earnings which results directly from incapacity incurred by a crime victim shall be payable during total incapacity to the victim or to such other eligible person, at a weekly compensation rate equal to sixty-six and two-thirds percent of the victim's average weekly wages. The total amount of weekly compensation shall not exceed $200. The victim's average weekly wages shall be determined as provided in § 65.1-6.

B. Compensation for Partial Loss of Earnings: An award made pursuant to this chapter for partial loss of earnings which results directly from incapacity incurred by a crime victim shall be payable during incapacity at a weekly rate equal to sixty-six and two-thirds percent of the difference between the victim's average weekly wages before the injury and the weekly wages which the victim is able to earn thereafter. The combined total of actual weekly earnings and compensation for partial loss of earnings shall not exceed $200 per week.

C. Compensation for Dependents of a Victim Who Is Killed: If death results to a victim of crime entitled to benefits, dependents of the victim shall be entitled to compensation in accordance with the provisions of §§ 65.1-65 and 65.1-66 in an amount not to exceed the maximum aggregate payment or the maximum weekly compensation which would have been payable to the deceased victim under this section.

D. Compensation for Unreimbursed Medical Costs, Funeral Expenses, Services, etc.: Awards may also be made on claims or portions of claims based upon the claimant's actual expenses incurred as are determined by the Commission to be appropriate, for (i) unreimbursed medical expenses or indebtedness reasonably incurred for medical expenses; (ii) expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the victim would have performed, for the benefit of himself and his family, if he had not been a victim of crime; (iii) expenses in any way related to funeral or burial, not to exceed ~~$1,500~~ *$2,000* ; (iv) expenses attributable to pregnancy resulting from forcible rape; (v) any other reasonable and necessary expenses and indebtedness incurred as a direct result of the injury or death upon which such claim is based, not otherwise specifically provided for.

E. Any claim made pursuant to this chapter shall be reduced by the amount of any payments received or to be received as a result of the injury from or on behalf of the person who committed the crime or from any other public or private source, including an emergency award by the Commission pursuant to § 19.2-368.9.

F. To qualify for an award under this chapter, a claim must have a minimum value of $100, and payments for injury or death to a victim of crime, to the victim's dependents or to others entitled to payment for covered expenses, after being reduced as provided in subsection E, shall not exceed $15,000 in the aggregate.

E. VAASA'S STANDARDS FOR SEXUAL ASSAULT CRISIS CENTERS

VIRGINIANS ALIGNED AGAINST SEXUAL ASSAULT

Standards for Sexual Assault Crisis Centers

ADOPTED July 31, 1989

SECTION I. DEFINITION

A sexual assault crisis center is a community-based program that provides free, specialized support services to persons who have been sexually assaulted, and to their families, regardless of race, color, creed, disability, sex, sexual orientation, age, parenthood, political affiliation, or financial status. A sexual assault crisis center protects confidentiality to the limit of the law, uses community volunteers and conducts a community education program. An integral part of all the work done by a sexual assault crisis center is the improvement of the various systems used by the persons who have been sexually assaulted, which includes promoting a multidisciplinary systems approach. Through public and allied professional education, centers strive to improve the various systems by providing information that creates a community atmosphere of understanding and support of persons who have been sexually assaulted, an atmosphere that does not discourage reporting.

SECTION II. PHILOSOPHY

Sexual assault crisis centers value empowerment and promote of the dignity and respect of all persons. Sexual assault crisis center specialized services have been developed based on the belief that the person who has been sexually victimized has the right to determine their own response to the assault. The immediate availability of crisis intervention and support services, facilitates the recovery from sexual assault. Sexual assault crisis intervention services will be provided at no cost to the recipient.

SECTION III. GOALS

1) To develop and promote procedures throughout the community which will:
   - reduce the physical and psychological trauma of sexual assault;
   - enhance treatment and recovery;

2) To implement a public education program which will:
   - dispel myths about sexual assault
   - promote support for persons sexually victimized
   - promote cooperation among allied professionals;
   - increase community awareness of sexual assault prevention/risk reduction techniques;
   - increase community awareness of services for persons sexually assaulted, and family members and friends;

3) To work toward criminal justice procedures which will:
   - increase the reporting of sexual assault;
   - increase arrests for sexual assault;
   - increase convictions for sexual assault.

SECTION IV. PROGRAM STANDARDS

A. SUPPORT SERVICES

1 The center shall provide 24 hour accessibility to crisis intervention services via a hotline staffed by a trained person. A trained person is defined as:

PREFERRED STANDARD: A sexual assault crisis center volunteer or staff person who has received a minimum of 30 hours of sexual assault crisis intervention training as identified in Section IV, 1, or

MINIMUM STANDARD: A person whose role is to relay hotline calls to a volunteer or staff person and who has at a minimum been provided with a written protocol detailing how to respond supportively to a caller.

Callers requesting telephone services shall be contacted by a sexual assault crisis center volunteer or sexual assault crisis center staff person within 15 minutes from the time the call was received. Callers requesting accompaniment services shall be met by a sexual assault crisis center volunteer or sexual assault crisis center staff person within 60 minutes from the time the call was received.

2 The center shall provide accompaniment to court, hospital, Commonwealth's Attorney office and Victim/Witness office upon request

3. The center will provide information and appropriate referrals to others.

4 The center will advocate for clients with police, criminal justice system, medical, mental health, schools, etc.

B. COMMUNITY EDUCATION SERVICES

1. At least three education programs will be presented to allied professionals annually.

2. At least four community education programs shall be presented annually.

C. CONFIDENTIALITY STANDARDS

1. Client files shall be locked.

2 When records, staff or volunteers are subpoenaed the center shall make every effort, within the limits of the law, to carry out the victim's desired response to the subpoena. The center shall first seek permission, after explaining the range of pro and con possibilities of disclosure to the person who the records or oral communications are about, to release information. If permission is granted, the center shall seek a written release of information which specifies what and to whom shall be released. If permission is declined, the center shall seek legal counsel and request a motion to quash the subpoena be filed. If the court declines to quash the subpoena, the center shall a seek an in camera inspection (in the judge's chambers) of the subpoenaed records or testimony.

If the defense attorney issues the subpoena, the center shall inform the Commonwealth's Attorney and/or the victim's attorney.

The center shall make every effort to have information disclosed by the center separated from the public record of the court proceedings.

3. Computerized client files shall be secured.

4. Use of cordless or cellular phones for confidential calls shall be prohibited.

5. Staff, volunteers, and anyone answering the hotline shall sign a confidentiality statement.

6. The center will report to Child Protective Services, suspicion of an identifiable child who is being abused or neglected by a caretaker. The center will develop a relationship with Child Protective Services to facilitate referral.

7. The center will develop a relationship with community allied professionals for referral and consultation for clients who are exhibiting dangerous behaviors to themselves or others and other mental health issues.

D. PRIVATE NON-PROFIT ORGANIZATION STANDARDS

1. The center shall be governed by a working Board of Directors of at least 7 members.

2. The Board shall be active through committees to address the following functions:

   a. Fund-raising to support center programs.
   b. Personnel to develop and maintain policies and procedures.
   c. Nomination to insure board recruitment and development.

3. The Board shall meet at least quarterly with a majority attending.

4. The following documents shall be maintained:

Articles of Incorporation
Bylaws
Tax exempt status/or umbrella agency's tax exempt status
Policy statements
Personnel policies
Affirmative Action Plan
Organization Chart
Current Job Descriptions
Minutes of Board of Directors
Financial records

E. PUBLIC NON-PROFIT ORGANIZATION STANDARDS

1. The organization shall commit to financially supporting the center and to expand the center proportionate to the requests for services and the needs of the community.

2. The following documents shall be maintained:

Organization's tax exempt status
Policy statements
Personnel policies
Affirmative Action Plan
Organization Chart
Current Job Descriptions
Financial records

F. PERSONNEL STANDARDS

1. Personnel policies will be developed and maintained.

2 The center will keep updated job descriptions for staff and volunteers. When applicable, the center will keep updated job descriptions for Board members and/or Advisory Committee members.

3. Staff and/or volunteers will participate in clinical case consultations. Staff will provide supervision for all volunteers. Staff and volunteers will meet for case consultations at least 6 times per year.

4 New staff shall attend the volunteer training referred to in Section IV, I

5 Direct service staff shall attend at least the number of hours equivalent to a half work week of continuing education per year

G. RECORD KEEPING AND COMPLIANCE WITH STANDARDS

1. Each center will complete its own program evaluation form and file it annually with VAASA. Centers will be given 6 months to correct deficiencies or certification will be withheld.

2. Statistics, as identified by the Board, shall be filed quarterly with VAASA.

3 To prevent fiscal instability arising from the withdrawal of a funding source, a center will have no more than 75% of its budget coming from any one source which requires periodic renewals.

H. PROGRAM MAINTENANCE STANDARDS

1 The center shall have an office.

2 There shall be a minimum of six case meetings with staff and volunteers per year.

3 Daily assistance from staff to volunteers shall be provided.

4 Written records shall be kept on each client contact.

5 The center shall make anonymous reports to police upon the request of the victim.

6 The center shall recruit, screen, train and supervise all volunteers.

I. TRAINING STANDARDS

1. The center shall conduct a minimum of 30 hours of initial training for volunteers.

2. A written documentation of training attendance shall be kept for all volunteers and staff.

3. These essential topics shall be covered:

GENERAL

- Myths and Facts
- Definitions
- Counselor vulnerability feelings
- Sexism & consciousness raising
- Confidentiality
- Volunteer rights & responsibilities
- Policies & procedures
- Organizational structure

Racism
Classism
Personal/Professional issues for the volunteer
History of sexual assault
History of Center
Philosophy of Center

CRISIS INTERVENTION

Crisis Intervention
Advocacy
Case management & follow-up
Rape Trauma Syndrome
Non-judgmental responses
Listening skills
Goal setting
Referrals
Problem solving
Suicide
Beginning/ending calls & sessions
Decision making
Role playing

SPECIFIC POPULATIONS

Effects on Family/Friends
Incest
Child Sexual Assault
Sexual harassment
Acquaintance Rape
Gang Rape
Elderly
Same Sexual Assault
Persons with disabilities (physical, mental, emotional)
Lesbians, Gay men (homophobia)
Multi-cultural issues appropriate to local population
Marital Rape

MEDICAL

Medical issues and sexual assault (hospital protocols, P.E.R.K., S.T.D.s, A.I.D.S., & pregnancy)

LEGAL

Police Interview Questions
Police Investigation Procedures
Jurisdictions, False reports
Sexual Assault Laws
Legal Systems
Victim's Rights & Compensation
Advocate's legal responsibilities (confidentiality, Good Samaritan)
Subpoena of Advocate
Case Report Writing

4. Optional topics:

Offenders
Feminist theory
Burnout
Pornography

Prevention/Risk reduction issues:
- Avoidance
- Awareness of surroundings
- Empowering
- Changing attitudes
- Teaching your children

J. CERTIFICATION PROCESS

1. Standards Committee:

a. The Standards Committee shall be appointed by the Board of Directors, using Board approved criteria for selecting appointees. The Standards Committee shall be responsible for certifying that centers are in compliance with the Standards for Sexual Assault Crisis Centers

b.The Standards Committee shall consist of at least one VAASA member from each of the five regions: Northern Virginia, Tidewater, Central Virginia, Southwest Virginia, Shenandoah Valley. Regions shall be revised when necessary as new centers open.

c.The Standards Committee shall develop recommendations for:
1) a self-evaluation form,
2)criteria for on-site certification visits,
3)criteria for Standards Committee appointments, and
4)appeal of denial of certification procedure. These recommendations shall be submitted to the Board for approval. Adopted recommendations will be subject to periodic review by the Standards Committee for Board action.

2. Compliance:

a. Every center shall conduct a self-evaluation involving the Board of Directors or governing body, staff and volunteers to be used as part of the certification process.

b. The second part of the certification process shall involve a site visit of each center by at least 2 Standards Committee members from outside their region every 3 years. Site visits shall be made the first year to 1/3 of the centers to be chosen by the Standards Committee with 1/3 to be visited by the second year and the remaining 1/3 the 3rd year.

c. Initially each center shall have one year to come into compliance from the date of adoption of the standards. Subsequently, new centers will have one year to come into compliance with standards from the date that application is made for certification.

d. A certified center not meeting standards at their annual self-evaluation will have 6 months to come into compliance before loosing certification.

140206

REPORT OF THE VIRGINIA STATE CRIME COMMISSION

Transportation of Juveniles

TO THE GOVERNOR AND THE GENERAL ASSEMBLY OF VIRGINIA

HOUSE DOCUMENT NO. 55

COMMONWEALTH OF VIRGINIA
RICHMOND
1990

MEMBERS OF THE VIRGINIA STATE CRIME COMMISSION 1989

From the Senate of Virginia:

Elmon T. Gray, Chairman
Howard P. Anderson
Elmo G. Cross, Jr.

From the House of Delegates:

Robert B. Ball, Sr., Vice Chairman
V. Thomas Forehand, Jr.
Raymond R. Guest, Jr.
A. L. Philpott
Warren G. Stambaugh
Clifton A. Woodrum

Appointments by the Governor:

Robert C. Bobb
Robert F. Horan, Jr.
George F. Ricketts, Sr.

Attorney General's Office:

H. Lane Kneedler

COMMONWEALTH of VIRGINIA

VIRGINIA STATE CRIME COMMISSION

General Assembly Building

IN RESPONSE TO
THIS LETTER TELEPHONE
(804) 225-4534

ROBERT E. COLVIN
EXECUTIVE DIRECTOR

January 16, 1990

TO: The Honorable L. Douglas Wilder, Governor of Virginia
and Members of the General Assembly

In a letter dated February 1, 1990, Senator J. Granger Macfarlane requested the Virginia State Crime Commission to consider issues related to transporting non-violent juveniles who are in detention facilities.

Pursuant to §9-125 of the Code of Virginia, a study was conducted by the Commission during 1989. I have the honor of submitting herewith the study report and recommendations on the transportation of non-violent juveniles.

Respectfully submitted,

Elmon T. Gray
Chairman

Treatment Issues Subcommittee Studying

TRANSPORTATION OF JUVENILES

Members:

Delegate Clifton A. Woodrum, Chairman
Delegate Robert B. Ball, Sr.
Delegate V. Thomas Forehand, Jr.
Delegate Raymond R. Guest, Jr.
Mr. Robert F. Horan, Jr.
Mr. H. Lane Kneedler
Rev. George F. Ricketts, Sr.
Delegate Warren G. Stambaugh

Staff

Robert E. Colvin, Executive Director
D. Robie Ingram, Staff Attorney
Susan A. Bass, Research Assistant
Sylvia A. Coggins, Administrative Assistant

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I. AUTHORITY FOR STUDY

During the 1989 legislative session, Delegate Alan A. Diamonstein and Senator J. Granger Macfarlane patroned identical bills that would designate the agency having custody or responsibility for supervision of a child in custody, detention or shelter care as responsible for transportation of the child. (See Appendix A.) Both bills were withdrawn and, in a letter dated February 1, 1989, Senator J. Granger Macfarlane formally requested that the Virginia State Crime Commission place the issue of juvenile transportation on its 1989 agenda for study. (See Appendix B.)

§9-125 of the Code of Virginia establishes and directs the Virginia State Crime Commission (VSCC) "to study, report, and make recommendations on all areas of public safety and protection." §9-127 of the Code of Virginia provides that "the Commission shall have duty and power to make such studies and gather information in order to accomplish its purpose, as set forth in §9-125, and to formulate its recommendations to the Governor and the General Assembly." §9-134 of the Code of Virginia authorizes the Commission to "conduct private and public hearings, and to designate a member of the Commission to preside over such hearings." The Virginia State Crime Commission, in fulfilling its legislative mandate, undertook the study of juvenile transportation as requested by Senator MacFarlane.

II. MEMBERS APPOINTED TO SERVE

During the April 18, 1989 meeting of the Crime Commission, its Chairman, Senator Elmon T. Gray of Sussex, selected Delegate Clifton A. Woodrum to serve as chairman of the Treatment Issues subcommittee studying juvenile transportation. Members of the Crime Commission who serve on the subcommittee were:

Delegate Clifton A. Woodrum of Roanoke, Chairman
Delegate Robert B. Ball, Sr., of Richmond
Delegate V. Thomas Forehand, Jr., of Chesapeake
Delegate Raymond R. Guest, Jr., of Front Royal
Mr. Robert F. Horan, Jr., of Fairfax County
Mr. H. Lane Kneedler, Attorney General's Office
Rev. George F. Ricketts, Sr., of Richmond
Delegate Warren G. Stambaugh of Arlington

EXCUTIVE SUMMARY

During the 1989 Session, Delegate Diamonstein and Senator Macfarlane patroned identical bills that would designate the agency having custody or responsibility for supervision of a child as responsible for transportation of the child. Both bills were withdrawn, and Senator Macfarlane formally requested by letter that the Virginia State Crime Commission place the issue of juvenile transportation on its 1989 agenda for study.

Existing law states that the chief judge of the juvenile and domestic relations district court shall designate the appropriate agencies to be responsible for transporting juveniles.

Throughout the course of this study, detention home operators have indicated a willingness to transport low-risk juveniles to local service appointments, if additional resources are provided. The sheriffs are willing to make all transports involving high-risk juveniles, court-related transports, and transports between detention centers.

Following considerable discussion of the issue among the affected entities, the subcommittee endorsed the Department of Youth Services' proposal that a one-week intensive study of the issue be conducted on behalf of the Department by Mr. John Morgenthau, an experienced consultant on this issue.

Mr. Morgenthau's study was completed, and his report supports legislation that would shift to the agency having custody the responsibility of transporting low-risk juveniles to local service appointments. In addition, Mr. Morgenthau recommended that the proposed amendment be modified to establish four pilot sites where this approach would be tested for a one year period. The sites recommended include Roanoke, Newport News, one Commission operated rural and one Commission operated urban locality.

The subcommittee found that it was inefficient to continue the current practice of having fully trained and equipped deputy sheriffs transport non-violent, low-risk juveniles between detention homes and local medical, dental and other service appointments. The subcommittee found these transports to be more efficiently and appropriately handled by personnel employed by the juvenile detention homes.

The Department of Youth Services prepared an analysis of the costs involved in establishing such a pilot program, and the Commission staff responded with an analysis which recommended a lower level of funding. Both analyses were discussed at length during the final meeting of the subcommittee. They found the lower figures to be reasonable. However, the subcommittee took no position on recommending the pilot projects. Instead, they recommended that the information developed by the subcommittee be formally presented by the Commission to Senator Macfarlane, Governor Wilder and the 1990 General Assembly for their review. On January 16, 1990, the Commission voted to approve the findings and recommendations of the Treatment Issues Subcommittee.

IV. STUDY DESIGN

The subcommittee held seven meetings and heard numerous staff briefings on the issue of juvenile transportation.

The staff and the Chairman, Delegate Clifton A. Woodrum, met with the Sheriff's Department of the City of Roanoke, and the staff met with both detention center personnel and the Sheriff's Department of Newport News. The Department of Corrections and the Virginia State Sheriffs' Association contributed greatly to the study effort and were instrumental in the development of the study proposals.

Subcommittee Meetings
June 19, 1989
July 27, 1989
August 14, 1989
September 18, 1989
October 17, 1989
December 20, 1989
January 9, 1990

Reports to Subcommittee
Initial Report - June 19, 1989
Update - July 27, 1989
Update - August 14, 1989
Update - September 18, 1989
Update - October 17, 1989
Update - December 19, 1989
Final subcommittee update - January 9, 1989

V. BACKGROUND

During the 1989 Session, Delegate Alan A. Diamonstein and Senator J. Granger Macfarlane patroned identical bills that would designate the agency having custody or responsibility for supervision of a child as responsible for transportation of the child. (See Appendix A.) Both bills were withdrawn. Existing law states that the chief judge of the juvenile and domestic relations district court shall designate the appropriate agencies to be responsible for transporting juveniles. (See Appendix C.)

A legislative impact statement prepared by the Department of Corrections, Department of Youth Services, indicated that the potential fiscal impact of such a bill was significant. (See Appendix D.) In that statement, Glen Radcliffe of the Department of Youth Services estimated that shifting the responsibility of juvenile transportation to the agency having custody would cost $1,217,864 for one fiscal year in salaries and fringe benefits alone. After consultation with the Virginia State Sheriffs' Association, Senator Macfarlane referred this matter to the Virginia State Crime Commission for further study.

Two jurisdictions voicing particular concerns over this issue are the cities of Roanoke and Newport News.

Commission staff members met with Delegate Clifton A. Woodrum and Sheriff W. Alvin Hudson in Roanoke to discuss the problem in that jurisdiction. Among other things, it was learned that in Roanoke the Sheriff's Office is solely responsible for the transportation of juveniles.

Members of the Commission staff also met with Brenda Wiggins, Director of the Newport News Juvenile Detention Center, and separately with Newport News Sheriff Clay B. Hester. In Newport News, the detention center is responsible for the transporting of all juveniles except those classified by the court as "violent and out of control."

In both jurisdictions, the responsible agencies indicated (1) the need for additional resources and personnel for the transportation of juveniles, (2) conflicts in transportation scheduling, and (3) difficulty in establishing criteria for the division of the responsibility among those potentially responsible under current law.

VI. OBJECTIVES/ISSUES

In response to the concerns raised by the affected parties in Roanoke and Newport News, and by Sheriffs' Association Executive Director John Jones on behalf of the Association, the following objectives and issues were identified.

A. Determine which agency or agencies might be responsible for the transportation of juveniles.

B. Develop criteria for division of labor if the responsibility is to be borne by more than one agency.

C. Determine the amount of funds, if any, currently available for juvenile transportation needs and the source(s) and recipient(s) of those funds.

D. Determine whether additional funds should be allocated to the responsible agency and for what purposes (i.e., salary, vehicles).

E. Determine what, if any, special training is necessary for those responsible for transporting of children.

VII. APPLICABLE LAW; ANALYSIS AND DISCUSSION

A. Current Law and Proposed 1989 Amendment

Under §16.1-254 of the Code of Virginia, the chief judge of the juvenile and domestic relations district court shall designate the appropriate agency in the jurisdiction to be responsible for the transportation of children who are in custody, detention or shelter care. (See Appendix C.) During the 1989 legislative session, Delegate Alan A. Diamonstein and Senator J. Granger Macfarlane patroned identical bills that would designate the agency having custody or responsibility for supervision of a child as responsible for transportation of the child. (See Appendix A.) Delegate Diamonstein's bill was introduced to insure that the detention center would continue to be responsible for transporting juveniles. Conversely, Senator Macfarlane's bill was introduced to shift the responsibility for transporting juveniles from the Sheriff's Department to the detention center.

B. Analysis and Discussion

1. Fiscal Impact

According to a legislative impact statement prepared by the Department of Corrections (DOC), such legislation would require additional full time equivalent personnel (FTE's) at the 31 court service units and the 17 detention facilities across the state. Adding one transportation officer at each court service unit and two at each detention home would cost at least $1,217,864 per year in salaries and fringe benefits alone. (See Appendix D.) Group homes and other similar programs would also require additional FTE's. Furthermore, according to the DOC, this bill would require additional training for staff in appropriate restraint and transportation techniques.

The Department of Corrections strongly opposed this bill "unless appropriate FTE's and equipment monies are provided to court service units, detention homes, and other affected programs." Both bills were subsequently withdrawn, and by letter dated February 1, 1989, Senator Macfarlane requested that this study of juvenile transportation be done. (See Appendix B.)

2. Funding Issues

A key issue in this study is the availability of funds for personnel and vehicles to provide transportation of juveniles. To determine the types of funding available for juvenile transportation, the staff contacted Mr. James Roberts of the House Appropriations Committee Staff and Mr. Stephen Pullen of the Department of Youth Services. Mr. Roberts and Mr. Pullen both explained that there is no funding specifically earmarked for transportation of juveniles.

In addition, Mr. James Matthews of the Compensation Board was contacted. He explained that the Board funds the salaries of deputy sheriffs and pays their mileage, but the Board does not provide funds specifically earmarked for transportation of juveniles.

To get an example of the costs of such transportation, the staff contacted Mr. Mark Johnson, director of the Coyner Springs Detention Center in Roanoke County, who estimated that it would cost the center $60,000 in start-up costs for personnel for the first year, and $25,000 to purchase a secure vehicle if the Center were made responsible for transporting the children.

The Commission staff also contacted the Department of Corrections to determine the amount of funds, if any, currently available for juvenile transportation needs. According to the Department of Youth Services, the federal government provided a total of $9,000 in annual non-expandable grant funds to be channeled through the Department of Criminal Justice Services to court service units to pay off-duty deputy sheriffs to transport juveniles.

The detention centers receive funding from the state and the locality. The state's portion of the funding comes in the form of a block grant which is distributed to each facility. Of this money, a 3% reserve is set aside to be used only in emergencies. Although there are no strict guidelines, an emergency is generally considered a situation that would endanger the program or cause it to fail. This 3% emergency reserve cannot be used to pay employees to transport juveniles (but it has been recently used in Newport News to purchase a van for juvenile transportation.) At the end of the fiscal year, the money remaining in the fund is distributed to the detention centers.

3. Meeting of Affected Entities

The staff arranged and attended a meeting among John Jones of the Virginia State Sheriffs' Association, Mike Leininger of the Department of Corrections, and Glenn Radcliffe of the Department of Youth Services. Mr. Jones indicated that the Sheriffs' Association favors shifting the responsibility for juvenile transportation from the sheriff's departments to the detention centers, except in the case of transports to and from court and in situations where a juvenile is violent and disruptive.

Mr. Leininger and Mr. Radcliffe indicated that they were opposed to shifting the responsibility to the detention centers because the centers lack the necessary vehicles and personnel. Mr. Leininger and Mr. Radcliffe requested that a survey of the detention homes be conducted to determine whether transportation problems exist in all jurisdictions. The staff conducted an informal telephone survey of each of the 17 detention centers. (See Survey at Appendix E.)

4. Detention Center Survey

According to the survey, only 3 jurisdictions report problems with the present system. They are Newport News, Petersburg and Coyner Springs (Roanoke). The sheriff's departments handle juvenile transportation for six centers, and it is a shared responsibility between the Sheriff's department and the detention center in four jurisdictions. Most centers service several jurisdictions.

Summary of Results of Telephone Survey:

For medical appointments:

- Two centers require transportation less than once per week.
- Nine centers require transportation 1-5 times per week.

For court appointments:

- Two centers require transportation 1-5 times per week.
- Two centers require transportation 5-10 times per week.
- Four centers require transportation more than 10 times per week.

Vehicles:

- Three centers have secure vehicles.
- Six centers have non-secure vehicles used for administrative purposes.
- Four centers do not have vehicles.

Transfer of Juveniles:

- Five centers make space for additional children when beds are full.
- Eight centers send additional children to other facilities.

Examples:

All local transports are handled by a locally funded transportation unit at the Fairfax Detention Center. The Fairfax Sheriff's department transports only when a child is being transferred to another center, and the Sheriff's department has never been involved in the local transport of juveniles. Their system apparently works well.

According to the Montgomery County Sheriff's Department, 160 transports of juveniles to court were made by deputies last year, and no problems with the present system were reported.

5. Study Sponsored by Department of Corrections

Following considerable discussion of the issue among the affected entities, the Department of Corrections' Department of Youth Services proposed to the subcommittee that a one-week intensive study of the issue of juvenile detention be conducted on behalf of the Department by Mr. John Morgenthau, an accomplished consultant on the issue. As proposed, the study would be paid for by the American Correctional Association and conducted in the latter part of October, 1989. The subcommittee endorsed the proposal and withheld recommendations pending the results of the study.

VIII. FINDINGS

Mr. Morgenthau's study was completed, and his report was presented to the subcommittee at its December, 1989 meeting (See Appendix G). The report supports the Bill previously proposed by the subcommittee as an appropriate approach to the problem of transporting low-risk juveniles to local medical and dental appointments, psychiatric evaluations and special placements (See Appendix F). Furthermore, the bill was endorsed by the Virginia State Sheriff's Association.

In addition, Mr. Morgenthau recommended that the proposed amendment be modified to establish four pilot sites where this approach would be tested for a one year period. The sites recommended include Roanoke, Newport News, one Commission operated rural and one Commission operated urban locality.

The subcommittee agreed that a one-year pilot project should be considered and directed the Commission staff to work with representatives from the Department of Youth Services to develop a realistic figure of its cost. The following figures were provided by the four proposed pilot sites.

Location	Pilot Cost	Population
Northern Virginia	$ 36,430	44.8
Crater	42,000	20.0
Newport News	41,729	34.4
Roanoke City	57,458	18.8

Commission staff believed the above figures to be excessive and made a report to the subcommittee. The financial proposals dealt chiefly with vehicles and personnel. At least two of the proposals included requests for funding for new full-size vehicles, maintenance costs and insurance costs in addition to the mileage reimbursement. This type of funding is contrary to the state's current funding practice for sheriffs' offices which does not provide money up-front for purchasing vehicles, or any other costs. Instead, deputy sheriffs operate patrol vehicles at a reimbursement rate of $ .24 per mile for the initial 15,000 miles per year and $ .11 per mile for each additional mile. The Commission staff analysis recommended the same type of funding for the transportation of low-risk juveniles to and from local service appointments.

In light of this information, the staff prepared an independent analysis of the vehicle, personnel and total costs (See Appendix H). The following table reflects necessary resources as calculated by the staff.

Location	Vehicle	Personnel	Total
Northern Virginia	$ 3,248	$ 10,763	$ 14,011
Crater	3,248	$ 4,797	8,045
Newport News	3,248	8,255	11,503
Roanoke City	3,248	4,508	7,756

IX. CONCLUSIONS

Throughout the course of this study, detention home operators have indicated a willingness to transport low-risk juveniles to local service appointments, if additional resources are provided. The sheriffs are willing to make all transports involving high-risk juveniles, court-related transports, and transports between detention centers.

The pilot project recommended in Morgenthau's report would establish four sites to test this approach for a one year period.

The Department of Youth Services (DYS) prepared an analysis of the costs involved in establishing such a program, and the Commission staff responded with a subsequent analysis which recommended a significantly lower level of funding. Both analyses were discussed at length during the final meeting of the subcommittee. The subcommittee found the lower figures to be reasonable. However, they took no position on recommending the pilot projects.

The main issue of concern raised in discussions during the 1989 General Assembly were tied to the $1.2 million fiscal impact reported by the Department of Corrections. During the course of this study, a cost estimate for a one year pilot project for four jurisdictions was sought by the subcommittee. The cost estimates which were provided to the subcommittee were found to be excessive and Commission staff was directed to analyze the estimates. The subcommittee found that a much more conservative cost was likely to be encountered.

Extrapolating the staff analysis in Appendix H, the subcommittee estimates the total annual cost for 17 detention homes to transport low-risk juveniles to local service appointments to be less than $180,884 annually.

The subcommittee further found that an implementation on July 1, 1991 of the bill proposal listed in Appendix F, if the General Assembly chose to adopt it, would provide for adequate pre-planning and transition.

In conclusion, the subcommittee found that it was inefficient to continue the current practice of having fully trained and equipped deputy sheriffs transport non-violent, low-risk juveniles between detention homes and local medical, dental and other service appointments. The subcommittee found these transports to be more efficiently and appropriately handled by personnel employed by the juvenile detention homes.

It was also found that the number of transports could be reduced by providing some services in the detention home on a purchase of services basis. The responsibility for transporting the low-risk individuals may serve as an additional impetus for reducing the number of transports.

The subcommittee felt it had accomplished its charge by fully exploring the issue, encouraging the Department of Corrections consultant's study, and identifying realistic cost estimates. The findings and conclusions of the subcommittee were reached after considerable deliberation and input from the various interested parties.

Since the study was conducted pursuant to a letter of request from Senator Macfarlane (as opposed to a directive from the full General Assembly), the subcommittee voted at its January 9, 1990 meeting to recommend that the information developed by the subcommittee, without a specific recommendation, be formally presented by the Commission to Senator Macfarlane, Governor Wilder and the 1990 General Assembly for their review. Should Senator Macfarlane choose to introduce the matter for consideration by the 1990 General Assembly, Commission staff would be made available to testify on the work and findings of the subcommittee. On January 16, 1990, the Commission voted to approve the findings and recommendations of the Treatment Issues Subcommittee.

X. ACKNOWLEDGEMENTS

The members of the subcommittee extend thanks to the following agencies and individuals for their cooperation and valuable assistance to this study effort.

American Correctional Association

Compensation Board
James Mathews, Assistant Executive Secretary

Coyner Springs Detention Center
Mark Johnson, Director

Department of Corrections
Michael Leininger, Legislative Liaison

Department of Criminal Justice Services
Robert O'Neal, Juvenile Justice Research Analyst

Department of Youth Services
Charles Kehoe, Director
Glenn Radcliffe, Chief of Operations for Community Programs
Steve Pullen, Business Manager

Henrico Juvenile Detention Center
Joseph Campbell, Director

House of Delegate Appropriations Committee Staff
James Roberts, Senior Legislative Fiscal Analyst

Morgenthau & Plant Associates
John Morgenthau, Consultant

Newport News Juvenile Detention Center
Brenda Wiggins, Director
Joanne Smith, Assistant Director

Newport News Sheriff's Office
Sheriff C. B. Hester

Roanoke Sheriff's Office
Sheriff W. A. Hudson
Captain Paul Barrett
Major George MacMillan

University of Richmond, T.C. Williams School of Law
Professor Robert E. Shephard, Jr.

Virginia State Sheriffs' Association
John Jones, Executive Director

APPENDIX A

LD6199152

HOUSE BILL NO. 1251

Offered January 16, 1989

A BILL to amend and reenact § 16.1-254 of the Code of Virginia, relating to transportation of children in custody, detention or shelter care.

Patrons--Diamonstein and Maxwell

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-254 of the Code of Virginia is amended and reenacted as follows:

§ 16.1-254. Responsibility for and limitation on transportation of children.--The *agency having custody or responsibility for supervision of a child pursuant to §§ 16.1-246, 16.1-247, 16.1-248.1, 16.1-249 or 16.1-250 shall be responsible for transportation of the child. However, the* chief judge of the juvenile and domestic relations district court ~~shall designate the appropriate agencies in each~~ *may direct another agency of the* county, city ~~and~~ *or* town, other than the Department of State Police, to ~~be responsible for the transportation of children pursuant to §§ 16.1-246, 16.1-247, 16.1-248.1, 16.1-249 and 16.1-250, and as otherwise ordered by the judge~~ *transport a child who is known to be violent and disruptive* . In no case shall a child known or believed to be under the age of fifteen years be transported or conveyed in a police patrol wagon.

No child shall be transported with adults suspected of or charged with criminal acts.

Official Use By Clerks	
Passed By The House of Delegates	**Passed By The Senate**
without amendment ☐	without amendment ☐
with amendment ☐	with amendment ☐
substitute ☐	substitute ☐
substitute w/amdt ☐	substitute w/amdt ☐
Date: _____	Date: _____
Clerk of the House of Delegates	Clerk of the Senate

APPENDIX B

SENATE OF VIRGINIA

J. GRANGER MACFARLANE
21ST SENATORIAL DISTRICT
CITY OF ROANOKE
TOWN OF VINTON
SOUTHWESTERN AND EASTERN
ROANOKE COUNTY
P. O. BOX 201
ROANOKE, VIRGINIA 24002

COMMITTEE ASSIGNMENTS
AGRICULTURE CONSERVATION AND NATURAL RESOURCES
COMMERCE AND LABOR
LOCAL GOVERNMENT
TRANSPORTATION

February 1, 1989

The Honorable Elmon T. Gray
Chairman, Virginia State Crime Commission
Room 326

Re: SB 568

Dear Elmon:

As you know, I introduced the enclosed bill and appeared before the Senate Courts of Justice committee during this Session.

However, some opposition developed from the Department of Corrections wherein they claimed they did not have the personnel or the equipment to transport young people, as the sheriff's had requested.

Accordingly, rather than create a confrontation and ill feelings and after consultation with the Sheriffs Association, I have concluded that it will be in the best interests of the affected young people who are in custody, the Department of Corrections, and the Sheriffs across the Commonwealth, if the Crime Commission will consider placing this matter on their 1989 agenda.

I respectively trust that you and the Commission will give this matter every consideration. I would be most appreciative if you will please advise me if you will work on this in 1989.

Thank you for your time and interest. I will be happy to provide you with any information you may request.

Sincerely,

J. Granger Macfarlane

JGM:dj

Enclosure

cc: The Honorable Alan A. Diamonstein

bcc: John Jones
Alvin Hudson

APPENDIX C

§ 16.1-254. Responsibility for and limitation on transportation of children. — The chief judge of the juvenile and domestic relations district court shall designate the appropriate agencies in each county, city and town, other than the Department of State Police, to be responsible for the transportation of children pursuant to §§ 16.1-246, 16.1-247, 16.1-248.1, 16.1-249 and 16.1-250, and as otherwise ordered by the judge. In no case shall a child known or believed to be under the age of fifteen years be transported or conveyed in a police patrol wagon.

No child shall be transported with adults suspected of or charged with criminal acts. (Code 1950, § 16.1-196; 1956, c. 555; 1958, c. 344; 1971, Ex. Sess., c. 109; 1973, c. 440; 1974, c. 358; 1977, c. 559; 1979, c. 202.)

APPENDIX D

DATE 1/18/98

REVIEWED AND APPROVED
EWM/DIR
DEP
MGR

THE POTENTIAL IMPACT OF THIS BILL IS
1 2 3 4 (5)
NEGLIGIBLE VERY LARGE

DEPARTMENT OF CORRECTIONS
1989 LEGISLATIVE IMPACT STATEMENT

1. BILL NO.: HB 1251/SB 558 2. PATRON(S): Diamonstein, Maxwell

3. COMMITTEE: Courts of Justice 4. REVIEWER: Glenn Radcliffe

5. BILL SUMMARY/PURPOSE: To specify that the agency having custody or supervision of a child shall be responsible for the transporation of the child.

6. CURRENT SITUATION: Section 16.1-254 of the Code presently provides for the chief juvenile & domestic relations court judge to designate the appropriate agency in the jurisdiction to be responsible for the transportation of children.

7. PROGRAM/POLICY IMPLICATIONS FOR AGENCY/CRIMINAL JUSTICE SYSTEM: (If fiscal impact, attach DPB-LIS form)

Would require Additional FTE's at court service units and detention facilities. There are currently 31 court service units and 17 detention homes in the Commonwealth. Adding one transportation officer (Grade 6) at each court service unit and two at each detention home would cost a minimum of $1,217,864 per year in salaries and fringe benefits alone. Under the current language of the bill group homes and other similar programs would also require additional FTE's.

This bill would require additional training for staff in appropriate restraint and transportation techniques and may involve state reimbursement for purchase of transportation vehicles.

8. SPECIFIC AGENCY/POLITICAL SUBDIVISION AFFECTED

DOC, DSS, Locally-operated detention homes and group homes, Sheriff's and Police Department

9. OTHER COMMENTS: (Include any pertinent history, recommendations,

etc., use back of form if necessary)

The current transportation system for juveniles seems to be operating effectively.

10. **RECOMMENDATION:**

The Department is strongly opposed to this bill unless appropriate FTE's and equipment monies are provided to court service units, detention homes, and other affected programs.

FINANCIAL IMPACT OF H. B. 1251 RELATING TO TRANSPORTATION OF CHILDREN

FACILITY	NO. OF TRANSPORTATION OFFICERS	SALARY	RETIREMENT	SOCIAL SEC.	GROUP INS.	HOSPITALIZATION	TOTAL
COURT SERVICE UNITS	31 (ONE AT EACH UNIT) @ $17,338 EACH	$537,478	$67,238	$40,365	$5,418	$43,772	$694,271
JUV. DETENTION HOMES	34 (TWO AT EACH FACILITY) @ 2/3 OF SALARY AND BENEFITS	$392,955	$49,159	$29,511	$3,961	$48,008	$523,594
	TOTAL COSTS FOR ONE FISCAL YEAR	$930,433	$116,397	$69,876	$9,379	$91,780	$1,217,864

APPENDIX B

TELEPHONE QUESTIONNAIRE
(DETENTION HOMES)

JUVENILE TRANSPORTATION STUDY

FACILITY NAME:_____

LOCATION:_____

CONTACT:_____

PHONE:_____

1. How many children are in the home?_____

   In social services custody?_____

   How many beds?_____

2. How many staff per shift?_____No. Shifts?_____

3. How many vehicles for transport?_____

   Secure Vehicles?_____

4. What are transportation needs?

   Medical?_____No. Trips/Wk?_____

   Court?_____No. Trips/Wk?_____

   Other_____No. Trips/Wk?_____

5. Who provides transportation services?

   Medical:_____

   Court:_____

   Other:_____

   Violent, disruptive children:_____

6. Are there problems making transportation arrangements?

   W/Sheriff?_____

   W/Your Staff?_____

7. What do you do when your beds are full?

   Send children to another facility?_____

   Make space(pull out a cot)?_____

8. What jurisdictions do you serve?_____

9. Is there a better way to transport juveniles than is in effect at your home?_____

   _____

   _____

   _____

10. Further Comments?_____

    _____

    _____

    _____

APPENDIX F

Juvenile Transportation Study

Proposed Amendment

§16.1-254. Responsibility for and limitation on transportation of children. A. The detention center having custody or responsibility for supervision of a child pursuant to §§16.1-246, 16.1-247, 16.1-248.1, 16.1-249 or 16.1-250 shall be responsible for transportation of the child to all local medical appointments, dental appointments, psychiatric evaluations and special placements. B. However, the chief judge of the juvenile and domestic relations district court shall designate the appropriate agencies in each county, city, and town, other than the Department of State Police, to be responsible for (i) the transportation of violent and disruptive children and (ii) the transportation of children to destinations other than those set forth in A. above, pursuant to §§16.1-246, 16.1-247, 16.1-248.1, 16.1-249 and 16.1-250, and as otherwise ordered by the judge. In no case shall a child known or believed to be under fifteen years be transported or conveyed in a police patrol wagon.

No child shall be transported with adults suspected of or charged with criminal acts.

APPENDIX G

MORGENTHAU & PLANT ASSOCIATES
Juvenile Justice & Corrections Consulting Services

1408 N. Piedmont Way, Suite 200
Tallahassee, Florida 32312
Telephone 904 422-0777

CONSULTATION REPORT FOR THE COMMONWEALTH OF VIRGINIA REGARDING THE TRANSPORTATION OF JUVENILES IN DETENTION STATUS

Sponsored By The
AMERICAN CORRECTIONAL ASSOCIATION
8025 Laurel Lakes Court
Laurel Maryland 20707

Prepared By
JOHN MORGENTHAU
November 25, 1989

CONSULTATION REPORT FOR THE

COMMONWEALTH OF VIRGINIA REGARDING THE

TRANSPORTATION OF JUVENILES IN DETENTION STATUS

I. INTRODUCTION

In response to increasing concern on the part of members of the General Assembly of Virginia, sheriffs, judges, staff of the Department of Corrections Division of Youth Services, and other key officials in the Commonwealth of Virginia regarding the designation of responsibility for and the costs related to providing transportation for juveniles in secure detention status, Charles Kehoe, Director of the Department of Youth Services, requested technical assistance from the American Correctional Association (ACA) to conduct a review of the current situation. The firm of Morgenthau & Plant Associates was retained by ACA to conduct the review.

The purposes of this review are threefold:

o Review the conditions and circumstances surrounding the development of Senate Bill No. 568, offered to the General Assembly of Virginia on January 18, 1989, and a proposed amendment to that Bill which is currently being considered.

o Assess the various ways different jurisdictions throughout the Commonwealth provide transportation for juveniles in detention status to determine whether current practices meet the need for public safety, present a personal risk to the transporter, are cost efficient, and are appropriate when viewed in light of national standards and practices for the transportation of youth.

o Develop a series of recommendations designed to resolve the immediate transportation related concerns of all involved parties and propose a plan of action to address the longer term issues of designation of responsibility and costs associated with providing transportation for juveniles in secure detention status.

The review included an on-site visit October 17-25, 1989, during which time discussions were held with numerous Division of Youth Services central office staff, all four Regional Administrators and their staffs, eight Detention Home Superintendents, four Court Services Unit Directors, thirty-five juveniles who had been transported recently, and the following public officials and other key individuals who had an interest in this matter:

- Delegate Clifton A. (Chip) Woodrum, Sixteenth District
- Judge Robert P. Frank, Newport News
- Judge Larry G. Elder, Petersburg, Dinwiddie
- Judge Philip Trompeter, Roanoke
- Executive Director John Jones, Virginia Sheriffs Assoc.
- Sheriff Clay Hester, City of Newport news
- Sheriff Alvin Hudson, Roanoke City
- Director Robert Colvin, Virginia Crime Commission

- o Attorney Robie Ingram, Crime Commission
- o Budget Manager Walt Smiley, Dept. of Planning and Budget
- o Staff Analyst Jim Roberts, House Appropriations Committee
- o President Jay Melvin, Virginia Detention Home Assoc.
- o President Dave Marsden, Virginia Juvenile Officers Assoc.
- o Executive Director Wayne Frith, Crater Juvenile Detention Commission and Member, Executive Committee of the Virginia Council on Juvenile Detention
- o President Harry Ayer, Virginia Court Services Assoc.
- o Chairperson Becky China, Virginia Community Residential Care Association

II. BACKGROUND

The Department of Corrections requested Juvenile Justice and Delinquency Prevention Act (JJDPA) funding in 1977 for the transportation of juveniles to detention homes in lieu of placement in adult jails. Participation by the localities was limited, and in the first two years of operation, all transportation reimbursements were for travel between jails, detention homes and court. In the third year sheriffs were reimbursed for transporting youth to medical, dental and diagnostic appointments. In the fourth year, the Department combined transportation networks with other jail removal initiative projects, and grant file documentation indicates that since that time, while there were participating localities, not all jurisdictions were aware of this resource, and up to 66% of allocated funds (FY's 83 to 89) for this purpose remained unspent.

The JJDPA grant for FY 1988/89 did not expand the number of localities in the network. The Department of Criminal Justice Services (DCJS) expressed reluctance to continue to provide JJDPA funding for local transportation networks due to continual underspending and the Department of Correction's reliance on federal funds to carry out transportation activities mandated by state law. The Department was asked by DCJS to develop and submit a cost assumption plan prior to the disbursement of funds. The Department in turn asked the participating jurisdictions for a cost assumption plan, four of which indicated that they would no longer offer transportation services if their localities would be financially responsible to do so. DCJS clarified its intent to the Department that state dollars were to assume the cost of transporting youth, and a letter rescinding the expectations for localities was circulated.

During the 1989 session of the General Assembly of Virginia, Senator Granger Macfarlane introduced Senate Bill No. 568, which would have amended Section 16.1-254 of the Code of Virginia, relating to transportation of children in custody, detention or shelter care. The amendment would have required the agency having custody or responsibility for supervision of a child to be responsible for transportation of the child, except that the Chief Judge of the Juvenile and Domestic Relations District Court may direct another agency of the county, city or town, other than the Department of State Police, to transport a child who is known to be violent and disruptive. This amendment would have addressed inadequate resource base, workload, scheduling, and other concerns expressed initially by Sheriffs in Roanoke and Newport News.

The Bill did not pass, and Senator Macfarlane requested the Crime Commission to review the issue of transportation of juveniles. Delegate Clifton A. (Chip) Woodrum, Sixteenth District, sitting as Chairman of the Crime Commission's Treatment Committee, met several times with representatives from the Department of Corrections, John Jones of the Virginia Sheriffs Association, and staff from the Senate Finance and House Appropriations Committees. The initial position of the Sheriffs, as represented by Mr. Jones, was to divest themselves from the duty of transporting non-violent juveniles. That position was modified as a result of these meetings. Their current position would have detention home staff assume responsibility for transporting non-violent juveniles in their custody to all local medical and dental appointments, psychiatric evaluations and special placements. Sheriffs would retain the duty to transport juveniles to and from court and those found to be violent and disruptive.

III. TRANSPORTATION WORKLOAD

FINDINGS

In August, 1989, the Department of Youth Services requested from each of the seventeen detention homes specific information about transportation activities which had taken place at their homes during the first month of each quarter for fiscal year 1988. While this data is not complete (in some instances records had not been kept), it does establish a baseline for further analysis. These data reveal that, for the four months specified, there were 936 youth transported for the following reasons:

o Medical/Dental	393
o Pre-existing Medical/Dental	138
o Psychological Examination	69
o To Another Facility	186
o For Placement Interviews	18
o Circuit Court	132

The above instances of transportation were provided by:

o Sheriff's Departments	612
o Detention Home Staff	84
o Court Service Unit Staff	48
o Police Departments	39
o Parents	5
o Social Services Staff.	2

When annualized, these data indicate a significant transportation workload impact, particularly for sheriffs and other law enforcement personnel.

In addition to the above data, detention home superintendents also identified a number of concerns relating to cost, scheduling, who decides which youth are violent and disruptive, and communication problems between their staff and judges, sheriffs, court service units, and others involved in the transportation of youth. They were also concerned about the overall negative impact of transportation requirements in light of overcrowded conditions in

many detention homes and inadequate personnel, vehicle, and equipment resources to meet this need.

Superintendents further expressed concern about the changing nature of youth detained within some of their facilities. This was particularly true for detention homes located in the northern part of the Commonwealth and along major north/south interstate highways, where significantly increasing numbers of violent and disruptive juveniles from northern states are arrested as a result of their involvement in drug trafficking and other criminal behavior. These youth are often unknown to local juvenile justice and corrections professionals, are very mature in stature and demeanor, and present additional security and supervision requirements for detention home staff. Many of these juveniles are dangerous and require the added security of well equipped vehicles and trained transportation staff when being transported for any reason.

Superintendents also acknowledged that not all youth in secure detention status were violent and disruptive, and that many of them could be (and currently are) safely transported by detention home staff, counselors, parents and other non-law enforcement personnel, without compromise to public safety.

Discussions with Sheriffs from Roanoke and Newport News, John Jones of the Sheriffs Association, and various Division of Youth Services and court service unit staff, revealed many parallel observations and concerns.

In addition to discussions with public officials and agency personnel, approximately 35 youth from throughout the Commonwealth were interviewed concerning their transportation related experiences while in secure detention status. Many of them stated that for purposes of medical/dental appointments, psychological evaluations, and special placements, they had been transported by many different individuals, including law enforcement personnel, detention home staff, counselors, parents and/or relatives, volunteers, and group home staff.

Youth reported that transportation for court hearings and for movement between detention homes was almost always provided by sheriffs deputies. Responses to specific questions about their handling by these deputies revealed that, with few exceptions, their experiences were basically positive and were well within standards characteristic of professionally trained law enforcement personnel carrying out this function.

The few exceptions noted above included:

- Complaints that meals and bathroom stops were not always provided on long (up to 5 hour) trips.

- Complaints of direct contact with adult prisoners (in one instance being shackled to an adult during a trip, and in several other instances, being placed in holding cells with adults).

- Complaints of embarrassment resulting from exposure to public view while in mechanical restraints (including leg shackles, handcuffs and restraining belts).

CONCLUSIONS

The approach to transportation of juveniles in secure detention status varies considerably from jurisdiction to jurisdiction and, while these variations are not in and of themselves problematic, more consistency throughout the Commonwealth would result in improved transportation services to youth and more efficient use of scarce resources to meet increasing transportation needs.

There are increasing numbers of youth placed in detention homes who have a documented history of violent behavior, a documented history of escape or attempted escape, are from out of state and unknown to local professionals, or who face serious charges and sanctions (particularly certification to adult court). These youth should be classified as "high-risk" as they are more likely to pose security problems when being transported than those youth who do not have such a history, are known to local professionals, or who are not facing serious charges and sanctions. The development of a secure transportation system, including appropriately equipped vehicles and trained staff, will be necessary in order to more efficiently meet the current and future transportation needs of these high-risk youth.

While the number of high-risk youth placed in detention homes is increasing, there are also increasing numbers of "low-risk" youth (those who are not violent, have no history of escape or attempted escape, are known to local professionals, and are not facing serious charges and sanctions). Transporting these low-risk youth in mechanical restraints in secure Sheriff's department vehicles supervised by Sheriff's deputies is neither necessary nor an efficient use of law enforcement resources.

The Department of Youth Services is the most appropriate agency in the Commonwealth to provide transportation services for youth who are involved in the juvenile justice system. Personnel who are specially trained to work with youth, including those who are high-risk, should have responsibility for their supervision and handling while under the jurisdiction of the juvenile court.

RECOMMENDATIONS

The workload impact on Sheriff's departments resulting from the need to transport youth to and from court for hearings and between detention homes due to overcrowding is significant, and will continue to grow in the future. Greater control of this increasing drain on Sheriff's resources might be achieved by evaluating whether there are workable alternatives available which would reduce the need for transportation of youth for these purposes.

Insights offered by Sheriffs Hester (Newport News) and Hudson (Roanoke City) led to an evaluation of current transportation requirements from the point of view of whether they were necessary. Several detention home superintendents expressed very creative ideas about alternative ways to provide medical/dental services and psychological evaluations within their facilities, thereby eliminating the need for transportation altogether for these purposes.

Where these services would be difficult to provide within the detention home, superintendents mostly agreed that, given additional resources, their staff could provide transportation when needed for non-violent youth. In instances

serving multiple jurisdictions), resources could be given to court service units who would make arrangements for transportation services for non-violent youth as needed.

The use of closed circuit television linkages between detention homes and courts for selected hearings might be a workable alternative in some jurisdictions. Increased resources could be used by detention home and court service unit staff to transport non-violent youth to and from court hearings, which would result in more efficient use of transportation dollars. The development of "holdover" programs which provide for supervision of youth overnight in community facilities (i.e. a room in a firehouse, church, or motel) might result in reducing the more costly movement of youth between detention homes due to overcrowding. These and other strategies to reduce the need for transportation wherever possible and without compromise to public safety should be included in plans to address future transportation need.

The proposed amendment to Section 16.1-254, which reflects the current position of the Sheriffs Association , is an excellent first step towards a cost efficient approach to address an initial problem of transporting low-risk youth to local medical and dental appointments, psychiatric evaluations and special placements. In discussions with a variety of individuals who have an interest in this matter, several recommendations were raised which are worthy of merit. These include:

o Modify the amendment to establish four pilot sites for a one year period where this approach would be tested. The recommended sites include Newport News, Roanoke, one Commission operated urban and one Commission operated rural locality. Establish a small workgroup to visit each of the four sites and, with the assistance of the DYS Regional Administrators, conduct a review of projected costs, staffing, equipment and vehicle needs, and issues and concerns which need resolution. The workgroup members should include Jay Melvin, Wayne Frith, Mark Johnson, Harry Ayer, and John Jones. Robie Ingram should be asked to participate in at least one of the reviews to assist with statutory issues which might be raised.

o Modify the amendment to permit counselors, parents, volunteers and others to transport low-risk youth where appropriate.

o Modify the amendment to designate detaining jurisdictions as responsible for transporting youth in detention status for appointments which are more than 25 miles from the detention facility.

o Modify the amendment to mandate that DYS conduct a formal study of the four pilot sites and the transportation needs throughout the Commonwealth and submit a report with recommendations to the General Assembly in January, 1991. In addition to staffing and cost analysis, the formal study should include strategies which reduce the need to move juveniles out of detention homes for purposes of medical and dental appointments, psychiatric evaluations, and special placements, as well as strategies designed to avoid transporting juveniles between detention homes due to overcrowding.

APPENDIX H

COMMONWEALTH of VIRGINIA

VIRGINIA STATE CRIME COMMISSION

General Assembly Building

IN RESPONSE TO
THIS LETTER TELEPHONE
(804) 225-4534

ROBERT E. COLVIN
EXECUTIVE DIRECTOR

January 4, 1990

The Honorable Clifton A. Woodrum
P.O. Box 1371
Roanoke, Virginia 24007

Dear Chip:

On December 20, 1989, your treatment subcommittee studying juvenile transportation agreed that a one-year pilot project would be proposed involving four detention homes who would assume the responsibilities of transporting non-violent detainees to local medical, dental and psychiatric appointments.

One of the detention home directors at the meeting guessed at $55,000 as the additional annual cost for his own center. The subcommittee then directed staff to work out a realistic figure with Division of Youth Services Director Chuck Kehoe and the detention home representatives. On Wednesday, January 3, 1989, Mr. Kehoe provided figures which were developed by the four proposed pilot sites as follows:

Location	Pilot Cost	Population
Northern Virginia	$ 36,430	44.8
Crater	42,000	20.0
Newport News	41,729	34.4
Roanoke City	57,458	18.8

I believe the figures to be excessive in light of the proposed activity, to wit: transport non-violent children to local "service" appointments. The remainder of this letter lists the basis of this conclusion.

Review of the Proposals:

A review of the details of the requests, (copies attached) reveals requests for a new Ford Crown Victoria with cellular phone, security package, car insurance at $2,500, maintenance cost $1,000 AND $.24 per mile for 3120 miles. Another request listed a 12 passenger van at $19,000 AND $.24 per mile for 5200 miles.

Regarding personnel, Northern Virginia listed three trips per week times four hours per trip times two people at $10.50 per hour, plus 7.65% FICA which equals $13,564. It should be noted that according to "The Friday Report," Northern Virginia reports the highest average daily population of the four proposed pilot sites. Two other sites with smaller populations listed more than $35,000 in total estimated personnel costs.

Staff Analysis: Vehicles

Local sheriff's offices (and in some cases individual deputy sheriffs) receive at total of $.24 per mile reimbursement from the State to cover depreciation, maintenance, repair, fuel and all other cost associated with operating a patrol vehicle. No funding is provided up front for the purchase. The same formula should be used in the instant case.

Northern Virginia estimated 3,120 and Roanoke estimated 5,200 additional miles annually to undertake this project. At $.24 per mile, the associated costs of $748 and $1,248 are very reasonable.

$500 for a protective vehicle screen and unlocking the rear door handles, along with $1,500 for a radio (Department of Corrections or local sheriff's frequency) would appear to be reasonable.

Additionally, Mr. Kehoe advised that each detention center currently has at least one public-use vehicle available.

Staff Analysis: Personnel

According to figures and testimony provided to the subcommittee by the Department of Corrections, 17 detention homes, which housed a total average of 523.4 juveniles during December 1989, reported 618 transports over a four month period in 1989 for current and pre-existing medical, dental, psychological and placement appointments. This equates to 3.5422239 trips per detainee per year. (618 x 3/523.4). Assuming four hours total time on average for each trip, the total man hours required per detention home could be determined by 4 hours x 3.5422239 trips (= 14.17 - rounded) x average daily population (ADP).

** It should be noted that testimony revealed a minimum reported trip and waiting time of 15 minutes and a maximum of 10 hours. No further data was available for staff comparison. Also, the total of 618 transports for the 4 month period includes violent AND non-violent juveniles.*

One consideration raised by Mr. Kehoe was that several areas may have to pay time and a half to employ qualified people. Under this assumption, the hourly personnel cost listed by Northern Virginia of $11.30 (including FICA) would be $16.95 at time and a half.

	ADP x factor =	man hours x	hour rate (1.5) =	total $
Northern Virginia	44.8 x 14.17 =	635 x	16.95 =	$10,763
Crater	20.0 x 14.17 =	283 x	16.95 =	4,797
Newport News	34.4 x 14.17 =	487 x	16.95 =	8,255
Roanoke City	18.8 x 14.17 =	266 x	16.95 =	4,508

Recommendation for Discussion

Roanoke listed the highest anticipated additional annual mileage at 5,200 miles. Using this higher figure for all locations at $.24 per mile reimbursement, $1500 for a radio and $500 for security enhancement, the table below lists the total vehicle costs that could be anticipated.

Using the time and a half hourly rate calculation, the table also lists total anticipated personnel costs. Finally, total cost is listed.

Locality	Vehicle	Personnel	Total
Northern Virginia	$ 3,248	$ 10,763	$ 14,011
Crater	3,248	4,797	8,045
Newport News	3,248	8,255	11,503
Roanoke City	3,248	4,508	7,756

I hope this analysis is of use to your subcommittee in initiating your discussions on January 9th. I look forward to seeing you then.

Sincerely,

Robert E. Colvin
Executive Director

REC/rn

cc: Mr. Chuck Kehoe

DETENTION	AVG.	x FACTOR	= MAN HOURS	x HOUR RATE (1.5)	= TOTAL PERSONNEL COST	+ 5200 MILES x .24	+ $2000 VEHICLE RADIO AND SECURITY	= TOTAL COST 1st YEAR
Western Region								
Shenandoah Valley	24.8	14.17	351	$16.95	$5949	$1248	$2000	$9197
Roanoke	18.8	14.17	266	16.95	4508	1248	2000	7756
Danville	29.6	14.17	419	16.95	7102	1248	2000	10350
New River Valley	15.8	14.17	224	16.95	3797	1248	2000	7045
Highlands	14.0	14.17	198	16.95	3356	1248	2000	6604
Northern Region								
Rappahannock	17.6	14.17	249	16.95	4221	1248	2000	7469
Northern Va.	44.8	14.17	635	16.95	10763	1248	20001	14011
Prince William	23.2	14.17	329	16.95	5577	1248	2000	8825
Fairfax	39.4	14.17	558	16.95	9458	1248	2000	12706
Central Region								
Chesterfield	24.4	14.17	346	16.95	5865	1248	2000	9113
Richmond	61.0	14.17	864	16.95	14645	1248	2000	17893
Lynchburg	16.0	14.17	227	16.95	3848	1248	2000	7096
Henrico	19.2	14.17	272	16.95	4610	1248	2000	7858
Eastern Region								
Tidewater	57.8	14.17	819	16.95	13882	1248	2000	17130
Norfolk	62.6	14.17	887	16.95	15035	1248	2000	18283
Newport News	34.4	14.17	487	16.95	8255	1248	2000	11503
Crater	20.0	14.17	283	16.95	4797	1248	2000	8045

TOTAL COST FIRST YEAR $180

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FILE

Residential Population
"The Friday Report"

Detention	Budgeted Capacity	12-01-89 M	F	T	12-08-89 M	F	T	12-15-89 M	F	T	12-22-89 M	F	T	12-29-89 M	F	T	MONTHLY AVG. M	F	T
WESTERN REGION																			
Shenandoah Valley	32	20	7	27	19	5	24	23	7	30	16	4	20	18	5	23	19.2	5.6	24.8
Roanoke	21	17	0	17	21	0	21	19	1	20	15	2	17	17	2	19	17.8	1.0	18.8
Danville	30	25	5	30	25	5	30	27	4	31	25	5	30	22	5	27	24.8	4.8	29.6
New River Valley	20	15	3	18	18	2	20	13	1	14	12	2	14	11	2	13	13.8	2.0	15.8
Highlands	20	14	3	17	12	3	15	10	4	14	8	2	10	12	2	14	11.2	2.8	14.0
Region Total ---	123	--- 91	18	109	95	15	110	92	17	109	76	15	91	80	16	96	86.8	16.2	103.0
NORTHERN REGION																			
Rappahannock	21	13	6	19	15	5	20	13	3	16	16	1	17	13	3	16	14.0	3.6	17.6
Northern Va.	43	49	5	54	43	3	46	37	3	40	37	3	40	40	4	44	41.2	3.6	44.8
Pr. William	21	19	5	24	19	5	24	21	3	24	18	2	20	23	1	24	20.0	3.2	23.2
Fairfax	33	35	7	42	33	5	38	34	6	40	31	7	38	32	7	39	33.0	6.4	39.4
Fairfax L/S	10	4	1	5	5	2	7	6	2	8	6	1	7	5	0	5	5.2	1.2	6.4
Region Total ---	128	--- 120	24	144	115	20	135	111	17	128	108	14	122	113	15	128	113.4	18.0	131.4
CENTRAL REGION																			
Chesterfield	32	20	4	24	24	5	29	21	5	26	20	4	24	18	1	19	20.6	3.8	24.4
Richmond	52	62	0	62	67	1	68	64	1	65	55	1	56	53	1	54	60.2	0.8	61.0
Lynchburg	20	11	6	17	12	6	18	12	6	18	13	2	15	11	1	12	11.8	4.2	16.0
Henrico	20	19	4	23	16	3	19	18	3	21	15	3	18	13	2	15	16.2	3.0	19.2
Region Total ---	124	--- 112	14	126	119	15	134	115	15	130	103	10	113	95	5	100	108.8	11.8	120.6
EASTERN REGION																			
Tidewater	52	65	10	75	52	9	61	54	9	63	35	8	43	39	8	47	49.0	8.8	57.8
Norfolk	43	58	11	69	57	12	69	57	10	67	47	7	54	46	8	54	53.0	9.6	62.6
Newport News	18	29	4	33	28	6	34	31	7	38	30	3	33	31	3	34	29.8	4.6	34.4
Crater	22	22	0	22	20	2	22	17	2	19	18	2	20	15	2	17	18.4	1.6	20.0
Tidewater L/S	12	10	4	14	12	5	17	7	4	11	9	3	12	8	3	11	9.2	3.8	13.0
Newport News L/S	12	11	4	15	10	3	13	7	1	8	9	3	12	10	2	12	9.4	2.6	12.0
Region Total ---	159	--- 195	33	228	179	37	216	173	33	206	148	26	174	149	26	175	168.8	31.0	199.8
State Total	534	--- 518	89	607	508	87	595	491	82	573	435	65	500	437	62	499	477.8	77.0	554.8

M=Male F=Female

APPENDIX I

D 12/30/89 Ingram C 01/10/90 kmk

SENATE BILL NO. ..... HOUSE BILL NO. .....

A BILL to amend the Code of Virginia by adding a section numbered 16.1-254.1, relating to transportation of children in detention homes.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a new section numbered 16.1-254.1 as follows:

§ 16.1-254.1. Experimental program for transportation of children.--A. Notwithstanding the provisions of § 16.1-254, those juvenile detention centers designated by the Department of Youth Services as participants in an experimental program for transportation of children shall be subject to the following responsibilities and limitations on the transportation of children:

1. The detention center having custody or responsiblity for supervision of a child, pursuant to §§ 16.1-246, 16.1-247, 16.1-248.1, 16.1-249, or 16.1-250, shall be responsible for transportation of the child to all local medical appointments, dental appointments, psychiatric evaluations, and special placements.

2. However, the chief judge of the juvenile and domestic relations district court shall designate the appropriate agencies in each county, city, or town, other than the Department of State Police, to be responsible for (i) the transportation of violent and disruptive children and (ii) the transportation of children to destinations other than those set forth in subdivision 1 above, pursuant to §§ 16.1-246,

16.1-247, 16.1-248.1, 16.1-249, and 16.1-250, and as otherwise ordered by the judge.

In no case shall a child known or believed to be under fifteen years of age be transported or conveyed in a police patrol wagon. No child shall be transported with adults suspected of or charged with criminal acts.

B. This section shall expire on June 30, 1991.

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