

**REPORT OF
THE COMMISSION ON SPEEDY TRIALS IN CRIMINAL CASES**

**To
THE GOVERNOR
And
THE GENERAL ASSEMBLY OF VIRGINIA**



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**COMMONWEALTH OF VIRGINIA
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THE COMMISSION ON SPEEDY TRIALS IN CRIMINAL CASES
TO THE
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Richmond, Virginia
January, 1976

To: Honorable Mills E. Godwin, Jr., Governor of Virginia
and

The General Assembly of Virginia

INTRODUCTION

With the population explosion, the rapidly growing urban centers, increased mobility of people and numerous other factors, the business of the Criminal Courts of the Commonwealth has been brisk. Out of concern for this fact, the General Assembly, at its 1975 session, adopted Senate Joint Resolution No. 124. The text of the Resolution follows:

SENATE JOINT RESOLUTION NO. 124

Creating a Commission on Speedy Trials in Criminal Cases;
allocating funds therefor.

WHEREAS, the Constitutions of Virginia and of the United States of America assure the right of a fair and speedy trial to persons charged with crimes; and

WHEREAS, the guarantee of a speedy trial in the United States and in Virginia has been eroded in recent times, years elapsing before a major case is finally concluded; and

WHEREAS, in the judicial system of other countries, notably the United Kingdom, persons accused of crimes are swiftly brought to the bar of Justice, and the case finally disposed of, including appeals, in a matter of weeks; and

WHEREAS, there appears to be no reason for the delays which seem to have become standard in criminal jurisprudence, and that a study should be made with the view toward the fair, rapid disposition of such cases, from indictment to final appeal, and any extraordinary remedies relating thereto; now therefore, be it

RESOLVED by the Senate of Virginia, the House of Delegates concurring, That there is hereby created a Commission on Speedy Trials in Criminal Cases. The Commission shall be composed of fourteen members, two of whom shall be appointed from the membership of the Senate by the Committee for Privileges and Elections thereof, five of whom shall be appointed from the membership of the House of Delegates by the Speaker thereof, and seven of whom shall be appointed from the State at large by the Governor. The appointments by the Governor shall include a Justice of the Supreme Court of Virginia, two judges of circuit courts, two Attorneys for the Commonwealth and two members of the Virginia State Bar who are skilled in the trial of criminal cases for the defense.

The Commission shall study all aspects of the problem of ensuring the Constitutional guarantee of a speedy and impartial trial to a person accused of a crime. The Commission shall examine appellate procedures in connection with its study, with the view toward expediting the final resolution of cases tried, including the desirability and feasibility of the establishment of a special court of criminal appeals. The Commission shall, in connection therewith, study the English practice of the argument of appellate cases without written briefs and the summary resolution of appeals in oral, per curiam, opinions. The Commission shall also study the use and abuse of extraordinary remedies in criminal practice.

All interested agencies of the State shall assist the Commission upon request.

Members of the Commission shall receive no compensation for their services, but shall receive the actual and necessary expenses incurred in the work of the Commission, for which, and for such necessary secretarial and professional services as may be required, there is hereby allocated from the general appropriations to the General Assembly the sum of five thousand dollars.

The Commission shall complete its study and report to the Governor and the General Assembly no later than November one, nineteen hundred seventy-five.

Pursuant to the Resolution's direction, Fred T. Gray, of Chesterfield and H. Selwyn Smith, of Manassas, members of the Senate and attorneys-at-law, were appointed to the Commission by the Committee for Privileges and Elections of the Senate. The Speaker of the House of Delegates appointed Wyatt D. Durette, Jr., Fairfax, J. Samuel Glasscock, Suffolk, George H. Heilig, Jr., Norfolk, Alex B. McMurtie, Jr., Chesterfield, and John L. Melnick, Arlington, members of the House of Delegates and attorneys-at-law, and the Governor appointed Sam Garrison, attorney-at-law, Roanoke, Sol Goodman, Commonwealth's Attorney, Hopewell, Alex M. Harman,

Jr., Justice of the Supreme Court of Virginia, Pulaski, Chandler A. Nelson, attorney-at-law, South Boston, Charles S. Russell, Judge, Circuit Court of Arlington County, John R. Snoddy, Jr., Commonwealth's Attorney, Dillwyn, and J. Randolph Tucker, Judge, Circuit Court of the City of Richmond.

Senator Gray was elected by the Commission's membership to serve as chairman.

The Division of Legislative Services provided counsel, research and secretarial assistance to the Commission.

The Commission met extensively, and also conducted public hearings in Richmond, at which time a variety of suggestions and opinions were aired. Each proposal was carefully considered by the Commission at a subsequent meeting and the Commission hereby expresses its gratitude to those persons who gave testimony or submitted material to the Commission for their expressions of interest.

At the outset of the study, it soon became apparent that Virginia is now handling the flow of criminal cases efficiently. Statistics prepared by the office of the Executive Secretary and the Supreme Court reveal that although the work load of the trial courts has more than doubled over the past decade, cases are tried with dispatch. The case load of the Supreme Court, through diligent effort of the Chief Justice and Justices, has kept pace, and the Court has been able to handle its work within a normal time framework. The Commission finds, however, that certain changes in the law and procedures should be made to ensure that the orderly flow of cases continue.

RECOMMENDATIONS BY THE COMMISSION

A. LEGISLATIVE IMMUNITY

Members of the General Assembly, officers and employees thereof, and employees of the Division of Legislative Services now enjoy continuances as a matter of right for a period of thirty days before and after sessions of the General Assembly. (§ 30-5; Code of Virginia) In addition, they are entitled to a one day continuance before and after any scheduled meeting, (three days) if such continuance is requested seven days in advance.

Many members of the General Assembly have extensive criminal practices. In most cases, delay is an invaluable technique in the defense of criminal matters, and counsel would be derelict in his duties if he did not take advantage of any legitimate reason to seek a continuance. For this reason, in addition to the skills of the individual members, the services of legislators are sought in law cases because of the right conferred by § 30-5.

No inference has been made of abuses in the use of continuances by those persons upon whom this right has been

conferred. Nevertheless, the Commission has attempted to balance the desirability of the prompt disposition of criminal cases from the standpoint of the Commonwealth and the accused, in principle, against the urgency of the legislative process.

In view of the fact that the General Assembly meets annually, and that carry-over legislation, study commissions and standing committee meetings demand a great deal of a member's time, the Commission feels that a reduction of time from thirty days to fifteen days prior to the Session, and elimination of the right to continue for committee meetings in criminal cases would not impose any burden on the legislative process, and it so recommends.

B. THE PRELIMINARY HEARING AND GRAND JURY

§ 19.2-218 affords persons arrested for felony the right to a preliminary hearing. The law also now requires that persons accused of felony be tried on either indictment or presentment, unless this procedure is waived. The procedure appears to be cumbersome. Probable cause is found or not found in the preliminary hearing. In addition, the accused has had the right to confront and cross-examine witnesses against him to test the apparent strength or weakness of the Commonwealth's case. His rights are not enhanced by a further consideration of his case by a grand jury.

On the other hand, it may not always be to the advantage of the Commonwealth to proceed by arrest upon warrant. In many cases, it is appropriate that a grand jury consider a case or cases before arrests are made. Properly used, the grand jury is a valuable tool in the hands of a capable prosecutor.

The Commission therefore recommends that the present system of the preliminary hearing and of the grand jury be modified to leave the defendant the alternative if arrested for felony on warrant, of having either a preliminary hearing, or consideration by a grand jury, but not both. If he exercises his right to a preliminary hearing, he will waive indictment or presentment, and if a probable cause is found, trial may proceed on either information or the warrant. Privilege to present a case to a grand jury in which probable cause is not found by the examining court is retained, in the recommendations of the Commission.

Regular grand juries are now required to be empanelled at each term of a circuit court. (§ 19.2-193). §17-127.21 now requires a minimum of four terms annually. The Commission feels that grand juries should be empanelled at least every sixty days. It also feels that shorter intervals between terms would expedite the caseload flow. It is not felt that six terms of court a year would increase the burden on circuit court judges, since courts are now in business twelve months of the year anyway. It is accordingly recommended that § 17-127.21 be amended to require six terms annually.

C. THE APPELLATE PROCESS

As previously stated, no problem appears to exist in obtaining a reasonably prompt hearing and decision in cases appealed to the Supreme Court of Virginia. It seems to the Commission, however, that the time period in which a case should reach the Supreme Court could be shortened with no loss of right to a person convicted of crime. The Commission therefore recommends that the Rule of Court (Rule 5:6) be amended to reduce the term with which Notice of Appeal be filed from thirty days to fifteen days.

It is also felt that there is no need for counsel to submit his Assignment of Error at the same time as the Notice of Appeal. Counsel should have full access to the record prior to assigning alleged errors of the trial court. It is therefore recommended that the Rules be amended to allow Assignments of Error to be made in the Petition.

The jurisdictional time limit of four months to present a Petition for Appeal, Writ of Error, or Supersedeas is too long. There appears to be no reason why a record cannot be made up and a petition filed within a ninety day time frame. The Commission recommends that § 8-463 be so amended, with leave to grant a thirty day extension in criminal cases by the court for good cause shown.

While peripheral to the Commission's study, it has come to its attention that confusion exists in the law as to how Petitions for Appeal get to the Supreme Court. The statute (§ 8-475) requires that the petition be presented "to the Supreme Court,xxx or to a judge thereof,xxx or filed with the Clerk." The statute is interpreted to mean that the Justice must be present to receive the petition. The Commission understands that this matter has been studied by the Judicial Council of Virginia, and, in connection with other proposals of the Council to simplify the appellate process, a proposal will be presented to the General Assembly for its consideration which will allow filing by certified mail, or by filing with the Clerk. The Commission supports the proposals of the Judicial Council in this regard.

OTHER MATTERS CONSIDERED

A number of matters were suggested to the Commission as problem sources relative to the study. Each of these were considered by the Commission in detail, and are herein set out.

A. DECRIMINALIZATION OF CERTAIN OFFENSES

Recommendations from several sources urged the Commission to decriminalize the "victimless crimes", such as certain non-addictive drug offenses, certain sexual offenses, disorderly conduct, abusive language and the like. While reducing the list of matters

deemed criminal would certainly reduce the court caseload, it was felt that matters of far-ranging policy entailed with this problem were outside the scope of the Commissions' charge and it therefore made no recommendations thereon.

B. COURT OF CRIMINAL APPEALS

The establishment of an intermediate Court of Appeals, or a Court of Criminal Appeals was strongly recommended by several witnesses before the Commission. This matter was studied for two years by the Court System Study Commission, chaired by Chief Justice Lawrence W. P'Anson. The establishment of such a court was recommended by it, and legislation was introduced designed to achieve this result. The General Assembly declined to establish this new layer to the original court system. Since the Commission on Speedy Trials in Criminal Cases had little time to, nor any mandate for, review of the recommendation of the former Commission, it is now in no position to recommend for or against the establishment of such a court.

C. EXPANSION OF PUBLIC DEFENDER SYSTEM

Pilot systems of public defender office now exist in several areas of the state and these systems are still under study in certain other areas. A Public Defender Commission was established by Chapters 410 and 476 of the Acts of Assembly of 1975, and the Commission is still at work. Since it is too soon to determine the extent that such a system should be employed, the Commission is inclined to pass no judgment on the concept until the results of the pilot system have been submitted to analysis.

D. COMMONWEALTH'S ATTORNEYS

Suggestions that Commonwealth's Attorneys and their assistants work full time at their duties were considered by the Commission. Since January 1, 1976, Commonwealth's Attorneys and their assistants in cities of more than 90,000 have been required to devote full time to their duties. (§15.1-821) The Commission determined that to expand the limitations of § 15.1-821 would extend beyond its charge.

E. CONTINUANCES

Suggestions with respect to continuances were made at the Commission's hearings. It was felt that while continuances, in the final analysis, should be granted only for good cause shown, the judgment to grant or deny this is a matter which an individual judge should handle in his sound discretion. § 19.2-241 requires that good

cause be shown in granting continuances beyond the second term after indictment and the Commission has seen no clear evidence of abuse of this directive.

F. DEADLINE ON PLEA NEGOTIATION AND REQUESTS FOR JURY TRIALS

Since a jury trial is a constitutional right which can be waived, through action or by inaction, imposing a deadline upon a request for a trial by jury is probably constitutionally permissible. However, imposing such a deadline could have the effect of causing more requests for juries and thereby slow down the criminal process instead of speeding it up.

Similar suggestions were made as to deadlines after which no further plea negotiations could be made. However, this restriction might very well have the same effect as a deadline on jury trial requests.

THESE MATTERS MERIT FURTHER STUDY, HOWEVER

G. PRE-SENTENCE REPORTS

Delays in obtaining Pre-Sentence Reports present a definite problem. Probation officers are overextended and overworked. Since a presentence report now entails a delay of six to nine weeks in sentencing, additional staff is indicated so as to reduce the time lag between conviction and sentencing. However, since this entails the primary problem of funding, the Commission has determined that this problem lies outside of its specific charge.

The Commission, however, has recommended that the Virginia Commission on Interstate Cooperation work with other states in an effort to speed up reports which are requested therefrom.

H. UNANIMOUS VERDICTS - SIZE OF JURIES

The Commission heard suggestions that verdicts be by majority vote rather than unanimous and that the size of criminal juries be reduced. After consideration, the Commission was of the opinion that the present system was quick and efficient, and any rare delay caused was not sufficient reason to depart from the system which has been traditional in Virginia since the early days of the Commonwealth.

I. CRIMINAL CASE PRIORITY

Recommendations were advanced to the Commission that criminal cases be given first priority in setting court dockets. It was generally agreed by the Commission that the problem is already

covered by statute (§ 19.2-241) and by Rule, and the Commission urges the Courts and the Commonwealth to apply these laws strictly within the bounds of reason.

Bills to carry out the recommendations of the Commission are set out as a separate appendix to this report.

Respectfully submitted,

Fred T. Gray, Chairman

Wyatt D. Durette, Jr.

Sam Garrison

J. Samuel Glasscock

Sol Goodman

Alex M. Harman, Jr.

George H. Heilig, Jr.

Alex B. MMurtrie, Jr.

John L. Melnick

Chandler A. Nelson

Charles S. Russell

H. Selwyn Smith

John R. Snoddy

J. Randolph Tucker

A Bill to amend and reenact §§ 17-127.21, 19.2-217 and 19.2-218 of the Code of Virginia, relating to terms of circuit courts; informations, indictments or presentments; preliminary hearings; election of proceeding by accused.

Be it enacted by the General Assembly of Virginia:

1. That §§ 17-127.21, 19.2-217 and 19.2-218 of the Code of Virginia are amended and reenacted as follows:

§ 17-127.21. Number of terms; how fixed.—The chief judge of each circuit shall fix the terms of each of the courts within his circuit; provided, that there shall be held no less than ~~four~~ six terms of court each year, and the dockets for criminal and civil cases for the same term may be called on different days and in different courtrooms. Such terms shall be fixed by order, which shall be entered in the common-law order book in each court. The order fixing, or changing the terms of court shall be entered on or before January one, to become effective July one, and a copy of the order shall be forwarded to the Executive Secretary of the Supreme Court, who shall cause an abstract thereof to be published in the Code of Virginia, as a part of the Rules of Court.

§ 19.2-217. When information filed; prosecution for felony to be by indictment or presentment; waiver; process to compel appearance of accused.—An information may be filed by the Attorney for the Commonwealth based upon a complaint in writing verified by the oath of a competent witness; but no person shall be put upon trial for any felony, unless *reasonable ground to believe he committed the offense has been found pursuant to § 19.2-218, or unless* an indictment or presentment shall have first been found or made by a grand jury in a court of competent jurisdiction or unless such person, by writing signed by ~~such person~~ *him* before the court having jurisdiction to try such felony or before the judge of such court, shall have waived such indictment or presentment, ~~in which~~. *In either event he may be tried on a warrant or information. If the accused be in custody, or has been recognized or summoned to answer such information, presentment or indictment, or to appear at such preliminary hearing no other process shall be necessary; but the court may, in its discretion, issue process to compel the appearance of the accused.*

§ 19.2-218. Preliminary hearing required for person arrested on charge of felony; waiver.—~~No~~ *Any* person who is arrested on a charge of felony shall ~~be denied~~ *have the right to* a preliminary hearing upon the question of whether there is reasonable ground to believe that he committed the offense. ~~and~~ No indictment shall be returned in a court of record against any such person prior to such hearing unless such hearing is waived ~~in writing~~ by the accused.

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A Bill to amend and reenact § 8-463, as amended, of the Code of Virginia, relating to time within which petition of appeal must be presented.

Be it enacted by the General Assembly of Virginia:

1. That § 8-463, as amended, of the Code of Virginia is amended and reenacted as follows:

§ 8-463. Time within which petition must be presented.—No petition shall be presented for an appeal from, or writ of error or supersedeas to, any final judgment, decree, or order, whether the Commonwealth be a party or not, (a) which shall have been rendered more than ~~four~~ *three* months before the petition is presented, *provided, that in criminal cases, a thirty day extension may be granted, in the discretion of the court, in order to attain the ends of justice,* or (b), if it be an appeal from a final order, judgment or finding of the State Corporation Commission which shall have been rendered more than four months before the petition is presented, or (c), if it be an appeal from a final award of the Industrial Commission unless the petition be presented within the time provided by § 65-94, or (d), if it be an appeal from a final decree refusing a bill of review to a decree rendered more than four months prior thereto, unless the petition be presented within three months from the date of such decree.

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A Bill to amend and reenact § 30-5, as amended, of the Code of Virginia, relating to continuances and plea filings where attorney or party is connected with the General Assembly or Division of Legislative Services.

Be it enacted by the General Assembly of Virginia:

1. That § 30-5, as amended, of the Code of Virginia is amended and reenacted as follows:

§ 30-5. Continuance or time for filing pleading, etc., where party or attorney is connected with General Assembly or Division of Legislative Services.—Any party to an action or proceeding in any court, including the Supreme Court of Virginia, commission or other tribunal having judicial or quasi-judicial powers or jurisdiction, who is an officer, employee or member of the General Assembly, employee of the Division of Legislative Services, or who has, prior to or during the session of the General Assembly, employed or retained to represent him in such action or proceeding an attorney who is an officer, employee or member of the General Assembly, or employee of the Division of Legislative Services, shall be entitled to a continuance as a matter of right (i) during the period beginning thirty days prior to the commencement of the session and ending thirty days after the adjournment thereof *in civil cases only*, and *during the period beginning fifteen days prior to the commencement of the session and ending thirty days after the adjournment thereof in criminal cases*, and (ii) during a period beginning one day prior to the meeting date of any commission, council, committee or subcommittee created by the General Assembly at which such officer, employee or member is scheduled to attend and ending one day after the adjournment of such meeting *in civil cases only*, provided no continuance need be granted under (ii) unless it shall have been requested at least seven days prior to the first day for which such continuance is sought. The period required by any statute or rule for the filing of any pleading or the performance of any act relating thereto shall be extended until thirty days after any such session. The failure of any court, commission or other tribunal to allow such continuance when requested so to do or the returning of such filing or act during the period hereinabove specified shall constitute reversible error; provided that this section shall not prevent the granting of temporary injunctive relief, or the dissolution or extension of a temporary injunction, but the right to such relief shall remain in the sound discretion of the court or other such tribunal.

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SENATE JOINT RESOLUTION NO.....

Requesting the Commission on Interstate Cooperation to encourage and promote free and efficient exchange of probation information with other states.

WHEREAS, delay in the criminal process is caused in the gathering by probation officers of information relating to the personal background of persons convicted of crime so that they may be intelligently sentenced; and

WHEREAS, in many instances, officers have been impeded in their efforts to prepare presentencing reports due to delay in obtaining information from their counterparts in other states; and

WHEREAS, there should be a free and efficient exchange between the Commonwealth of Virginia and the other states of such information, in order that the judicial process be enhanced thereby; now, therefore, be it

RESOLVED by the Senate of Virginia, the House of Delegates concurring, That the Commission on Interstate Cooperation is requested to take such steps as it may deem advisable to encourage and promote the free and efficient exchange of probation information with other states, including, but not limited to, negotiating for, or entering into, compacts with respect thereto.

