REPORT OF THE
VIRGINIA STATE CRIME COMMISSION ON

Pretrial Detention Decision Making Process

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

SENATE DOCUMENT NO. 19

COMMONWEALTH OF VIRGINIA
RICHMOND
1991

COMMONWEALTH of VIRGINIA

VIRGINIA STATE CRIME COMMISSION

General Assembly Building

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

F. L. RUSSELL
EXECUTIVE DIRECTOR

December 11, 1990

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

House Joint Resolution 79 and Senate Joint Resolution 33, agreed to by the 1990 General Assembly, directed the Virginia State Crime Commission to "study and identify improvements to the decision-making process with respect to pretrial detention of persons accused of crimes."

In fulfilling this directive, a study was conducted by the Virginia State Crime Commission. I have the honor of submitting herewith the study report and recommendations on pretrial detention in the Commonwealth.

Respectfully submitted,

Elmon T. Gray
Chairman

MEMBERS OF THE VIRGINIA STATE CRIME COMMISSION

From the Senate of Virginia:

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

From the House of Delegates:

Robert B. Ball, Sr., Vice Chairman
V. Thomas Forehand, Jr.
Raymond R. Guest, Jr.
A. L. Philpott
Warren G. Stambaugh
Clifton A. Woodrum

Appointments by the Governor:

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

Attorney General's Office:

H. Lane Kneedler

IN COMMEMORATION:

Of the Honorable Warren G. Stambaugh, 1944-1990, member of the House of Delegates and Virginia State Crime Commission. His insight, wit, and dedication to the work of the Commission will be greatly missed.

Jail Issues Subcommittee Studying

PRETRIAL DETENTION (SJR 33 & HJR 79)

Members

Delegate V. Thomas Forehand, Jr, Chairman
Senator Howard P. Anderson
Delegate Robert B. Ball, Sr.
Senator Elmo G. Cross, Jr.
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I. Authority for Study

During the 1990 session of the Virginia legislature, Delegate Wm. Roscoe Reynolds sponsored House Joint Resolution No. 79 (HJR 79) and Senator Joseph V. Gartlan, Jr. sponsored Senate Joint Resolution No. 33 (SJR 33), requesting and authorizing the Virginia State Crime Commission to "study and identify improvements to the decision-making process with respect to pretrial detention of persons accused of crimes." (See, Appendix A.) The identical bills were spurred by findings of the Commission on Prison and Jail Overcrowding that over half of the Commonwealth's jail population is awaiting trial and that a more efficient information delivery system on bail and bond decisions and use of risk assessment instruments to determine which accused offenders could be safely released before trial would improve the overcrowding situation by reducing the length of pretrial detention.

Section 9-125 of the *Code of Virginia* establishes and directs the Virginia State Crime Commission (VSCC) "to study, report, and make recommendations on all areas of public safety and protection." *Code of Virginia* §9-127 provides that "the Commission shall have the duty and power to make such studies and gather information in order to accomplish its purpose, as set forth in §9-125, and to formulate its recommendations to the Governor and the General Assembly." Section 9-134 of the *Code of Virginia* authorizes the Commission to "conduct private and public hearings, and to designate a member of the Commission to preside over such hearings." The Virginia State Crime Commission, in fulfilling its legislative mandate, undertook the study of pretrial detention issues as requested and authorized by HJR 79 and SJR 33.

II. Members Appointed to Serve

Subsequent to the April 18, 1990, meeting of the Crime Commission, Commission Chairman, Senator Elmon T. Gray selected Delegate V. Thomas Forehand, Jr. to serve as Chairman of the Jail Issues Subcommittee, the subcommittee assigned to study both pretrial detention issues and laws governing local jails. The following members of the Crime Commission were selected to serve on the subcommittee:

Delegate V. Thomas Forehand, Jr., Chairman
Senator Howard P. Anderson, Halifax County
Delegate Robert B. Ball, Sr., Henrico County
Senator Elmo G. Cross, Jr., Hanover County
Mr. Robert F. Horan, Jr., Fairfax County
Rev. George F. Ricketts, Sr., Richmond
Delegate Clifton A. Woodrum, Roanoke

III. Study Design

In accordance with SJR 33 and HJR 79, the Subcommittee set about its study and identification of improvements to the decision-making process with respect to pretrial detention of persons accused of crimes.

The Commission applied for, and received, a grant from the National Institute of Corrections (NIC) earmarked for expenditure on this study. The Commission made a request for proposal by outside consultants to perform the bulk of the work on the study, utilizing those grant funds from the NIC (See, Appendix B). The Commission received numerous inquiries about the request and received proposals from two of the respondents (See, Appendix C).

The respondents were the Adjudication Technical Assistance Project (ATAP), a program funded by the Bureau of Justice Assistance, and Pretrial Services Resource Center (PSRC). Both organizations are located in Washington, D.C. Both have considerable experience with the subject matter of the study. ATAP and PSRC made a joint proposal to the Commission which would join their resources and expertise (See Consultant's report). Additionally, ATAP offered essentially to match the funds available under the NIC grant, effectively doubling the resources available for the study. The Commission accepted the joint proposal (See, Appendix D).

ATAP and PSRC developed and distributed a survey to judicial officers throughout the Commonwealth and tabulated the results of this survey. Subsequently, they conducted follow-up interviews and on-site visits with selected judicial officers in order to develop the results more definitively, and produced a report of their findings. Finally, the two organizations provided the Commission with recommendations in response to three of the five points specifically raised by the resolutions (For further discussion of these study areas refer to sections IV. and V. of this report, beginning on page 4).

The Commission staff worked closely with ATAP and PSRC throughout the course of the study, monitoring the activities of the organizations, and providing appropriate input. Additionally, the staff engaged independently in research of suggested and proposed pretrial services programs in Virginia and the many states, and of programs which are already operating in the Commonwealth.

The staff conducted research and inquiry into the two points raised by SJR 33 and HJR 79, which were not addressed by the work of ATAP and PSRC. A review of applicable statutory and case law was done, and research was conducted into literature relating to many aspects of pretrial detention, release and various mechanisms and programs associated with this process. Surveys of, and interviews with, Virginia Supreme Court and Department of Criminal Justice Services personnel were conducted, and testimony by these persons was received by the subcommittee. Other individuals contacted for this segment of the study included members of the Commonwealth's Attorneys office, magistrates' offices and other judicial officers.

Meetings:

First subcommittee meeting	September 19, 1990
Second subcommittee meeting	October 16, 1990
Third subcommittee meeting	November 13, 1990
Fourth subcommittee meeting	December 11, 1990

Reports:

Initial staff study	September 19, 1990
First update	October 16, 1990
Second update	November 13, 1990
Update & proposed recommendations	December 11, 1990
Final subcommittee report to Commission	December 11,1990

IV. Background

As cited in SJR 33 and HJR 79 (See , Appendix A.), the Commission on Prison and Jail Overcrowding (COPJO), after conducting an extensive, broad-based study of the overall issue in 1989, found that half of the contribution to Virginia's jail overcrowding was that population being held in jail while awaiting trial. COPJO determined that increased use of risk assessment tools and pretrial release alternatives could reduce the population awaiting trial. It also found numerous inconsistencies in the *Code of Virginia* regarding bail, bond and recognizance. COPJO recommended, therefore, that a study be conducted to assess: "1) improvements possible through clarifying the provisions, and eliminating inconsistencies, in the various sections of the *Code of Virginia* pertaining to bail, bond, and recognizance; 2) methods to provide critical information about an offender to judicial officers at the time of making bail/bond decisions; and 3) the need for developing bonding guidelines and requiring participation in bail risk training for all magistrates and judges. The study should also identify satisfactory ways of providing identifying information about the complainant, when the complainant is not a police officer." (Report of the 1989 Commission on Prison and Jail Overcrowding, Pp. 40,41, COPJO, 1990). Pursuant to the recommendations of the Commission on Prison and Jail Overcrowding as incorporated in the Senate and House joint resolutions, the study was undertaken by the Crime Commission.

V. Study Issues

The issues presented in the study resolution, which echo those of the Commission on Prison and Jail Overcrowding, can be reduced to the following questions:

a. What are the inconsistencies in the *Code of Virginia* relating to bail, bond and recognizance which should be eliminated, and how should that part of the Code be clarified?

b. What are the methods that should be developed, created, or improved to provide relevant information about an accused at the earliest possible time for pretrial detention decisions?

c. What existing bail risk assessment tools can be improved and what tools can be made available for use by, and training of, magistrates and judges?

d. What is the best method of obtaining information about persons who file criminal complaints directly with a magistrate (rather than with a police officer), and relaying such information to the office of the Commonwealth Attorney?

e. Which alternative release programs employed within and without the Commonwealth could be put into place statewide?

VI. Problem Analysis/Discussion

The various issues identified were broken down into separate components for study purposes. The Pretrial Services Resource Center and the Adjudication Technical Assistance Project contracted with the Virginia State Crime Commission to provide assistance to the Commission on items numbered 1,3, and 5 in the resolution (correlating to a, c and e of the Study Issues outlined above). These two organizations, which possess extensive experience in the area of pretrial services, conducted research into the practices of judicial officers in making bail decisions, and developed recommendations for insuring effective release decisions, with an emphasis on maximizing limited jail space while guaranteeing public safety and defendants' appearance for trial (See, PSRC recommendations at Appendix F).

The staff conducted extensive background research into the activities of pretrial programs presently being operated in Virginia, including on-site visits of local programs, as well as review of literature and research on the

pretrial detention and release process, and alternatives to present practices. Primary focus was placed on the concerns surrounding items numbered 2 and 4 in the resolution (correlating to issues b and d above), which were not being studied by PSRC and ATAP. In this, substantial information and suggestions were received from personnel at the Virginia Supreme Court and the Department of Criminal Justice Services.

A. Inconsistent Provisions in Title 19.2

The first of the five broad issues raised by SJR 33 and HJR 79 (and the first of the two studied exclusively by Crime Commission staff) concerned inconsistencies in statutes governing bail, bond and recognizance.

The most glaring problem to be found in Title 19.2 relating to the bail process was the use of multiple labels in defining the procedures for hearings and the terms of release. Among these, "bond," "bail," and "recognizance" are used individually, jointly, sometimes interchangeably and often inconsistently to define both 1) the actual release from pretrial custody and 2) the conditions attached to such a release.

The *Code of Virginia* requires that any accused who is incarcerated be extended a hearing before an appropriate judicial officer to consider his release, pending trial. *Code of Virginia*, §19.2-120. Initially that judicial officer is likely to be a magistrate and, if the accused is not released, he receives a subsequent appearance before a district or circuit court judge.

The judicial officer is to consider various factors which relate to the accused's likelihood of appearance for trial and the safety of the community, should he be released. *Code of Virginia*, §19.2-120, §19.2-123. Upon determination by the judicial officer that the accused should be released such judicial officer may impose appropriate release conditions, including a promise to forfeit a sum certain for any breach of the conditions. *Code of Virginia*, §19.2-121, §19.2-123. The judicial officer may require that this commitment be accompanied by security (in the form of cash), where such a requirement is warranted. Id.

Because Title 19.2 of the *Code of Virginia*, which controls the bail process, has developed over many decades, the terms employed to describe various aspects of this process have occasionally been used in contradictory fashion as code sections were added. Incumbent upon the Commission was the need to decipher the primary meanings of such terminology, not only within the code, but as applied in case law and practice. Upon research of statutory and case law, and daily application of the language in Virginia and the many states the staff determined that the problems associated with Title 19.2 were more a matter of inconsistent usage than any fundamental conflict over the actual process. In fact, recent Virginia Supreme Court case law speaks directly to this issue, finding the need to differentiate the terms

"bail," "bond" and "recognizance." Heacock v. Commonwealth, 228 Va. 235, 321 S.E.2d 645 (1984).

The Commission's staff research revealed that no radical change in terminology would be necessary to eliminate the confusion in the bail statutes, but that adequate definition of terms, and amendment to insure consistent usage throughout the code is the proper response to the concerns raised by SJR 33 and HJR 79.

Two additional problems were noted in Title 19.2. The first, found in §19.2-123, was simply the need for clarification of the code. Because this section explicitly permits the use of real estate in determining the solvency of a surety but is silent with regard to personal property, a misconception had developed among some judicial officers that personal property could not be so used. In fact, personal property is commonly used in Virginia to value a surety's assets. Thus, specific recognition of this in the *Code of Virginia* would eliminate the misconception.

The final source of inconsistency was found in §§19.2-132, 19.2-132.1 and 19.2-133, which overlap in their language and purpose. The result of three different sections addressing the question of when the amount of a bond or recognizance may be increased for an accused who has already been admitted to bail was a certain amount of confusion about such requirements. Again, clarification of the language, without any substantive change in requirements, would satisfactorily resolve this problem.

B. Methods for Providing Information About a Complainant

The second issue studied exclusively by Crime Commission staff was the directive to identify methods of providing information about a criminal complainant, when that complainant is not a police officer. The concern which motivated inclusion of this issue in the resolutions was the frequent incident of criminal complaints being filed before magistrates by private citizens who failed to adequately identify themselves. Because no identifying information of a citizen complainant is required under current law, other than a signature from the complainant swearing to any facts asserted in the complaint, the Commonwealth Attorney is often left with insufficient knowledge of criminal cases.

A problem associated with any requirement that a complainant provide personal information is the potential for the accused to gain access to that information and harass the complainant. Evidence indicates that such a danger exists, and may not be uncommon. Thus, methods for providing information should take into consideration effective delivery of the information to the attorney for the Commonwealth while limiting access to that information by other persons where such access is unnecessary.

C. Providing Information to Judicial Officers, Providing Training to Judicial Officers and Identification of Alternative Pretrial Programs

The three remaining issues raised by the resolutions involve 1) the development of mechanisms for getting information about defendants to the judicial officer to aid in his decisions regarding pretrial release, 2) the development of risk assessment training for these judicial officers to enhance their ability to make effective pretrial release decisions and 3) the identification of programs as possible alternatives to the traditional pretrial release/detention process.

Each of these specific concerns relate to the broader objective of reducing unnecessary jail population while maintaining public safety and ensuring the appearance of defendants for trial. As noted, a study of these issues was made by ATAP and PSRC and specific recommendations were offered. (See, Appendix F for consultants' recommendations and comments.) The consultants' report was received at the Commission offices on Dec. 6, 1990. Thereafter, Crime Commission staff analyzed the PSRC/ATAP recommendations and, with the considerable assistance of Tony Casale, Planning and Technical Assistance Coordinator for the Department of Criminal Justice Services, formulated responses to the recommendations as follows:

Consultant Recommendation 1.

"Magistrates should be provided at a minimum complete local arrest records in all instances where bail must be set."

Response: This ambitious recommendation is derived from the major finding of the consultants' work - that bail setting judicial officers need more information earlier in the process to make an informed decision about release. It fails, however, to identify the means by which the objective is to be accomplished. Clearly, both a mechanism would have to be developed and a party or entity designated to do the work. The consultants suggest that "[i]n some cases this could be accomplished with a computer terminal tie in to VCIN; in others, a requirement that law enforcement provide a copy of the local record to the magistrate for bail setting would accomplish the end sought." While both these options would, indeed, be helpful, they also both have an unknown fiscal impact and, in the case of the second option, the records may not always be available at all hours. In sum, the recommendation has merit but requires further study to determine its feasibility and the most effective method of implementation (if any) in the future .

Consultant Recommendation 2.

"In no instance should a person be held on a magistrate's bail more than 48 hours without a review by a District Court Judge."

Response: Clearly, there are cases in which an accused might be held 48 hours or longer. This occurs most obviously over weekend holidays. Such delays are even greater in jurisdictions where court is not held on Monday (or Tuesday). In the latter case, a judge may be utterly unavailable. A more viable solution to insure review of the bail decision would be to require a second bail hearing before a magistrate. This would ensure adequate consideration of all additional information which may come to light prior to district court bail review. While this is a viable recommendation, some additional study is necessary to determine the most effective means of implementation.

Consultant Recommendation 3.

"At the initial court appearance the District Court Judge should have complete local criminal record information, as well as NCIC arrest information available for every detainee."

Response: This recommendation is very similar to recommendation number 1 which states that the magistrate should have available to him the complete local **arrest** record and suggests in the comments that the record could be gotten from VCIN. Here, it is recommended that NCIC be the source for the arrest record and that the **entire** record be made available to the judge. Conceivably, these overlapping recommendations could be merged and one mechanism manned by one party/entity could be responsible for making such information available. It has a definite (though unknown) fiscal impact, and further study would be necessary to determine whether this option is economically feasible and, if so, how it might best be accomplished.

Consultant Recommendation 4.

"At the initial appearance, the District Court Judge should be provided verified demographic information on each detainee appearing before him, including a recommendation as to appropriate conditions of release or detention."

Response: Again, the recommendation has merit but leaves open the question of who is to gather such information and how. There is no suggestion as to what factors would go into making an appropriate release/detention recommendation to the judge. These issues must be resolved prior to undertaking any further action on this recommendation.

Consultant Recommendation 5.

"On a monthly basis, bail setting judges should be provided aggregate data on: numbers released and detained; failure to appear rates, and rearrest rates."

Response: §53.1-124(b) of the *Code of Virginia* already requires the semimonthly reporting to the circuit court, the general district court and the juvenile and domestic relations district court of the number of prisoners awaiting trial, their names, offenses and amount of bail. The additional information called for may be of value to judicial officers in aiding a determination of the effectiveness of bail decisions, and thereby guiding future conduct. However, compilation of the data ("numbers released. . .; failure to appear rates, and rearrest rates") would be burdensome and expensive. Personnel and resources for such an effort are not immediately available. Thus, implementation of such an endeavor does not appear to be feasible at the present time.

Consultant Recommendation 6.

"Bail setting judges should be apprised on a regular basis of the availability of pretrial treatment "slots," and organizations available to provide third party custody monitoring and supervision."

Response: Without expressly recommending third party custody as a possible alternative solution to release on bond, this recommendation raises an issue for further investigation - the expansion of alternative supervised release programs. One such alternative might be an expansion of CDI to accommodate pretrial detainees. Community Diversion Incentive programs presently cater only to convicted persons. While a moderate addition in personnel might be necessary to handle a pretrial case load, the structure already exists, including established offices and experienced personnel, to engage in such duties.

Where pretrial programs are available judges are receiving information about release alternatives. Even where such programs don't exist, defense counsel carry that responsibility. However, it is hoped that judges and magistrates alike are already aware of the traditional organizations and "slots" available for pretrial release. It is only with the advent and implementation of new or different programs that such information should be require.

Employment of alternatives to incarceration as a means of maintaining supervision and control over accused persons pending trial is a concept well worth consideration. More specific suggestions should be scrutinized for viability and method of implementation.

Consultant Recommendation 7.

"The recommendations provided to judicial officers should include but not be limited to release on recognizance, third party custody, reporting to a specific agency on a regular basis, electronic monitoring, or drug testing. If unable to verify sufficient information, no recommendation should be made."

Response: Where pretrial services exist recommendations already include a release on recognizance, third party custody (where available) and reporting to a specific agency (where available). The feasibility of electronic monitoring has not been investigated as a pretrial alternative nor has drug testing (as a condition of freedom) been tested statewide. As with some of the other recommendations, these are good ones generally. Again, recommendations for release can be made only where personnel exist to make them. It would be helpful to study further the opportunity for more specific alternatives as conditions of pretrial release, electronic monitoring and drug testing being prime examples.

Consultant Recommendation 8.

"Judicial officers should be regularly apprised of the compliance of defendants released with non-financial conditions pending trial."

Response: A system for providing this type of information is conceptually attractive. No such system presently exists, however, nor are the personnel and resources available for development of such a system at this time. It is not clear how the information would be put to use by judicial officers nor how it would be gathered. The recommendation requires further study.

Consultant Recommendation 9.

"In every instance where a defendant is detained and bound over to the Circuit Court, a review of the information provided at the initial bail setting shall be undertaken. If additional information or verification results, a new report and recommendation shall be submitted to the court with jurisdiction in the case."

Response: A defendant already is entitled to a review of his initial bail hearing upon request. A requirement that such a review be made automatically in all cases is a good one, demanding no significant investment in additional resources. Verification of information occurs presently in those jurisdictions possessing pretrial programs and such information as is available should certainly be placed before the court to enhance decision-making capabilities. Where no pretrial program exists, a report would not be available, and traditional sources of information would have to be relied upon by the court. This recommendation could be assessed with only moderate additional study, and a determination made as to means of implementation.

Consultant Recommendation 10.

"The state should be responsible for insuring that training occurs in the area of pretrial screening and supervision; that recommendation schemes employed in the counties and judicial districts accurately reflect both statutory wording and local research findings; and that county data be regularly aggregated to provide policy makers with state-wide information on release/detention practices."

Response: As noted by the PSRC report, pretrial services training is already being provided by the state through the Department of Criminal Justice Services, in those areas where programs are presently operating. Likewise, DCJS requires regular reports by all programs which accept state funding, which provides them with data on the operations of these programs. Thus, much of what is suggested under recommendation 10 is already being accomplished. The more comprehensive scheme called for by this recommendation, however, would require a substantial expenditure of state funds which are unlikely to be available at this time.

Consultant Recommendation 11.

"An investigation of the proper role of bail bonding for profit in the Commonwealth should be undertaken."

Response: This recommendation was prompted by responses to the survey indicating that substantial problems exist with the industry of bail bonding in the Commonwealth. In fact a legislative subcommittee, chaired by Delegate V. Thomas Forehand, was established to study procedures and standards for bail bondsmen, and presented its findings in a 1984 report (House Document No. 17, 1984).

The Joint Subcommittee concluded that a mechanism should be adopted "to ensure that bail bondsmen and their qualifications are known in the courts in which they practice" and further that "specific and uniform standards of conduct should also be adopted to preserve the integrity of bail bondsmen. The subcommittee found that the most efficient means of implementing these recommendations was through the circuit court system.

VII. Findings

A. Inconsistencies in Virginia statutes governing bail, bond and recognizance result primarily from misconceptions about the meaning of the terms "bail," "bond" and "recognizance."

The terms "bail," "bond" and "recognizance" are not defined in the *Code of Virginia* and, in some instances, are used in an inconsistent or confusing manner. The resulting ambiguity in the code has led to the apparent inconsistency in the application of bail statutes.

B. Virginia law relating to bail, bond and recognizance is fundamentally consistent.

There are no substantive contradictions in Virginia's bail statutes. The inconsistencies result from the manner in which specific language is employed in various sections of the Code, creating superficial conflicts which can be eradicated by a change in language, with no resulting change in the fundamental processes related to bail hearings or controlling terms of bonds or recognizances

C. No Statute or Rule Presently Requires a Citizen to Accompany a Criminal Complaint with Personal Information About Himself.

While a judicial officer before whom a citizen appears to file a criminal complaint may inquire into the identity and residence of the complainant, no formal requirement exists for providing this information. Consequently, if the judicial officer does not ask for such information or the complainant declines to provide it, the Office of the Commonwealth Attorney may lack sufficient evidence with which to prosecute the case. Prosecutors presently experience difficulties as a result of inadequate identifying information about citizen complainants.

D. The Ready Availability of Identifying Information About a Criminal Complainant May Result in Harassment of the Complainant by the Individual Who is the Subject of Such Complaint.

In some instances a citizen filing a criminal complaint before a magistrate is unwilling to provide personal information for fear that this information will become available to the defendant, who will use the information to identify and locate the complainant for purposes of harassment. Such harassment of complainants has occurred in the past. Methods of providing identifying information about complainants to the Office of the Commonwealth Attorney must provide for a means of protecting the complainant against undue harassment or,

alternatively, run the risk of deterring the filing of valid complaints by citizens concerned about the potential for such harassment.

E. The Majority of PSRC's Recommendations are Broad Formulations of Goals which Require Greater Study Before They Can Be Assessed for Determination of Desirability and Mechanics of Implementation.

Recommendations numbered 1, 3, 4, 5, 6, 7, 8 and 10 in the final report to the Crime Commission by the Pretrial Services Resource Center (See, Appendix F) represent, generally, suggestions for greater availability of information in the bail process and alternatives to traditional methods of ensuring a defendant's appearance for trial. While it is clear that many of these recommendations are desirable goals, they do not offer specific means for implementation of the goals. Further, such goals, as presented, would likely require consumption of scarce resources.

Prior to any actual implementation, further study of the individual recommendations is necessary to determine their feasibility, and the most effective means of implementation. A narrowing of the scope of each of these recommendations would enhance the likelihood that cost-effective methods could be developed to achieve them.

F. The PSRC Recommendation that No Person Be Held on a Magistrate's Bail Decision More than 48 Hours Without Review Could Be Implemented Without Undue Expense and at Significant Benefit.

Individuals accused of crimes are frequently detained subsequent to an initial appearance before a magistrate for a number of days before appearing before a District Court Judge. While an earlier District Court appearance may not be possible, a second appearance before a magistrate could be accomplished without undue burden. This would insure that additional information, including verification of facts provided by the accused or by police, be taken into consideration in review of the accused's initial bail hearing. Such a process could reduce the jail population and insure that those who can safely be released on bond or recognizance are released in a timely manner.

G. The PSRC Recommendation that All Persons Who are Detained and Bound Over to the Circuit Court Have Their Bail Decisions Reviewed is Feasible But Such Review is Already Available Upon Request.

Individuals bound over for Circuit Court may presently request a review of the bail hearing upon their appearance before the court, and may pursue appeal of the decision to each succesively higher court.

VIII. Recommendations

1) Amend §19.2-119, *Code of Virginia* to add statutory definitions for the terms "bail," "bond" and "recognizance." Defining these terms, which are ubiquitous in Chapter 9, Title 19.2, *Code of Virginia* (dealing with the bail process), is necessary to insure proper and consistent usage, but should not alter the meanings commonly given the terms by persons involved in the bail process.

2) Amend §19.2-120, *Code of Virginia* to make language used therein consistent with the manner in which it is commonly used throughout the code, including a conformity to recommended definitions in 19.2-119, *Code of Virginia.*

3) Amend §19.2-121, *Code of Virginia* to substitute the term "bond" for "bail," thereby bringing the section into conformity in usage of this language with the rest of the Code, including the recommended definitions in 19.2-119, *Code of Virginia.*

4) Amend §19.2-124, *Code of Virginia* to substitute "bond" for "bail," thereby bringing the section into conformity in usage of this language with the rest of the code, including the recommended definitions in 19.2-119, Code of Virginia.

5) Amend §19.2-130 to substitute "bond" for "bail," thereby bringing the section into conformity in usage of this language with the rest of the code, including the recommended definitions in 19.2-119, Code of Virginia.

6) Amend §19.2-134, *Code of Virginia* to delete the terms "bail" and "corporation" and to substitute therefor the terms "accused" and "city" thereby bringing the section into conformity with common usage in practice and in the *Code of Virginia.*

7) Amend §119.123, *Code of Virginia* to add the words "or personal property" in front of "real estate," thereby bringing the code into conformity with common practice and the recognized intent of the law.

8) Amend the *Code of Virginia* to delete §§19.2-132.1 and 19.2-133, incorporating the provisions of these sections into §19.2-132 which also deals with the subject matter of §§19.2-132.1 and 19.2-133. This will eliminate overlapping provisions and clarify the meaning of all provisions, while retaining requirements under the three sections.

9) Suggest that Virginia's Committee on District Courts create a form for obtaining identifying information from citizens filing a criminal complaint and mandate its usage by all magistrates in the Commonwealth, to be completed by the complainant and forwarded directly to the Commonwealth Attorney's Office. Implementation of this suggestion will provide the prosecutor necessary information about the complainant, without undue waste of magistrates' time or resources, and protect the complainant where necessary and appropriate.

10) Commit to further study the requirement that any person who is detained pending trial for a period in excess of 48 hours, pursuant to a magistrate's initial bail decision, be granted a review of that decision by a judicial officer then on duty in that jurisdiction.

11) Recommend that localities continue to investigate the recommendations numbered 1, 3, 4, 5, 6, 7, 8 and 10 in the Bail Study Project final report prepared by the Pretrial Services Resource Center (See, Appendix F), and to further the goals encompassed by those recommendations wherever, and to the degree, possible.

12) Recommend that Virginia state criminal justice and public safety agencies, in association with the Crime Commission, engage in a continuing investigation of the goals encompassed by recommendations numbered 1, 3, 4, 5, 6, 7, 8 and 10 in the Bail Study Project final report of the Pretrial Services Resource Center, with the objective of development of mechanisms by which these goals can be accomplished.

IX. Resources/Acknowledgements

The Crime Commission greatly appreciates the assistance of the following persons and organizations in the conduct of this study:

Supreme Court of Virginia
R. Milton Crump, Jr., Director of Technical Assistance
Larry Palmer, Magistrates Technical Assistance
Kenneth Montero, Director of Legal Research

Virginia Department of Criminal Justice Services
Anthony Casale, Planning and Technical Assistance Coordinator
Daniel Catley

Virginia State Sheriffs Association
John Jones, Executive Director

Appendix A

House Joint Resolution 79 & Senate Joint Resolution 33

LD4258553

HOUSE JOINT RESOLUTION NO. 79

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Rules
on February 11, 1990)

(Patron Prior to Substitute–Delegate Reynolds)

Requesting the Virginia State Crime Commission to study the decision-making process with respect to pretrial detention of persons accused of crimes.

WHEREAS, the Commission on Prison and Jail Overcrowding determined that currently one-half of the Commonwealth's jail population is awaiting trial and that growth of this component of the population has outpaced others; and

WHEREAS, the Commission's data suggests that annually about 900 jail beds are used by offenders ultimately released while awaiting trial; and

WHEREAS, because of current jail crowding these findings raise questions about decisions regarding establishment of bail and bond by judicial officers; and

WHEREAS, information available to a judicial officer about an offender upon such offender's arrest is minimal, resulting in bail and bond decisions which may be more conservative than necessary to protect public safety and the likelihood that the offender will appear for trial; and

WHEREAS, statutory provisions governing establishment of bail and bond and release on recognizance are confusing and inconsistent; and

WHEREAS, the use of risk assessment instruments to determine which accused offenders can safely be released while awaiting trial and the use of pretrial release alternatives such as release on recognizance, supervised release, and third party release may safely reduce the number of persons in jail awaiting trial; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia State Crime Commission is requested to study and identify improvements to the decision-making process with respect to pretrial detention of persons accused of crimes. The Commission's deliberations shall include, but not be limited to, the following:

1. Clarification and elimination of inconsistencies in statutes governing bail, bond, and recognizance;

2. Development of methods to provide relevant information about an accused person to judicial officers at the time pretrial detention decisions are made;

3. Development and provision of bail risk assessment training for all magistrates and judges;

4. Identification of methods of providing information about the complainant, when the complainant is not a police officer, to the attorney for the Commonwealth; and

5. Identification of alternative programs to ensure court appearance.

The Commission shall work throughout the study in consultation with representatives of the general district court judges, magistrates, attorneys for the Commonwealth, criminal defense attorneys, bondsmen, and organizations providing pre-trial services to offenders.

The Commission shall complete its work in time to submit its findings and recommendations to the Governor and the 1991 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for processing legislative documents.

LD4292118

SENATE JOINT RESOLUTION NO. 33

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Rules
on March 1, 1990)

(Patron Prior to Substitute–Senator Gartlan)

Requesting the Virginia State Crime Commission to study the decision-making process with respect to pretrial detention of persons accused of crimes.

WHEREAS, the Commission on Prison and Jail Overcrowding determined that currently one-half of the Commonwealth's jail population is awaiting trial and that growth of this component of the population has outpaced others; and

WHEREAS, the Commission's data suggests that annually about 900 jail beds are used by offenders ultimately released while awaiting trial; and

WHEREAS, because of current jail crowding these findings raise questions about decisions regarding establishment of bail and bond by judicial officers; and

WHEREAS, information available to a judicial officer about an offender upon such offender's arrest is minimal, resulting in bail and bond decisions which may be more conservative than necessary to protect public safety and the likelihood that the offender will appear for trial; and

WHEREAS, statutory provisions governing establishment of bail and bond and release on recognizance are confusing and inconsistent; and

WHEREAS, the use of risk assessment instruments to determine which accused offenders can safely be released while awaiting trial and the use of pretrial release alternatives such as release on recognizance, supervised release, and third party release may safely reduce the number of persons in jail awaiting trial; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia State Crime Commission is requested to study and identify improvements to the decision-making process with respect to pretrial detention of persons accused of crimes. The Commission's deliberations shall include, but not be limited to, the following:

1. Clarification and elimination of inconsistencies in statutes governing bail, bond, and recognizance;

2. Development of methods to provide relevant information about an accused person to judicial officers at the time pretrial detention decisions are made;

3. Development and provision of bail risk assessment training for all magistrates and judges;

4. Identification of methods of providing information about the complainant, when the complainant is not a police officer, to the attorney for the Commonwealth; and

5. Identification of alternative programs to ensure court appearance.

The Commission shall work throughout the study in consultation with representatives of the general district court judges, magistrates, attorneys for the Commonwealth, criminal defense attorneys, bondsmen, and organizations providing pretrial services to offenders.

The Commission shall complete its work in time to submit its findings and recommendations to the Governor and the 1991 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for processing legislative documents.

Appendix B

Study Request for Proposal

July 6, 1990

Request For Proposal
Virginia State Crime Commission

This is a Request for Proposal (RFP) for consulting services, made by the Virginia State Crime Commission, pursuant to the Virginia Public Procurement Act, Sections 11-35, et seq., of the Code of Virginia (1950), as amended, and issued in accordance with the Agency Procurement Manual (Dep't. of General Services, January,1990). This RFP contemplates an award following negotiations with two or more offerees.

1. NATURE OF REQUIRED WORK.

The Virginia State Crime Commission is a legislative agency formed by the General Assembly primarily to study, report, and make recommendations to the Governor and the General Assembly on all areas of public safety and protection. The Commission was directed by 1990 House Joint Resolution 79 and 1990 Senate Joint Resolution 33 to "study the decision-making process with respect to pretrial detention of persons accused of crimes," with the goal of reducing pretrial detention time and jail overcrowding in Virginia. The study will require that the consultant work with the Crime Commission members and staff to:

a. identify inconsistencies in the statutes governing the process of bail, bond, and recognizance, and make recommendations on how to eliminate inconsistencies and clarify bail procedures for persons accused of crimes in Virginia;
b. develop information collection procedures designed to provide judicial officers with greater information about the accused at the time of his appearance;
c. design or replicate a bail assessment training package for judicial officers in the Commonwealth to aid them in making informed, consistent, and systematic bail decisions;
d. identify methods to provide information to the Attorney for the Commonwealth about a complainant, when the complainant is not a police officer; and
e. identify alternative programs to ensure that the accused appears in court.

The consultant will be required to present written interim findings to the Commission on September 18, 1990; October 16, 1990; November 13, 1990; and present all recommendations and conclusions in the form of a final report to the Commission on or before December 3, 1990.

2. INFORMATION REQUIRED TO BE INCLUDED IN PROPOSAL

a. A statement of experience and qualifications of the consultant and all members of the proposed consulting team with specific reference to experience in the resolution of pretrial detention and jail overcrowding problems at the state and local level;

b. A statement that the consultant will comply with all applicable Federal, State and local laws and regulations in the performance of the study including affirmation of drug-free workplace status;

c. A statement of proposed activity designed to accomplish the work described in paragraph 1., above.

3. PROPOSAL EVALUATION/SELECTION OF CONSULTANT

The Crime Commission staff will evaluate all proposals and select a consultant on the basis

of the consultant's subject matter expertise, ability to meet strict deadlines (interim and final) set forth herein and ability to accomplish the objectives of this study in a professional manner.

4. CONTRACT

The successful offeror will be expected to execute a contract which will incorporate the provisions of the RFP and the proposal.

5. ISSUE DATE /CLOSING DATE/INQUIRIES

This RFP is issued July 6, 1990. All proposals submitted in response to this RFP, and signed by the consultant's contractually binding authority, must be received by Mr. Robie Ingram, Staff Attorney, Virginia State Crime Commission, 910 Capitol Street, General Assembly Building, Suite 915, Richmond, VA 23219, no later than 5:00 p.m., July 20, 1990. Any received later will not be considered. A consultant may submit more than one proposal. It is the responsibility of the consultant to inquire about and clarify any requirement of this RFP. Any such inquiries should be made to Mr. Ingram at the above address or by phone to (804) 225-4534.

Appendix C

Proposals

THE AMERICAN UNIVERSITY
WASHINGTON, D.C.

School of Public Affairs

July 23, 1990

Projects Office
3615 Wisconsin Ave., N.W.
Washington, D.C. 20016
(202) 362-4183
FAX: (202) 362-4867

D. Robie Ingram, Esquire
Staff Attorney
Virginia State Crime Commission
General Assembly Building
910 Capitol Street, Suite 915
Richmond, Virginia 23219

Ref: Crime Commission Pretrial Detention Study

Dear Mr. Ingram:

Thank you for giving me the opportunity to submit a proposal to offer my consultative services to the Crime Commission to assist Commission staff with the referenced study.

After reading your office's RFP and reflecting on the statewide adjudication system implications of the proposed study, I believe that the Commission's objectives in this endeavor could best be achieved through the vehicle of an organizational consultant or consultants, rather than individuals, to assist the staff in its work. I spoke about this matter with Mr. Alan Henry, director of the national Pretrial Services Resource Center, whom I know to be another of the invited consultants for the prospective study. He agrees that an approach to the study that com-bines the expertise and resources of his organization and the BJA-funded Adjudication Technical Assistance Project that I direct here at American would have several important benefits for the Commission.

First, the national Pretrial Services perspective of PSRC's staff and its specialized reference collection would be readily available to the study "team." Second, ATAP, by handling its involvement in the study as a technical assistance request from the Commission, could devote sufficient resources, including my time and outside consultant time and related expenses, to effectively double the amount of funds available to the Commission for this study, at no additional cost to the State of Virginia. And third, the consultative assistance provided to the Commission by staff and consultants of the two organizations would reflect the respective national experience of PSRC and ATAP, thereby adding an institutional dimension to the study's recommendations.

If the Commission agrees that there is merit in this approach, I recommend that you schedule an early meeting (within a week to ten days) with the chairman of the Commission subcommittee with responsibility for oversight of the Pretrial Detention Study for

Mr. Henry and me to meet with him or her and appropriate staff representatives to identify objectives for the study and agree on a strategy to competently accomplish them within the timetable laid out in the RFP. Once this is done, we would be able to recommend how your NIC technical assistance grant and ATAP resources could most effectively be applied to carrying out the agreed upon tasks.

As far as ATAP is concerned, we anticipate that all of the NIC funds presently available to the Commission for the Pretrial Detention Study would be used to pay for the services of PSRC in this joint endeavor and would be subject to a direct contract between the Commission and PSRC. The reason that I strongly recommend that a meeting be held before you enter into a contract for consultative services with the NIC grant, however, are: (1) to assure that the joint services that the Commission receives from PSRC and ATAP are jointly developed and coordinated from the inception of the tasks involved; and (2) to assure that both the Commission and the service-providing organizations agree on objectives and tasks that can be satisfactorily accommodated within the time and resource limitations of the prospective study.

I hope--and I know that Alan Henry will communicate the same desire to you separately--that we will be able to work with the Virginia Crime Commission on this very significant legislative response to the 1989 COPJO Report.

If the approach outlined in this letter is acceptable to the Commission, please send me a letter over the signature of Mr. Colvin requesting ATAP assistance with the design and conduct of the Pretrial Detention Study and reference this correspondence. Mr. Colvin's letter will qualify as a technical assistance request under our BJA grant. The ATAP government project monitor, Mr. Jay Marshall, Chief of the Courts Branch at BJA, has approved ATAP assistance to the Commission in this endeavor under our BJA grant.

I look forward to hearing from you.

Sincerely,

Joseph A. Trotter, Jr.
Director
Adjudication Technical Assistance Project

JAT:el

cc: D. Alan Henry, PSRC
Jay Marshall, BJA

PRETRIAL SERVICES RESOURCE CENTER

1325 G Street, N.W. Washington, D.C. Suite 620 (202) 638-3080

August 7, 1990

D. Robie Ingram, Esquire
Staff Attorney
Virginia State Crime Commission
General Assembly Building
910 Capitol Street, Suite 915
Richmond, VA 23219

Dear Mr. Ingram:

Based on our meeting last week in Richmond, I have drafted a tentative agenda and time line of tasks and products. A three-step approach is proposed to address two of the tasks outlined in the RFP: development of methods to provide relevant information to judicial officers and identification of alternative programs to ensure court appearance. The approach includes: (1) a literature and research review of nation-wide bail statutes, policies, practices and procedures; (2) a Virginia state wide survey of magistrates and judges; and (3) on-site visits to five representative jurisdictions. In addition, a draft training syllabus will be prepared in response to the third task of the development and provision of bail risk assessment training for all magistrates and judges.

There are basically two issues that need to be addressed in the first task: the identification of all relevant information for the pretrial release/detention decision and the weights or importance attached to each of the relevant factors. The literature/research review will examine each of the factors identified by the bail statute of the Commonwealth of Virginia as well as other states. Research findings that describe which specific factors effect pretrial misconduct will be reviewed. This review will focus particularly on research efforts undertaken by the Department of Criminal Justice Services, but would not be limited to these. In recent years, a number of evaluations of pretrial decision processes and outcomes have been undertaken in both the federal and state systems whose findings will also be included in the literature review.

A second part of the literature review will be to examine local site reports that describe the various ways in which relevant

information is gathered and submitted to bail setting judicial officers. This will include reviewing reports of jurisdictions within and outside the Commonwealth, with emphasis on those local jurisdictions which have implemented pretrial programs.

The literature review will also explore the range of alternative programs that exist and are used by Commonwealth judicial officers as well as nation-wide, and their effect. In addressing the task of identifying alternative programs to ensure court appearance, perhaps the reference to "programs" should be changed to "conditions," as not all conditions of release are necessarily administered through a distinct program, and moreover, a given program may in fact provide or administer several alternative conditions of release.

It is proposed that a survey be administered to all 440 magistrates and a representative sample of district court judges and a smaller representative sample of circuit court judges (sample size to be determined by the you). The survey would provide the views of bail setting judicial officers in the following areas: (1) what factors are and/or should be relevant in release/detention decisions; (2) the source(s) that are used to obtain such relevant information--defense counsel, commonwealth attorney, police report, pretrial program, defendant; (3) the importance of each factor in predicting likelihood of pretrial misconduct; and (4) the types and frequency of conditions imposed to ensure that defendants will appear in court. The survey will draw on similar ones undertaken in other states and developed with the assistance and final review of Commission staff.

Case studies of a few select jurisdictions will provide an in depth examination of the bail decision making process and thereby augment the information obtained from the literature review and state survey findings. Project staff will visit up to five Commonwealth jurisdictions to assess the manner in which information is currently made available to bail setting judicial officers. Commission staff will select the jurisdictions which should represent both a geographical--rural, urban, suburban--cross section of the state as well as of variety of information gathering methods employed.

Work products will include: (1) a preliminary finding report based on the literature review and survey results; (2) summary reports of each site visit; and (3) a final report which will summarize the findings of all three steps and recommend which factors should be included in information gathering efforts for bail setting and the most appropriate conditions to set to ensure against pretrial misconduct, either currently used in the Commonwealth or whose use may be considered. In addition, a draft training syllabus containing sections on legal issues, research findings, and program models will be prepared and submitted to the Commission for future presentation at an appropriate judicial training forum.

To complete the above tasks and products within the schedule you provided, the following tentative time line is proposed:

Week	Event/Product
August 13-17	Judges identified for survey
August 20-24	Judicial Survey prepared
August 27-31	Judicial survey disseminated
September 3-7	Literature review Entry of survey results on computer
September 10-14	Literature review Entry of survey results on computer
September 17-21	Follow up calls to survey respondents
September 24-28	Survey data analyzed Preliminary report prepared
October 1-5	Survey data analysis continued Preliminary report submitted
October 8-12	On-site visits
October 15-19	On-site visits
October 22-26	Summary on-site reports prepared
October 29-November 2	Summary on-site reports prepared
November 5-December 3	Final report prepared
December 7-11	Final report submitted

I hope this tentative schedule of is satisfactory and responsive to your needs. Let me know your thoughts.

Sincerely,

D. Alan Henry
Director

c: Joseph A. Trotter, Jr.

Appendix D

Virginia State Crime Commission Acceptance of Proposal

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

ROBERT E. COLVIN
EXECUTIVE DIRECTOR

COMMONWEALTH of VIRGINIA

VIRGINIA STATE CRIME COMMISSION

General Assembly Building

August 14, 1990

Mr. D. Alan Henry
Pretrial Services Resource Center
1325 G. Street, N.W., suite 620
Washington, D.C. 20005

Re: Pretrial Detention Study
Confirming Proposal Contents

Dear Alan:

This is to confirm our understanding of the contents of the proposal you sent to me dated August 7, 1990, and to advise you of some activities that have a bearing on this study and in which you may have an interest.

First, I include a reminder of our report and meeting schedule with the understanding that even though the breaks in your schedule are not the same as in ours, you will be able to prepare a report to the subcommittee for each of those occasions.

Reports Mailed	**Meeting Date**
Sept. 7, 1990	Sept. 18, 1990
Oct. 5, 1990	Oct. 16, 1990
Nov. 2, 1990	Nov. 13, 1990
Dec. 11, 1990	Dec. 19, 1990

Second, regarding the sites of on-site visits and the selection of judges for the survey, we would rather leave that selection to you with the option to "amend" the selections. How can we help?

Third, we are in the process of rounding up the magistrate names and addresses. Apparently, even that relatively simple task is time consuming. We will have a list to you before August 24.

GENERAL ASSEMBLY BUILDING • 910 CAPITOL STREET • SUITE 915 • RICHMOND, VIRGINIA 23219

Fourth, I think it is clear in your proposal that your final work product will make recommendations about which conditions are superior (i.e., a ranking) in guaranteeing that an accused appears for trial and does not engage in "pretrial misconduct." I want to assure that my understanding is correct, however.

Fifth, I want to remind you that we will need a couple questions in the survey about the issues of (1) complainants' affidavit and (2) the code sections deemed by the COPJO to be inconsistent and in need of clarification. (Apparently, the problem MAY be, for issue no. 1, that an accused is served with a complaint which provides the complainant's address and name, whereuopon the accused promptly locates the complainant and takes whatever action he deems necessary. Is this really a problem?)

Sixth, Bob has indicated that the formal grant approval will likely occur on or about August 15, with check in hand shortly thereafter. You will be the first to know. Have you looked at the contract; do you have any comments?

Seventh, there are two studies ongoing locally that may have an impact on this one, and vice versa. The House Appropriations and the Senate Finance Committees jointly are conducting a study of State Support for Jail Construction. The Department of Corrections is studying the efficacy of court service units for district courts. We are getting further information on both now. I thought you would like to know.

Finally, Bob Colvin was appointed by the Governor to the Alcohol Beverage Control Commission, effective August 20, 1990. Until a successor is elected by the Crime Commission, I will act as director. As a consequence, I expect Mike, our new "acting staff attorney for studies other than the drug study" will do much of the work here that I would have done. Bear with us, please.

Sincerely,

D. Robie Ingram

DRI/L7
c: Mike Maddox

Appendix E

Survey and Results

JUDICIAL SURVEY

NUMBER DISSEMINATED AND RESPONSE RATE

QUESTIONNAIRES DISSEMINATED

Total number of questionnaires	533
Number returned to sender	2
Total number of valid questionnaires	531
Total number of magistrate questionnaires	440
Number returned to sender	1
Total number of valid questionnaires	439
Total number of judge questionnaires	93
Number returned to sender	1
Total number of valid questionnaires	92

QUESTIONNAIRES RETURNED

Total number of questionnaires	289
Magistrates	233
Judges	41
Unknown (unidentified)	15

RESPONSE RATE

Total response rate	289/531	54%
Magistrate response rate	233/439	53%
Judge response rate	41/92	45%
Percent unknown	15/531	3%

TABLE 1

NUMBER OF TIMES PER WEEK
BAIL IS SET BY JUDICIAL OFFICER

FREQUENCY	PERCENTAGE MAGISTRATE	JUDGE
0-5	11 %	74 %
6-10	12	5
11-20	24	8
21-50	29	8
51-75	12	-
76-100	7	3
101-150	2	-
151-200	1	-
200 +	1	3

TABLE 2

NUMBER OF TIMES PER WEEK
BAIL IS REVIEWED BY JUDICIAL OFFICER

FREQUENCY	PERCENTAGE MAGISTRATE	JUDGE
0-5	68 %	59 %
6-10	12	15
11-20	9	3
21-50	8	5
51-75	3	5
76-100	0.4	8
101-150	0.4	-
151-200	0.4	5
200 +	-	-

TABLE 3
FREQUENCY OF BAIL SET ON OUT-OF-COUNTY RESIDENT
BY JUDICIAL OFFICER

FREQUENCY	PERCENTAGE MAGISTRATE	JUDGE
Often	34 %	31 %
Sometimes	45	51
Infrequently	18	15
Never	4	3

TABLE 4

NATURE OF JURISDICTION
BY JUDICIAL OFFICER

JURISDICTION	PERCENTAGE MAGISTRATE	JUDGE
Urban	37 %	45 %
Suburban	21	40
Rural	42	15

TABLE 5

YEARS SERVED AS JUDICIAL OFFICER BY JUDICIAL OFFICER

YEARS	PERCENTAGE MAGISTRATE	JUDGE
<1	7 %	13 %
1-2	9	10
3-5	17	21
6-10	27	26
10-15	19	18
16-20	12	5
20 +	9	8

TABLE 6

FACTORS CONSIDERED IN BAIL SETTING
BY JUDICIAL OFFICER

FACTOR	PERCENTAGE MAGISTRATE	JUDGE
Charge	99 %	98 %
Prior Arrests	87	63
Prior Convictions	87	98
Pending Cases	78	85
Residence	94	93
Employment Status	91	88
Education Status	35	50
Military Status	40	50
Financial Status	77	73
Arrest UI of Alcohol	83	40
Arrest UI of Drug	68	45
Family	88	90
Mental Condition	60	73
Medical Treatment	45	60
Alcohol Abuse	49	48
Drug Abuse	46	53
Prior FTA	95	93
Probation/Parole Status	76	88
Weight of Evidence	49	45
Victim Status	60	53

TABLE 7a

IMPORTANCE OF FACTORS CONSIDERED
IN BAIL SETTING BY MAGISTRATES

FACTOR	VERY IMP.	IMP.	SOME. IMP.	NOT VERY IMP.	LEAST IMP.
Charge	83 %	14 %	3 %	0.4 %	-
Prior Arrests	29	50	18	3	0.5
Prior Convictions	35	46	15	3	1.0
Pending Cases	29	41	25	4	1.0
Residence	39	45	15	0.4	-
Employment	27	47	22	4	1.0
Education	2	9	33	36	21
Military	4	11	31	29	24
Financial	17	41	29	10	4
Arrest/Alcohol	38	29	24	8	1.0
Arrest/Drugs	38	35	19	8	1.0
Family Ties	35	42	19	4	1.0
Mental Condition	31	41	22	4	3
Medical Treatment	14	27	39	13	6
Alcohol Abuse	9	35	38	14	4
Drug Abuse	14	34	35	13	5
Record FTAs	86	13	1	-	-
Parole/Probation	60	30	8	1.0	0.5
Evidence	19	25	23	17	16

TABLE 7b

IMPORTANCE OF FACTORS CONSIDERED
IN BAIL SETTING BY JUDGE

FACTOR	VERY IMP.	IMP.	SOME. IMP.	NOT VERY IMP.	LEAST IMP.
Charge	69 %	28	3 %	-	-
Prior Arrests	21	24	18	32	6
Prior Convictions	55	34	11	-	-
Pending Cases	32	26	37	5	-
Residence	33	46	18	3	-
Employment	18	39	33	10	-
Education	3	22	41	31	3
Military	6	24	27	36	6
Financial	11	29	43	17	-
Arrest/Alcohol	-	11	39	36	14
Arrest/Drugs	-	14	50	25	11
Family Ties	26	42	29	3	-
Mental Condition	15	56	18	9	3
Medical Treatment	13	25	38	22	3
Alcohol Abuse	10	24	45	17	3
Drug Abuse	14	24	41	17	3
Record FTAs	80	21	-	-	-
Parole/Probation	61	26	13	-	-
Evidence	13	20	27	27	13

TABLE 8a

AVAILABILITY OF INFORMATION ON FACTORS
CONSIDERED IN SETTING BAIL BY MAGISTRATE

	PERCENT AVAILABLE			
FACTOR	0%	1 - 50%	51 - 90%	91 - 100%
Charge	0.4 %	12 %	6 %	82 %
Prior Arrests	0.5	59	29	12
Prior Convictions	0.5	66	25	8
Pending Cases	0.6	72	22	6
Residence	1.0	35	34	31
Employment	0.5	39	35	26
School	2.5	64	23	11
Military	1.0	53	18	28
Financial	2.0	43	30	25
Arrest/Alcohol	-	24	23	54
Arrest/Drugs	0.6	44	18	38
Family Ties	0.5	33	41	26
Mental Condition	-	58	22	20
Medical Treatment	1.0	64	20	15
Alcohol Abuse	1.0	74	18	5
Drug Abuse	-	80	14	6
Record FTAs	0.5	54	24	22
Parole/Probation	1.0	63	24	13
Evidence	1.0	56	32	11
Victim	-	62	26	12

TABLE 8b

AVAILABILITY OF INFORMATION ON FACTORS
CONSIDERED IN SETTING BAIL BY JUDGE

FACTOR	PERCENT AVAILABLE 0%	1 - 50%	51 - 90%	91 - 100%
Charge	-	8 %	5 %	87 %
Prior Arrests	0.5%	59	30	12
Prior Convictions	-	31	56	13
Pending Cases	-	32	50	18
Residence	-	22	35	43
Employment	-	32	46	23
School	-	60	25	15
Military	-	35	35	30
Financial	-	41	31	28
Arrest/Alcohol	6	31	31	31
Arrest/Drugs	6	56	28	11
Family Ties	-	22	31	47
Mental Condition	-	69	21	10
Medical Treatment	-	58	17	25
Alcohol Abuse	-	90	5	5
Drug Abuse	-	62	14	5
Record FTAs	-	24	46	30
Parole/Probation	-	20	46	34
Evidence	5	68	21	5
Victim	5	68	14	14

TABLE 9a

SOURCES OF INFORMATION RELIED ON
IN BAIL SETTING BY MAGISTRATE

SOURCES	USED PRIM.	USED OFTEN	USED SOME.	USED INFREQ.	NEVER USED
People in Crt.	4 %	12 %	22 %	14 %	49 %
Arresting Officer	43	36	18	2	1
Prosecutor	4	10	29	31	26
Defense Counsel	1	3	14	38	44
Defendant	49	31	17	2	1
Pretrial Svcs. Officer	17	23	6	17	37
Bail bondsman	3	8	-	22	67
Other	14	33	26	21	7

TABLE 9b

SOURCES OF INFORMATION RELIED ON
IN BAIL SETTING BY JUDGE

SOURCES	USED PRIM.	USED OFTEN	USED SOME.	USED INFREQ.	NEVER USED
People in Crt.	21 %	18 %	26 %	18 %	16 %
Arresting Officer	8	25	22	28	17
Prosecutor	56	28	10	3	3
Defense Counsel	46	39	10	3	3
Defendant	24	41	27	8	-
Pretrial Svcs. Officer	5	6	10	14	64
Bail bondsman	1	1	10	18	70
Other	-	67	17	17	-

TABLE 10

PERCENTAGE OF NON-FINANCIAL CONDITIONS
OF RELEASE IMPOSED BY JUDICIAL OFFICER

PERCENTAGE	MAGISTRATE	JUDGE
0	2 %	8 %
about 25 %	36	59
about 50 %	25	21
about 75 %	29	5
> 90 %	7	8

TABLE 11a

FREQUENCY OF NON-FINANCIAL CONDITIONS IMPOSED BY JUDGE

CONDITION	VERY FREQ.	OFTEN	SOMETIMES	SELDOM	NEVER
Telephone	3	11 %	17 %	34 %	34 %
Report in Person	-	17	29	34	20
Stay in Juris.	35	32	16	11	5
Third-Part Custody	3	13	58	24	3
Supervision Public	3	14	28	25	31
Supervision non-profit	-	9	11	34	46
Employment	16	16	22	24	22
Educational	8	6	25	28	33
No Alcohol/ Drugs	19	24	32	11	14
Detox. Ctr.	8	14	27	27	24
Mental Health	5	14	41	27	14
Stay Away From Complaining Witness	34	53	13	-	-
Stay Away From Area	21	40	29	5	5
Adhere to Curfew	3	3	31	36	28
No Firearms Possession	11	14	33	22	19

TABLE 11b

FREQUENCY OF NON-FINANCIAL CONDITIONS IMPOSED BY MAGISTRATE

CONDITION	VERY FREQ.	OFTEN	SOMETIMES	SELDOM	NEVER
Telephone	1 %	1 %	8 %	21 %	68 %
Report in Person	3	0.5	11	18	67
Stay in Juris.	33	27	23	9	8
Third-Party Custody	15	36	43	4	2
Supervision Public	1	3	8	26	62
Supervision non-profit	0.5	-	7	18	75
Employment	1.0	5	10	16	68
Educational	0.5	2	3	16	79
No Alcohol/ Drugs	6	8	13	17	56
Detox. Ctr.	2	3	11	14	71
Mental Health	2	7	18	14	59
Stay Away From Complaining Witness	60	32	8	1	-
Stay Away From Area	40	36	18	5	1
Adhere to Curfew	5	7	13	19	56
No Firearms Possession	11	8	17	17	49

TABLE 12a

DO YOU PERCEIVE INCONSISTENCIES IN VA CODE
BY JUDICIAL OFFICER

YES/NO	MAGISTRATE	JUDGE
yes	16 %	14 %
no	84	86

TABLE 12b

DO YOU PERCEIVE PROBLEMS WITH CRIMINAL COMPLAINT FORM
BY JUDICIAL OFFICER

YES/NO	MAGISTRATE	JUDGE
yes	29 %	11 %
no	71	89

Appendix F

Pretrial Services Resource Center Recommendations

V: CONCLUSIONS AND RECOMMENDATIONS

The genesis for this study was the Report of the 1989 Commission on Prison and Jail Overcrowding in which the issue of pretrial detention and its impact on the crowding problem in the Commonwealth's jails was addressed.

The ideas suggested in that report and the experiences of local criminal justice officials as described in a statewide survey, on-site visits, and telephone interviews have been incorporated into the recommendations that appear below. We have also examined other states that have introduced pretrial screening and supervision procedures, and, where their experiences appeared to be viable for Virginia, have incorporated them in the recommendations. Finally, we looked to national criminal justice standards to ensure that the recommendations proposed comport with them.

We were guided in our work by the necessity to ensure that all arrestees in the Commonwealth receive equitable treatment in a timely manner, rather than simply decreasing the jail population at any cost. We believe that the implementation of the following recommendations will help achieve that goal, bringing about a more efficient, just system that in turn will decrease unnecessary and expensive pretrial detention.

The recommendations are divided by subject headings related to Magistrates, District

Court, Circuit Court, and the State.

Magistrates

1. Magistrates should be provided at a minimum complete local arrest records in all instances where bail must be set.

Research has demonstrated that criminal justice history information is significantly related to instances of failure to appear and rearrest, yet in a surprisingly high proportion of cases, magistrates in the Commonwealth indicated they had no prior criminal record information available when setting bail. Providing a complete criminal record history of a defendant may not be possible in every instance; thus, we recommend that only a local history of arrests be mandated. In some cases this could be accomplished with a computer terminal and tie in to VCIN (as already occurs in some jurisdictions); in others, a requirement that law enforcement provide a copy of the local record to the magistrate for bail setting would accomplish the end sought. But no matter how the individual counties decide to provide such information, its current absence leaves magistrates in a difficult position that has already resulted at least a few persons being released who presented substantial risk to the community, based on their record.

2. In no instance should a person be held on a magistrate's bail more than 48 hours without a review by a District Court judge.

It appears that the only time such detention can currently occur is on weekends; particularly holiday weekends. Two methods have been employed by other jurisdictions to address this problem. In the first case, persons detained 48 hours are reviewed and their status presented to the magistrate on call. This would be appropriate where a case of unintended detention exists (a magistrate sets a bail with an understanding that someone will be down shortly to make bail, but the person never comes, for example). In the second case, a District Court Judge "on call" would be contacted and provided available background information over the phone on identified detainees. Local counties could no doubt institute other means of addressing the jail crowding bottleneck that often occurs on long weekends and that this recommendation seeks to address.

<u>District Court</u>

3. At the initial court appearance the District Court Judge should have complete local criminal record information, as well as NCIC arrest information available for every detainee.

While arrest record information alone might suffice for the magistrate's decision, when the detainee appears before a judicial officer in the District Court, that judicial officer should be provided with not only the arrest but also disposition history of the

detainee. In many instances, arrests may have led to a conviction and the detainee being placed on probation; conversely, some arrests may have lead to a dismissal of all charges. In either case, the judicial officer's decision as to bail would be affected. For border counties particularly, the availability of NCIC arrest records is especially important, since criminals are not known for their high regard for state lines; their criminal activity in a neighboring state should be made known to the District Court judge.

4. At the initial appearance, the District Court Judge should be provided verified demographic information on each detainee appearing before him, including a recommendation as to appropriate conditions of release or detention.

The information should be obtained by a non-adversarial party, and be demonstrably related to the arrestee's likelihood of flight or rearrest. There are a number of counties in the Commonwealth where such information is currently provided to District Court judges by various agencies and non-profit organizations. While we were unable to visit all of these programs, we would assume that the information obtained in their interviews is similar and appropriate. A program or new agency may not be necessary in some counties; much of the information traditionally included in such interviews is similar to jail classification information. Or, a self-administered "fill in the blanks" form for detainees, with the information subsequently verified by an agency ,could suffice. Whichever format is chosen, copies of the information should be provided to the judge, the Commonwealth's Attorney, and the defense counsel.

The recommendation made should be based on the demographic information and criminal records background, and be objective in nature, not relying simply on the subjective assessment of the interviewer. In no instance should the allegations leading to the arrest be included in the recommendation consideration. While it is crucial that such arrest information be available to the bail setting judge, the proper vehicle for providing it is the Commonwealth's Attorney; just as challenges to those allegations are properly provided by the defense. Pretrial screening recommendations should be "charge blind," based solely on the factors that local research have demonstrated to be related to fugitivity or rearrest. Only a judicial officer should determine how much weight the Commonwealth's allegations in a particular case should be given in the final bail decision.

5. On a monthly basis, bail setting judges should be provided aggregate data on: numbers released and detained; failure to appear rates, and rearrest rates.

Judicial officers need to be kept informed of the impact of their decisions, both pre- and post-trial. But too often in the pretrial stage, judges do not find out if persons they intended to be released actually were (low bail), or conversely, if a high bail resulted in the defendant's release. In addition, judges should be informed of whether defendants they have released appeared for all court dates and remained arrest free. Finally, they might wish to know how they compare with their peers in the district: are they detaining or releasing more? Is their failure to appear rate higher/lower? While differences will always exist, judicial officers should be informed if those

differences are extreme.

6. Bail setting judges should be apprised on a regular basis of the availability of pretrial treatment "slots," and organizations available to provide third party custody monitoring and supervision.

The majority of defendants arrested and requiring bail to be set are neither very good nor very bad risks; for most, a particular problem--drugs and/or alcohol particularly--is the primary concern that a judicial officer has when deciding whether to release or detain. Unfortunately, judicial officers are too often in the dark at bail setting as to the availability of treatment for such problem cases, and must therefore err on the side of caution and detain the defendant. In some counties, judicial officers are advised of the availability of such services on a regular basis and can use that knowledge in deciding conditions of release. Still other counties have taken a proactive stance, actively encouraging local organizations to consider pretrial third party custody for appropriate cases. Even where the latter is not possible, it is incumbent on the system to keep judicial officers aware of the availability of resources that have traditionally been employed for pretrial release supervision and monitoring, as well as any changes in those resources that could affect their ability to provide the necessary services.

7. The recommendations provided to judicial officers should include but not be limited to release on recognizance, third party custody, reporting to a specific agency on a regular basis, electronic monitoring, or drug testing. If unable to verify sufficient information, no recommendation should be made.

Experience both in the Commonwealth and in other states has verified that many defendants can be released pending trial when conditions of release are recommended and available. Each of the examples above have demonstrated their viability as conditions of release. In a recently completed three year study in Michigan, for example, electronic monitoring was found to be an effective means of increasing the numbers of persons released pending trial without significantly increasing pretrial misconduct. Similarly, drug testing as a condition of pretrial release has been shown to increase the likelihood that drug abusers might be released while, again, maintaining community safety and the integrity of the court process. The key is to insure that the conditions recommended represent the least intrusion necessary to accomplish the ends sought: appearance at court proceedings and no rearrests. They should only be employed in those cases where but for their imposition, detention would likely result.

8. Judicial officers should be regularly apprised of the compliance of defendants released with non-financial conditions pending trial.

No matter how innovative or appropriate conditions of release might be, without strict monitoring of compliance and the speedy imposition of sanctions where appropriate, their usefulness deteriorates. The system must be able to provide judicial officers with regular updates as to compliance with conditions of release, as well as speedy response when violations apparently occur.

Circuit Court

9. In every instance where a defendant is detained and bound over to the Circuit Court, a review of the information provided at the initial bail setting shall be undertaken. If additional information or verification results, a new report and recommendation shall be submitted to the court with jurisdiction in the case.

In some instances, the factors that lead bail to be set at a certain level change, even while a defendant is incarcerated; warrants are disposed of, other charges dropped, "holds" are lifted. When a detained defendant's felony case reaches the trial court level, a pro-active bail review should be undertaken to insure that any changes that might affect the bail status are brought to the attention of the judge with jurisdiction.

State

10. The state should be responsible for insuring that training occurs in the area of pretrial screening and supervision; that recommendation schemes employed in the counties and judicial districts accurately reflect both statutory wording and local research findings; and that county data be regularly aggregated to provide policy makers with state-wide information on release/detention practices.

While local jurisdictions might be expected to accomplish much of what has been recommended here, there are three functions that appear to clearly require state action. They are training and technical assistance, data collection and the establishment and monitoring of standards related to pretrial screening and supervision within the Commonwealth. The structure for such services may already

exist; training and technical assistance is already provided to the pretrial services programs in the state through the Department of Criminal Justice Services, predominantly in the person of Criminal Justice Analyst Anthony C. Casale (In fact, through communication with the staff of the Crime Commission about this project, Mr. Casale has initiated a plan to bring in Justice Department-sponsored trainers to work with existing pretrial program staff in 1991). Wherever the locus may be, the services outlined should be available to local jurisdictions as they seek to address their jail crowding.

11. An investigation of the proper role of bail bonding for profit in the Commonwealth should be undertaken.

No issue in our survey generated such virulent responses as those related to bail bondsmen. While some system participants professed to be satisfied with bondsmen and their activities in their jurisdiction, others disagreed. Some had clear ideas as to what they wanted changed--the length of time extended from a capias issuance to forfeiture was one example given--while others called for the outright abolition of the entire system.

While this latter position is endorsed by the American Bar Association and every other national organization that has examined criminal process, the fact remains that the majority of states continue to allow bail bonding to exist; in fact, in some states it is the predominant method of release pending trial. More specifically, it is unclear what

the view of the majority of criminal justice professionals in Virginia is on the subject. It is clear however, that it is a practice that has a very real and immediate impact on the level of jail crowding that exists, and that many of the system actors contacted in our surveys had strong feelings about it. For these reasons, we feel that a statewide examination of this process should take place, involving all criminal justice representatives. The results of that examination should, at a minimum surface any further statutory changes related to bail bonding for profit deemed appropriate.

To estimate the costs associated with implementing the above recommendations is not possible without further study. For example, the state of Kentucky has accomplished virtually all of the changes recommended above through the passage of a number of statutes; one establishing statewide pretrial services, another outlawing bail bonding for profit and others as were deemed necessary. But this is but one way to achieve the ends sought; in Virginia, a new state wide bureaucracy, no matter its potential benefits, might not be feasible at this time. Other states have taken a different approach, one where responsibilities between counties and states (as well as costs) are shared. The state of Maryland, for example, is contemplating a bill that would establish pretrial programs, paid for equally by the local county and the state, with local control over the actual operations. Finally, Oregon has legislation that simply authorizes counties to establish such screening and supervision services at the discretion of the judicial districts, with training provided by the state. What needs to first be decided in the Commonwealth is whether these recommendations are

reasonable and appropriate to address the problems related to jail crowding. If so, the question of how best to accomplish them will be affected by the fiscal and political situation that exists.

Appendix G

Recommended Statutory Amendments

D 12/3/90 Brinson C 1/9/91 jds

SENATE BILL NO. ..... HOUSE BILL NO. .....

A BILL to amend and reenact §§ 19.2-119, 19.2-120, 19.2-121, 19.2-123, 19.2-124, 19.2-130, 19.2-132, 19.2-134, 19.2-136, 19.2-137, 19.2-144, 19.2-148, and 19.2-149 of the Code of Virginia and to repeal §§ 19.2-132.1 and 19.2-133 of the Code of Virginia, relating generally to bail, bond and recognizance.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-119, 19.2-120, 19.2-121, 19.2-123, 19.2-124, 19.2-130, 19.2-132, 19.2-134, 19.2-136, 19.2-137, 19.2-144, 19.2-148, and 19.2-149 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-119. Definitions.--As used in this ~~article-the-term-~~chapter:

"Bail" means the pretrail release of an accused from custody upon those terms and conditions specified by order of an appropriate judicial officer.

"Bond" means the posting by an accused or his surety of a specific sum, secured or otherwise, ordered by an appropriate judicial officer as a condition of bail.

" ~~judicial-~~Judicial officer" means, unless otherwise indicated, any magistrate within his jurisdiction, any judge of a district court and the clerk or deputy clerk of any district court or circuit court within their respective cities and counties, any judge of a circuit court, any judge of the Court of Appeals and any justice of the Supreme Court of Virginia.

"Recognizance" means a signed commitment by an accused to adhere to certain terms ordered by an appropriate judicial officer as a condition of bail.

§ 19.2-120. Right to bail; use of bond to satisfy fines and costs.--An accused, or juvenile taken into custody pursuant to § 16.1-246 who is held in custody pending trial or hearing for an offense, civil or criminal contempt, or otherwise shall be admitted to bail by a judicial officer as defined in § 19.2-119, unless there is probable cause to believe that:

1. He will not appear for trial or hearing or at such other time and place as may be directed, or

2. His liberty will constitute an unreasonable danger to himself or the public.

In any case where the accused has appeared and otherwise met the conditions of bail, ~~the bail~~ no bond therefor shall ~~not~~ be used to satisfy fines and costs unless agreed to by the person who posted ~~the bail~~ such bond .

§ 19.2-121. Fixing terms of bail.--If the accused, or juvenile taken into custody pursuant to § 16.1-246 is admitted to bail, the terms thereof shall be such as, in the judgment of any official granting or reconsidering the same, will be reasonably calculated to insure the presence of the accused, having regard to (1) the nature and circumstances of the offense, (2) the weight of the evidence, (3) the financial ability to pay ~~bail~~ bond , and (4) the character of the accused or juvenile.

§ 19.2-123. Release of accused on unsecured bond or promise to appear; conditions of release.--A. If any judicial officer has brought before him any person held in custody and charged with an offense,

other than an offense punishable by death, or a juvenile taken into custody pursuant to § 16.1-246, the judicial officer shall consider the release pending trial or hearing of the accused on his written promise to appear in court as directed or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer. In determining whether or not to release the accused or juvenile on his written promise to appear or an unsecured bond, the judicial officer shall take into account the nature and circumstances of the offense charged, the accused's or juvenile's family ties, employment, financial resources, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings, and any other information available to him which he believes relevant to the determination of whether or not the defendant or juvenile is likely to absent himself from court proceedings.

In the case of a juvenile or in any case where the judicial officer determines that such a release will not reasonably assure the appearance of the accused as required, the judicial officer shall then, either in lieu of or in addition to the above methods of release, impose any one or any combination of the following conditions of release which will reasonably assure the appearance of the accused or juvenile for trial or hearing:

1. Place the person in the custody of a designated person or organization agreeing to supervise him;

2. Place restrictions on the travel, association or place of abode of the person during the period of release and restrict contacts with household members for a period not to exceed seventy-two hours;

3. Require the execution of a ~~bail~~-bond with sufficient solvent sureties, or the deposit of cash in lieu thereof. The value of real estate or personal property owned by the proposed surety shall be considered in determining solvency; or

4. Impose any other condition deemed reasonably necessary to assure appearance as required, and to assure his good behavior pending trial, including a condition requiring that the person return to custody after specified hours.

In addition, where the accused is a resident of a state training center for the mentally retarded, the judicial officer may place the person in the custody of the director of the state facility, if the director agrees to accept custody. Such director is hereby authorized to take custody of such person and to maintain him at the training center prior to a trial or hearing under such circumstances as will reasonably assure the appearance of the accused for the trial or hearing.

B. In any jurisdiction served by a pretrial services agency which offers a drug testing program approved for the purposes of this subsection by the chief general district court judge, any such accused or juvenile charged with a crime may be requested by such agency to give voluntarily a urine sample. This sample may be analyzed for the presence of phencyclidine (PCP), barbiturates, cocaine, opiates or such other drugs as the agency may deem appropriate prior to the initial appearance of the accused or juvenile at a hearing to establish bail. The agency shall inform the accused or juvenile being tested that test results shall be used by a judicial officer at the initial bail hearing only to determine appropriate conditions of release. All test results shall be confidential with access thereto

limited to the judicial officer, the attorney for the Commonwealth, defense counsel and, in cases where a juvenile is tested, the parents or legal guardian or custodian of such juvenile. However, in no event shall the judicial officer have access to any test result prior to making an initial release determination or to determining the amount of bond, if any. Following this determination, the judicial officer shall consider the test results and the testing agency's report and accompanying recommendations, if any, in setting appropriate conditions of release. In no event shall the decision regarding an initial release determination be subject to reversal on the sole basis of such test results. Any accused or juvenile whose urine sample has tested positive for such drugs and who is admitted to bail may, as a condition of release, be ordered to refrain from illegal drug use and may be required to be tested on a periodic basis until final disposition of his case to ensure his compliance with the order. Sanctions for a violation of any condition of release pertaining to abstention from drug use, which violations shall include subsequent positive drug test results or failure to report as ordered for testing, may be imposed in the discretion of the judicial officer and may include imposition of more stringent conditions of release, contempt of court proceedings or revocation of release. Any test given under the provisions of this subsection which yields a positive drug test result shall be reconfirmed by a second test if the person tested denies or contests the initial drug test positive result. The results of any drug test conducted pursuant to this subsection shall not be admissible in any judicial proceeding other than for the imposition of sanctions for a violation of a condition of release.

C. Nothing contained in this section shall be construed to

prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court.

D. Nothing in this section shall be construed to prevent an officer taking a juvenile into custody from releasing that juvenile pursuant to § 16.1-247 of this Code. If any condition of release imposed under the provisions of this section is violated, the judicial officer may issue a capias or order to show cause why the bond should not be revoked.

§ 19.2-124. Appeal from order denying bail or fixing terms of bond or recognizance.--If a magistrate or other judicial officer denies bail to an accused ~~,~~ or juvenile taken into custody pursuant to § 16.1-246 ~~or~~, requires excessive ~~bail~~ bond, or fixes unreasonable terms of a recognizance under § 19.2-123, the accused or juvenile may appeal therefrom successively to the next higher court or judge thereof, up to and including the Supreme Court of Virginia or any justice thereof where permitted by law.

§ 19.2-130. Bail in subsequent proceeding arising out of initial arrest.--Any person admitted to bail by a judge or clerk of a district court or by a magistrate shall not be required to be admitted to bail in any subsequent proceeding arising out of the initial arrest unless the court having jurisdiction of such subsequent proceeding deems the initial amount of ~~bail~~ bond or security taken inadequate. When the court having jurisdiction of the proceeding believes the amount of ~~bail or security~~ bond inadequate, it may increase the amount of such ~~bail~~ bond or require new and additional sureties.

§ 19.2-132. Motion to increase amount of bond fixed by magistrate or clerk; when bond may be increased.-- ~~If the amount of the bail fixed by a magistrate or clerk be deemed inadequate~~ A.

Although a party has been admitted to bail, if the amount of any bond is subsequently deemed insufficient, or the security taken inadequate , the attorney for the Commonwealth of the county or city in which the accused or juvenile taken into custody pursuant to § 16.1-246 is held for trial may, on reasonable notice to the accused or juvenile and to any surety on the bond ~~or recognizance~~ of such accused or juvenile, move the court, or the ~~judge thereof~~ appropriate judicial officer to increase the amount of such ~~bail~~ bond. The court may, in accordance with subsection B, grant such motion and may require new or additional sureties therefor, or both. Any surety in a bond for the appearance of such party may take from his principal collateral or other security to indemnify such surety against liability . The failure to notify the surety will not prohibit the court from proceeding with the bond hearing.

B. Subsequent to an initial appearance before any judicial officer where the conditions of bail have been determined, no accused or juvenile, after having been released on a bond, shall be subject to a motion to increase such bond unless (i) the accused or juvenile has violated a term or condition of his release, or is convicted of or arrested for a felony or misdemeanor, or (ii) the attorney for the Commonwealth presents evidence that incorrect or incomplete information regarding the accused's or juvenile's family ties, employment, financial resources, length of residence in the community, record of convictions, record of appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings, or other information relevant to the bond determination was relied upon by the court or magistrate establishing initial bond.

§ 19.2-134. When bail piece to be delivered to accused; form of

bail piece.--In all cases in which recognizances, at the suit of the Commonwealth, may have been, or shall hereafter be entered into, it shall be the duty of the clerk of the court in which, or in the clerk's office of which, any recognizance is filed, to deliver to the ~~bail~~ accused on his applying therefor, a bail piece, in substance, as follows: "A. B. of the county ~~(or corporation)~~ or city of ....., is delivered to bail, unto C. D. of the county ~~(or corporation)~~ or city of ....., at the suit of the Commonwealth. Given under my hand, this day of ....., in the year ....."

§ 19.2-136. How bonds in recognizances payable; penalty.--~~Recognizances~~ Bonds in recognizances in criminal or juvenile cases, where the violation is committed against the Commonwealth or where the Commonwealth is a party, shall be payable to the Commonwealth of Virginia. ~~Recognizances~~ Bonds in recognizances in criminal cases where the violation is a violation of a county, city or town ordinance, shall be payable to such county, city or town. Every ~~recognizance~~ bond under this title shall be in such sum as the court or officer requiring it may direct.

§ 19.2-137. Order of court on recognizance.--When such recognizance is taken by a court of a person to answer a charge or of a witness to give evidence it shall be sufficient for the order of the court taking the recognizance to state that the party or parties recognized were duly recognized upon a bond in such sum as the court may have directed with such surety as the court may have accepted for his or their appearance before such court at such time as may have been prescribed by the court to answer for the offense with which such person is charged or to give evidence, as the case may be.

§ 19.2-144. Forfeiture of recognizance while in military or

naval service.--If in any motion, action, suit or other proceeding made or taken in any court of this Commonwealth on a forfeited bail bond or forfeited recognizance, or to enforce the payment of the ~~same~~ bond in any manner or any judgment thereon, or to forfeit any bail bond or recognizance, it appears that the person for whose alleged default such bail bond or recognizance was forfeited or judgment rendered, or such motion is made or proceeding taken, was prevented from complying with the condition of such bail bond or recognizance by reason of his having enlisted or been drafted in the army or navy of the United States, then judgment or decree on such motion, action, suit or other proceeding shall be given for the defendant.

§ 19.2-148. Surety discharged on payment of amount, etc., into court.--A surety on a bond in a recognizance may, after default, pay into the court from which the process has issued, or may issue thereon, the amount for which he is bound, with such costs as the court may direct, and be thereupon discharged.

§ 19.2-149. How surety on a bond in recognizance may surrender principal and be discharged from liability.--A surety on a bond in a recognizance may at any time arrest his principal and surrender him to the court before which the recognizance was taken or before which such principal's appearance is required, or to the sheriff, sergeant or jailer of the county or city wherein the court before which such principal's appearance is required is located; in addition to the above authority, upon the application of the surety, the court, or the clerk thereof, before which the recognizance was taken, or before which such principal's appearance is required, shall issue a capias for the arrest of such principal, and such capias may be executed by such surety, or his authorized agent, or by any sheriff, sergeant or

police officer, and the person executing such capias shall deliver such principal and such capias to the sheriff or jailer of the county or the sheriff, sergeant or jailer of the city in which the appearance of such principal is required, and thereupon the said surety shall be discharged from liability for any act of the principal subsequent thereto. Such sheriff, sergeant or jailer shall thereafter deliver such capias to the clerk of such court, with his endorsement thereon acknowledging delivery of such principal to his custody.

2. That §§ 19.2-132.1 and 19.2-133 are repealed.

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