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1988

*Annual Report  
of the  
Virginia State Crime Commission*



NCJRS

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*General Assembly Building  
910 Capitol Street  
Richmond, Va. 23219*

*April 18, 1989*

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# COMMONWEALTH of VIRGINIA

## VIRGINIA STATE CRIME COMMISSION

General Assembly Building

910 Capitol Street

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RICHMOND, VIRGINIA 23208

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

ROBERT E. COLVIN  
EXECUTIVE DIRECTOR

### MEMBERS:

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.

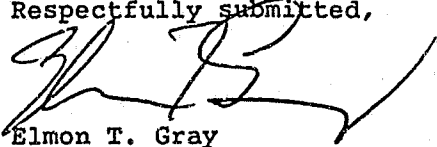
ATTORNEY GENERAL'S OFFICE  
H. LANE KNEEDLER

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

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Robert E. Colvin, Executive Director

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# 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 clarifies 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 appearance 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 Kneeder, 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."

#### 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 available 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. Reliability 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 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.

### 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. Melver, 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 adversely 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 officials 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.

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| <p>Sec.<br/>           9-125. Commission created; purpose.<br/>           9-126. Membership; appointment; terms; vacancies; chairman; expenses.<br/>           9-127. Studies and recommendations generally.<br/>           9-128. Studies of operations, etc., of law-enforcement agencies.<br/>           9-129. Cooperation with agencies of other states.<br/>           9-130. Commission to refer cases of crime or official misconduct to appropriate authorities.</p> | <p>Sec.<br/>           9-131. Executive director, counsel and other personnel.<br/>           9-132. Reports to Governor and General Assembly.<br/>           9-133. Publication of information.<br/>           9-134. Powers enumerated.<br/>           9-135. Construction of chapter.<br/>           9-136. Cooperation of other state agencies.<br/>           9-137. Disclosure of certain information by employee a misdemeanor.<br/>           9-138. Impounding of certain documents.</p> |
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§ 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.)