

**REPORT OF THE
DEPARTMENT OF MENTAL HEALTH AND MENTAL
RETARDATION AND SUBSTANCE ABUSE SERVICES ON**

**The Impact of Public Inebriates
on Community and Criminal
Justice Services Systems**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 46

**COMMONWEALTH OF VIRGINIA
RICHMOND
1994**



COMMONWEALTH of VIRGINIA

DEPARTMENT OF

Mental Health, Mental Retardation and Substance Abuse Services

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COMMISSIONER

January 1994

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

House Joint Resolution 583, adopted by the 1993 General Assembly, directed the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS), with the assistance and cooperation of the Department of Criminal Justice Services (DCJS), to "study alternatives to repeated arrests of public inebriates." In addition, HJR 583 requested the development of a definition of "repeat offenders", alternatives that provide for conviction and incarceration of repeat offenders, an investigation of cost-effective approaches to treatment for incarcerated and non-incarcerated public inebriates, and appropriate recommendations for submission to the 1993 session of the General Assembly.

We have the honor of submitting herewith the report on the "Impact of Public Inebriates on Community and Criminal Justice Services Systems."

Respectfully submitted,

A handwritten signature in black ink that reads "King E. Davis".

King E. Davis, Ph.D., Commissioner
Department Mental Health, Mental
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A handwritten signature in black ink that reads "Lindsay G. Dorrier, Jr.".

Lindsay G. Dorrier, Jr., JD, Director
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PREFACE

This study was initiated in response to House Joint Resolution 583 requesting the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) with the assistance and cooperation of the Department of Criminal Justice Services (DCJS), the Commonwealth's Attorneys' Council, and Office of the Attorney General to "study alternatives to repeated arrests of public inebriates."

The report presents a review of literature which addresses issues related to the impact chronic public inebriates have on criminal justice and other community systems. The report also contains an analysis of arrest and jail confinement data and information obtained from interviews with community officials.

The Department of Mental Health, Mental Retardation and Substance Abuse Services and the Department of Criminal Justice Services wish to recognize Ken Batten (DMHMRSAS) and Tony Casale (DCJS), co-directors of the study and the individuals of the study group who contributed their time and expertise to this effort. The members of the study group were Joseph A. Walker, Michael Costanzo, Patty Gilbertson, Clyde Vandivort, Robert G. Jackson, Linda Stewart, Jim Davis, Allen Barley, William H. Davenport, LaDale George and David G. Speck.

Finally the Department of Mental Health, Mental Retardation and Substance Abuse Services and the Department of Criminal Justice Services express their gratitude to all the community leaders and officials who presented information about the problems associated with chronic offenders in the Commonwealth.

EXECUTIVE SUMMARY

The Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) and Department of Criminal Justice Services (DCJS) established a work group (DETOXIFICATION TASK FORCE) in May of 1991 to study issues related to diversion of public inebriates into public inebriate centers and social detoxification programs. This task force was asked to broaden its study to include the tasks requested by HJR 174, in 1992 and to continue the study in 1993.

House Joint Resolution 583, which continued the study of the public inebriate problem, requested a "study of alternatives to repeated arrests of public inebriates", development of a definition of "repeat offenders", alternatives that provide for conviction and incarceration of repeat offenders, and an investigation of cost-effective approaches to treatment for incarcerated and non-incarcerated public inebriates.

In its report to the 1993 General Assembly (The Impact of Public Inebriates on Community and Criminal Justice Services Systems - House Document # 20) the task force found that while arrests for public intoxication were declining, the cost of the chronic public inebriate on medical, business, treatment and criminal justice systems was considerable and increasing. Present treatment systems were not equipped to significantly reduce the impact of chronic public inebriation. The task force also determined that social detoxification or public inebriate centers are cost effective alternatives in diverting the majority of public inebriates from the criminal justice system.

The task force developed six recommendations. Four of the recommendations propose changes to the Code of Virginia to provide a consistent definition of the chronic public inebriate. They also suggest changes in sentencing procedures to provide for extended incarcerations or referrals to treatment programs.

Recommendation #5 requests the Department of Mental Health, Mental Retardation and Substance Abuse Services to study civil commitment of individuals with primary substance abuse problems to state mental health facilities and make recommendations for alternative community programs.

Recommendation #6 requests the development and expansion of Public Inebriate and Social Detoxification facilities in the five localities or areas with the highest incidence of arrests for public intoxication. Costs for this expansion are \$1,750,000.

STUDY DESIGN

The following people serve as members of the Detoxification task force established by the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) and Department of Criminal Justice Services (DCJS):

Lead Staff

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The task force identified several key areas for the study in 1992 which continued to guide the study in 1993. The areas are:

- Incidence of public intoxication;
- Definition of "repeat offenders";
- Availability of services for public inebriates;
- Impact of public inebriates on police, jails and judicial system;
- Cost effective alternatives to incarceration for population

The 1993 study utilized the 1992 literature review, interviews with community officials and current and historical data regarding public inebriate problems. Representatives from the legal community were added to assist the task force in reviewing existing statutes related to arrest, diversion, interdiction and civil commitment of intoxicated persons.

ARREST AND JAIL CONFINEMENT DATA

The study (House Document #20, 1993) of public inebriate issues contained arrest and jail confinement data for the offense of public intoxication that was based on a 1990 report entitled, "*An Analysis of the Need for Public Inebriate Centers*" prepared by the Department of Criminal Justice Services (DCJS) for the Commission on Prison and Jail Overcrowding (COPJO).

That report notes that arrests for the offense "public drunkenness" increased 12 percent from 1986 to 1989. The report further reveals that during FY 1989 there were 45,524 statewide commitments to jail for the offense of drunk in public; 45,408 were committed to jail awaiting release on bond or awaiting trial. When compared to the 60,317 arrests for 1989, it appears that about 75 percent of all individuals arrested for drunk in public were brought before a magistrate and committed to jail. Statewide arrests for drunk in public increased 10.5 percent from 1989 to 1990. However from 1990 to 1991, there was an 11.6 percent decrease in arrests.

The task force discussed the decline in arrests with law enforcement officials in 12 jurisdictions. According to the officials, the major reason for the decline was local government budget reductions. The majority of the budget cuts were made in the overtime category which supports, in many police departments, evening and midnight shift patrol and also court attendance by police officers. With reduced resources, law enforcement agencies tend to concentrate efforts on combating Part I crime and the more serious victim related Part II offenses. Participants in the 92 regional interviews suggested that the greater availability of shelters and public inebriate/social detoxification programs also have contributed to reduced arrests by getting public inebriates off the streets.

Arrests for public drunkenness were tracked through 1992. While total arrests for all crimes decreased 1.7 percent from 1991 to 1992, arrests for public drunkenness decreased 10.6 percent. Since 1990, arrests statewide for this offense have decreased by 14,037 or 21.1 percent. The Recovery Center, a combined Public Inebriate/Social Setting Detox Center operated by the Virginia Beach Community Services Board, accounted for 14 percent of the total statewide reduction in arrests for public drunkenness due in part to a 42 percent reduction in local arrests. This was due to adding treatment staff to police precincts to increase the diversion of individuals to the public inebriate center in lieu of arrest.

LITERATURE SEARCH AND DISCUSSION

The task force conducted a literature search to provide data about public inebriates, particularly chronic offenders, and to identify the cost of providing services to these individuals. In addition, the literature search provided information concerning the major service needs of the chronic population and "what works" as it relates to the treatment of these individuals. The literature spanned 35 years and covered topics ranging from hospital based studies of chronic alcoholics and incarcerated populations in the late 1950's to the development of detoxification center programs initiated during the 1970's and 1980's.

Chronic Repeat Offender Public Inebriate

Miller (1975), in a study of 10 chronic public drunkenness offenders, used the definition of "chronic" as having a minimum of 8 public drunkenness arrests during a previous 12 month period. Willenbring et. al. (1990), stated that the "term chronic public inebriate refers to that combination of chronic alcohol abuse, unemployment, homelessness, poverty and poor physical and emotional health." Richman (1984), revealed that "70 percent of inpatient alcoholics were readmitted within 2 years, and that 17 percent of ambulatory detox patients repeated within one month." The National Institute on Alcohol Abuse and Alcoholism (NIAAA) in 1982 stated, that "the average person arrested for public inebriation has been arrested 12 times before."

The literature generally supports the data gathered from the regional interviews, which indicate that a very small number of individuals are chronic repeat offenders. Comments from local criminal justice agencies indicate that these individuals account for 50 percent to 75 percent of the total annual arrests for public drunkenness in each of their localities. The Department of Criminal Justice Services estimates that approximately 1,500 persons accounted for 35 percent of the annual arrests, and another 3,500 individuals accounted for 55 percent of the total. Repeated hospitalizations and admissions to community detoxification centers, in addition to multiple arrests and convictions for public drunkenness, are common behaviors of the chronic offender. According to Finn (1985), "in some detoxification centers, 25 percent of admissions represent offenders who have been admitted at least 10 times within 3 to 24 months."

The literature search identified several factors which characterize chronic inebriates. These are:

- Multiple arrests for public intoxication in accordance with §18.2-388 of the Code of Virginia;

- Multiple transports to a detoxification center in lieu of arrest pursuant to §18.2-388 of the Code;
- Multiple commitments to jail by any judicial officer, as an unreasonable danger to himself or the public as the result of intoxication, in accordance with §19.2-120 of the Code;
- Multiple convictions of public intoxication pursuant to §18.2-388, either as the result of a hearing before a judicial officer or in absentia, in accordance with §19.2-258 of the Code;
- Multiple convictions of drinking in public pursuant to §4-78 of the Code;
- Multiple convictions of driving under the influence pursuant to §18.2-266 or §46.2-341.24 of the Code;
- Multiple failures to comply with court imposed sanctions following a conviction of public intoxication pursuant to §18.2-388 of the Code;
- Interdiction(s) for being an habitual drunkard, in accordance with §4-51 of the Code;
- Violation(s) of an interdiction order pursuant to §4-51 of the Code;
- Multiple admissions and treatment at an emergency room for medical problems or injuries occurring as the result of being intoxicated in public pursuant to §18.2-388 of the Code or due to the ingestion of alcohol; and
- Multiple admissions, voluntary or otherwise, to any facility as defined in §37.1-1 and §37.1-217 of the Code for the treatment of alcoholism or alcohol induced psychosis;

Time and Cost Factors

While all those interviewed shared the belief that the chronic public inebriate accounted for a significant utilization of limited resources, specific cost data for Virginia is very limited. Willenbring (1990) reveals that a 1984 feasibility study determined that the service utilization patterns and associated costs over a one year period for 43 chronic public inebriates randomly selected from the Hennepin County (Minnesota) detox center population totalled \$15,900 per person per year for medical and psychiatric costs and \$6,940 per person per year for legal and social services expenditures, for a total of \$22,840 per person per year. Willenbring

further stated that "approximately 450 were considered active, thus the total public expenditures that we could directly account for amounted to over \$9.7 million per year for less than 500 people."

As noted earlier in this report, the Commission on Prison and Jail Overcrowding (COPJO) report published in 1989 identified 60,317 arrests and 45,524 commitments to jail for public drunkenness in Virginia. In 1991, arrests decreased to 58,954. However, there were only 52,226 commitments to jail for public drunkenness. These commitments accounted for less than 58,300 reported prisoner days. An estimate of the daily contribution by the State Compensation Board for a "reported day" during that year was approximately \$31, inclusive of jail administration, jail and treatment officers, medical costs, and operating costs reimbursed through the per diem paid for local prisoners and state responsible felon prisoners. The state paid approximately \$1,810,400 to house public inebriates in local jails in 1991.

In addition to jail costs, public inebriates utilize a significant amount of law enforcement officer time. Officials in Fairfax County stated that it costs at least \$30 for each hour of a law enforcement officer's involvement with a public inebriate. In an article in the July 26, 1992 Richmond Times-Dispatch entitled "Are Jails Becoming Detox Centers?", Richmond City Police reported that it costs between \$20.53 and \$26.80 per hour for law enforcement involvement with public inebriates. The police indicate that about 2.75 hours can be spent on each public inebriate arrest, including transportation, lock-up and court time.

Gallant (1973), revealed that "a drunk arrest in New Orleans can take 2.5 to 4 hours of police department time for transportation, booking, court appearance and correctional officer time for each convicted alcoholic. This amounts to \$100 to \$130 per arrest/conviction, \$1,400 to \$1,800 annually, and between \$700,000 to \$1,100,000 of non-treatment costs for the arrests of 210 chronic alcoholic municipal court offenders."

Based on the aforementioned cost factors associated with public inebriate arrests in Virginia, the Department of Criminal Justice Services developed the following estimates:

PUBLIC INEBRIATE COST ESTIMATES

1.75 hours at \$20 per "law enforcement hour"	\$35.00
.50 hour at \$15 per "magistrate hour"	\$7.50
<u>.50 hour at \$255 per "judge/court hour"</u>	<u>\$127.50</u>
Cost Per Inebriate Arrest	\$140.00
Therefore, \$ 35.00 x 58,954 arrests	\$2,063,390.00
7.50 x 52,226 pretrial confinements	391,695.00
27.50 x 9,320 handled by court	<u>1,188,300.00</u>
	\$3,643,385.00
Compensation Board payments	<u>\$1,810,400.00</u>
Total Public Inebriate Costs	\$5,453,785.00

Approximately \$5.5 million was expended by the Virginia criminal justice system for public inebriates during 1991. This cost, however, does not include the local contribution for jail operations, nor does this estimate include medical emergency, mental health and substance abuse treatment costs. Wells (1985) indicate that "the chronic public inebriate utilizes public service significantly out of proportion to his numbers, and accounts for a disproportionate share of alcoholism treatment costs." It is clear from both the literature and the regional interviews that a significant number of the arrests for public drunkenness can be attributed to a small number of individuals.

Public Inebriate and Social Detoxification Facilities

Woogh (1986) cites a 1979 Ontario, Canada Ministry of Health report which states, that "during the past 30 years...the most visible group of alcoholics in the community has been the chronic drunkenness offenders whose actions were considered to be 'self-destructive behavior, warranting arrest and incarceration in jail.'" The Ministry, which developed the program model for social setting detoxification, also cautioned that, "a detoxification center is only the initial phase, without rehabilitation and follow up services it offers little more than a comparative period in jail." These factors indicate that the majority of public inebriates can be safely diverted from the jails and lockups into public inebriate centers or social detoxification facilities. Such diversion could result in significant reductions in the number of individuals arrested for drunk in public, especially for the nonrepeat offender. Many law enforcement and correctional professionals agree that jail is not an appropriate setting, but that public inebriate/detoxification centers would be more appropriate.

An analysis of the decline in total Virginia arrests for drunk in public from 1990 to

1991 indicates that cities accounted for 62 percent of the decline in total arrests and that Newport News and Virginia Beach accounted for 49 percent of the total reduction. Newport News experienced a 31 percent decline in arrests during the past year. This is attributable to an 18 month effort by the Capo' Detoxification Center operated by Hampton/Newport News Community Services Board which increased the number of direct law enforcement referrals to their facility. The Center provides both public inebriate "sobering-up" and social setting detoxification services. The City of Virginia Beach had even more dramatic results with a 42 percent decline in public inebriate arrests during the past year. Staff from the Community Services Board's detoxification program (The Recovery Center) worked for a year with precinct commanders to increase direct law enforcement referrals. Detox staff located at two of the city's precincts screened inebriates brought to the substation lock-ups and diverted those suitable for "sobering-up" and social detoxification services. In addition, the workers provided intervention services for police in domestic situations where drug or alcohol abuse was suspected.

The public inebriate center in Winchester (Starting Point) is another example of effective programming for public inebriates. Starting Point began services on July 1, 1982 as an outgrowth of a detox program in Front Royal, previously funded by federal Law Enforcement Assistance Administration (LEAA) funds. Prior to that year, total annual arrests for drunk in public in the three localities served by the facility ranged between 2,000 to 3,000. At the end of FY 1983, the three localities reported only 196 arrests for drunk in public while the facility reported 3,722 admissions, of which 60 percent were by law enforcement staff. While arrests for drunk in public have doubled during the past 10 years in these localities, admissions to Starting Point has grown to between 4,000 and 5,000 annually, about 90 percent of which are now direct law enforcement. Annual operating costs for this facility have been less than \$250,000 for the past three years, and the facility has admitted approximately 2,000 law enforcement diversions during the same time period. The cost for facilities that provide for longer lengths of stay (social detox programs) ranges from \$350,000 to \$500,000 annually.

An analysis by DCJS of the need for Public Inebriate/Social Detoxification services indicates that the 21 localities or combinations of localities listed below have the greatest need for expansion or development of diversion programs for public inebriate programs due to significant numbers of arrests in these localities.

COMBINED CITY/COUNTY 1992 ARRESTS	
Fairfax County & City	5,748
Roanoke City	5,365
Richmond City	2,510
Norfolk City	2,152
Prince William, Manassas, & Manassas Park	1,705
Montgomery, Pulaski & Radford	1,704
Danville City	1,589
Arlington/Falls Church	1,515
Chesterfield, Colonial Heights & Petersburg	1,499
Alexandria	1,192
Chesapeake	1,177
Augusta, Staunton, & Waynesboro	1,035
Rockingham/Harrisonburg	1,055
Fredericksburg, Spotsylvania & King George	1,003
Henrico County	898
Portsmouth	837
Lynchburg	743
Washington Co. & Bristol	880
York/Poquoson/Williamsburg & James City County	873
Wise Co. & Norton	820
Tazewell County	732

The Department of Criminal Justice Services estimates that the annual cost to the state for these 21 new sites would be approximately \$6.7 million. In addition, expansions in Virginia Beach with 2,124 annual arrests; Newport News, to include

Hampton City (950 + 1,414 arrests); and in Charlottesville, to include Albemarle County (957 + 135 arrests) and to re-establish direct law enforcement public inebriate diversion services would cost an additional \$450,000, for a estimated total of \$7.1 million dollars. The localities where these 21 new and 3 expanded sites are proposed accounted for 80 percent of the statewide arrests for public intoxication in calendar year 1992.

This cost is approximately \$1 million less than additional operating costs for maintaining an average daily population of 750 repeat offender public inebriates in jail for one year. If the public inebriate population in jail reaches 1,750, the state would pay close to 2.7 times the cost of operating a statewide system of public inebriate or social setting detox centers. According to reports from the four programs currently operating in the state, approximately 25 percent of public inebriates with long term alcohol problems utilize facility services to achieve some period of extended sobriety.

While diversion of the public inebriate addresses part of the problem, it will not address the problems of the chronic repeat offender who has the most impact on the business community. The controversy about "what works" is summed up by Finn (1985) who states, "there is a need for special housing facilities for those men who cannot live independently and yet do not require institutionalization." Not only is there a need for special housing facilities but civil and criminal measures may need to be developed to keep them in the facilities involuntarily.

FINDINGS AND RECOMMENDATIONS

Finding # 1

Arrests for public intoxication account for 15 percent of all arrests in the Commonwealth. Costs to the Commonwealth were approximately \$5.5 million to process these arrests through the criminal justice system in 1992. While the majority of individuals arrested for public intoxication do not present a reoccurring problem, a small number of individuals in many communities are repeatedly arrested for this offense. It is estimated that repeat offenders account for over 35 percent of the 60,000 arrests for public intoxication in 1992. Chronic public inebriates consume resources of criminal justice and community services at a disproportionate rate to their numbers. While existing statutes may be appropriate for the majority of those arrested for public intoxication, they are not effective with the repeat offender.

Recommendation #1 *

Amend the Code of Virginia to provide the Commonwealth with a mechanism to address habitual public inebriation. The current Code criminalizes the conduct of public inebriation, §18.2-388, but fails to: (1) set forth a definition for habitual or repeat offenders, and (2) provide a penalty for continuous violation of this statute. Under the current law, the trial judge arbitrarily determines a habitual offense and the maximum penalty for a repeat offender is a one (1) year interdiction order. In addition, the laws are void of any penalty for continuous violations of this statute during the duration of such order.

Legislative proposal #1, set out in Appendix 2, codifies the number of convictions for public inebriation (12 convictions) necessary to be found guilty of habitual or repeat offenses. It authorizes the Court to declare a convicted person to be an Habitual Public Inebriate Offender. In addition, the proposal provides the Commonwealth a mechanism to impose up to 12 months of extended sobriety through incarceration or substance abuse treatment for the habitual offender. Finally, it allows for additional penalties to be imposed for continuous violations.

Recommendation #2 *

Amend §18.2-338 to provide the Commonwealth with the authority to convict a person of public inebriation in absentia. The current statute is silent on this matter.

Recommendation #2 in Appendix 2 includes proposed legislation to empower the court, to convict a person who willfully chooses not to appear in court and provides law enforcement officials a mechanism to count the number of convictions in order to establish a prima facie case of the violation of habitual public inebriation.

Recommendation #3 *

Amend §4.1-33 to provide coordination and clarity to provisions in the Code related to public inebriation. The current statute empowers the court to impose interdiction orders on intoxicated drivers and habitual drunkards. Concerning intoxicated drivers, the law is duplicative and unnecessary due to the enactment of §18.2-266 et al., and therefore should be deleted. Concerning habitual public drunkards, the statute fails to: (1) define "habitual", (2) coordinate the word "drunkard" with "inebriate" as stated in §18.2-338, and (3) prohibits only the sale of alcoholic beverages to an offender.

Recommendation #3 in Appendix 2 amends §4.1-333 to remove the language related to intoxicated drivers. The proposal defines "habitual" and replaces "drunkard" with "inebriate" by incorporating the proposed §18.2-388.1 to set forth the elements of a violation. Finally, the proposal prohibits the possession of alcoholic beverages by an offender. The intent of the statute is to interrupt the offender's interaction with alcohol, not simply the ability to purchase.

Recommendation #4 *

Amend §4.1-334 to coordinate the provisions of the Code related to public inebriation. The current law imposes a one (1) year interdiction order prohibiting the sale of alcoholic beverages to an offender who has been found guilty of illegal possession, but fails to prohibit the continued possession of alcoholic beverages by the offender.

Proposed legislation in Recommendation 4 of Appendix 2 prohibits the possession of alcoholic beverages by an offender.

*** NOTE: THE MAJORITY OF VIRGINIA'S JAILS ARE OVERCROWDED. IF THE PROPOSED LEGISLATION IS ENACTED WITHOUT EXPANSION OF DIVERSION PROGRAMS LIKE PUBLIC INEBRIATE, SOCIAL DETOXIFICATION CENTERS AND OTHER LONG-TERM TREATMENT PROGRAMS, THE POPULATION OF PUBLIC INEBRIATES IN JAILS MAY BE LIKELY TO INCREASE AND EXACERBATE AN INCREASING SHORTAGE OF JAIL BEDS.**

Finding # 2

Chronic public inebriates clog the mental health system in addition to jail and other community systems. Alcoholism is acknowledged as a major public health problem across the nation. It often complicates serious mental illness, is clearly a problem for people who abuse other drugs, and is a major problem in all community treatment systems. The cost of treatment for all conditions is increased

by the presence of untreated alcoholism.

Public inebriates are in need of alcoholism treatment, and often overwhelm the substance abuse services available in communities, particularly emergency crisis services. As a result, chronic alcoholics account for a significant number of admissions to public mental health facilities, even though they often lack a diagnosis of major mental illness.

Detention and commitment laws do not clearly direct the legal management of public inebriates. They are often used to place them inappropriately in intensive mental health facilities and community mental health programs where specific substance abuse services may be lacking.

Recommendation #5

DMHMRSAS, with assistance from the Office of the Attorney General, should study the Code of Virginia as it relates to the civil commitment of individuals with primary substance abuse to state mental health facilities. The study should evaluate the clinical appropriateness and cost effectiveness of current civil commitment law and make recommendations regarding alternatives, to include code changes and effects on community capacity to address the treatment and ancillary support needs of people with primary substance abuse, to include public inebriates and chronic offenders. The study proposed in Recommendation 5 is presented in Appendix 2.

Finding # 3

Public inebriate centers and social detoxification facilities are cost effective measures to divert public inebriates from Virginia's jails.

Recommendation #6

The General Assembly should provide funding to expand and develop public inebriate centers/social detoxification facilities in communities which have the highest volume of arrests for public intoxication. The communities requiring expansion of existing facilities are Fairfax, Roanoke City and Norfolk. Localities requiring new facilities are Richmond City and the Prince William County area. The cost to expand and develop these programs is approximately \$1,750,000.

The cost of expanding existing facilities in Fairfax, Roanoke City and Norfolk is based on the cost of developing a public inebriate center at \$250,000 per center. The cost for developing new facilities in Richmond City and the Prince William County area is based on the DMHMRSAS's experience in operating social detoxification centers at \$500,000 each.

APPENDIX 1

HOUSE JOINT RESOLUTION NO. 583

House Amendments in [] - February 5, 1993

Requesting the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRAS), with the assistance and cooperation of the Department of Criminal Justice Services [and the Commonwealth's Attorneys' Council] . to continue the study of alternatives to repeated arrests of public inebriates.

Patrons—Cohen and Van Landingham; Senator: Calhoun

Referred to the Committee on Rules

WHEREAS, public intoxication is punishable as a Class 4 misdemeanor, an offense for which the offender cannot be incarcerated; and

WHEREAS, public inebriates may be repeatedly arrested and convicted of the crime; and

WHEREAS, public intoxication is as much a public health concern as a criminal offense and is not deterred by such repeated arrests; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Department of Mental Health, Mental Retardation and Substance Abuse Services, with the assistance and cooperation of the Department of Criminal Justice Services [, the Commonwealth's Attorneys' Council,] and with consultation from the Office of the Attorney General, be requested to continue the study of alternatives to repeated arrest of persons for public intoxication.

The Department of Mental Health, Mental Retardation and Substance Abuse Services should: (i) consider the development of a definition of a repeat offender public inebriate; (ii) develop recommendations to strengthen existing laws relating to public intoxication and repeat offenders; (iii) recommend cost-effective avenues of treatment for people who are chronic repeat offenders; and (iv) develop cost estimates to expand capacity of public inebriate diversion programs.

The Department of Mental Health, Mental Retardation and Substance Abuse Services should complete its work in time to submit its recommendations to the Governor and the 1994 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

APPENDIX 2

Legislative Proposals

Recommendation #1

PROPOSED HABITUAL PUBLIC INEBRIATION STATUTE

§18.2-388.1 - (A) A person is guilty of habitual public inebriation if he has accumulated: (i) at least 12 or more convictions for public intoxication, pursuant to §18.2-388, within a 12 month period, or (ii) at least one conviction for public intoxication, pursuant to §18.2-388, of any person who has been declared an habitual public inebriate offender, pursuant to paragraph B of this section, or any person who is subject to an interdiction order, pursuant to §4.1-333 or §4.1-334, during the term of such order.

(B) A person convicted of habitual public inebriation shall, by order of the court, be declared an habitual public inebriate offender and may be incarcerated for not more than 12 months or sentenced in accordance with §18.2-254.

(C) The court entering an order of declaration may alter, amend or cancel such order as it deems proper. A copy of the original order or any alteration, amendment or cancellation shall be filed with the Alcohol Beverage Control Board pursuant to §4.1-333. If a person declared an habitual public inebriate, pursuant to this section, is not found in violation of §18.2-388 for a period of five (5) years, then the order of declaration shall be canceled and a copy filed with the Alcohol Beverage Control Board.

Recommendation #2

§18.2-388

§18.2-388. **Profane swearing and intoxication in public; penalty; transportation of public inebriates to detoxification center.** -- If any person profanely curses or swears or is intoxicated in public, whether such intoxication results from alcohol, narcotic drug or other intoxicant or drug of whatever nature, he shall be deemed guilty of a Class 4 misdemeanor. A person charged under this provision may be convicted *in absentia*. In any area in which there is located a court-approved detoxification center a law-enforcement officer may authorize the transportation, by police or otherwise, of public inebriates to such detoxification center in lieu of arrest; however, no person shall be involuntarily detained in such center.

Recommendation #3

§4.1-333

§4.1-333. **Interdiction of ~~habitual public inebriate offender~~ intoxicated driver or ~~habitual drunkard~~.** (A) When after a hearing upon due notice it appears to the satisfaction of the circuit court of any county or city that any person, residing within such county or city, has been convicted of ~~driving any automobile, truck, motorcycle, engine or train while intoxicated or has shown himself to be an habitual drunkard~~ *habitual public inebriation and declared an habitual public inebriate offender, pursuant to §18.2-338.1*, the court may enter an order of interdiction prohibiting the sale of alcoholic beverages to such person or *the possession of alcoholic beverages by such person* until further ordered. The court entering any such order shall file a copy of the order with the Board. (B) The court entering any order of interdiction may alter, amend or cancel such order as it deems proper. A copy of any alteration, amendment or cancellation shall be filed with the Board.

Recommendation #4

§4.1-334

§4.1-334. **Interdiction for illegal manufacture, possession, transportation or sale of alcoholic beverages.** - When any person has been found guilty of the illegal manufacture, possession, transportation, or sale of alcoholic beverages or maintaining a common nuisance as defined in section 4.1-317, the court may without further notice or additional hearing enter an order of interdiction prohibiting the sale or possession of alcoholic beverages to such person for one year from the date of the entry of the order, and thereafter if further ordered.

Recommendation #5

PROPOSED STUDY RESOLUTION

HOUSE JOINT RESOLUTION NO.

Requesting the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS), with the assistance and cooperation of the Office of the Attorney General, to study community and facility treatment programs for individuals with chronic substance abuse problems.

WHEREAS, chronic public inebriates and other individuals with chronic substance abuse problems often overwhelm the substance abuse services available in communities and clog the mental health system in addition to jail and other community systems; and

WHEREAS, chronic substance abusers account for a significant number of admissions to intensive mental health facilities and community mental health programs where specific substance abuse services may be lacking; and

WHEREAS, appropriate long term treatment capacity in Virginia's communities is lacking; and

WHEREAS, detention and commitment laws do not clearly direct the legal management of public inebriates and other chronic substance abusers resulting in inappropriate placement in mental health facilities, even though they often lack a diagnosis of major mental illness, now therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, that the DMHMRSAS, with the assistance and cooperation of the Office of the Attorney General, be requested to study the clinical appropriateness and cost effectiveness of current civil commitment process for individuals with substance abuse problems and make recommendations regarding alternatives.

The study should: (i) address the development of an array of services, including community social detoxification and structured short and long term inpatient programs which more appropriately respond to the needs of individuals with chronic substance abuse problems; (ii) review the Code of Virginia as it relates to the civil commitment of individuals with primary substance abuse problems and make appropriate recommendations; (iii) recommend clinically appropriate and cost-effective alternatives to facility based treatment for people who have chronic substance abuse problems; and (iv) develop cost estimates to expand community capacity to serve chronic substance abusers.

The DMHMRSAS should complete its work in time to submit its recommendations to the Governor and the 1996 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for processing legislative documents.

APPENDIX 3

VIRGINIA LAWS RELATED TO PUBLIC INTOXICATION

§ 18.2-254. Commitment of convicted person for treatment for drug or alcohol abuse. — A. The court trying the case of any person alleged to have committed any offense designated by this article or by the Drug Control Act (§ 54.1-3400 et seq.) or in any other criminal case in which the commission of the offense was motivated by, or closely related to, the use of drugs and determined by the court to be in need of treatment for the use of drugs may commit such person, upon his conviction and with his consent and the consent of the receiving institution, to any facility for the treatment of persons for the intemperate use of narcotic or other controlled substances, licensed or supervised by the State Mental Health, Mental Retardation and Substance Abuse Services Board, if space is available in such facility, for a period of time not in excess of the maximum term of imprisonment specified as the penalty for conviction of such offense or, if sentence was determined by a jury, not in excess of the term of imprisonment as set by such jury. Confinement under such commitment shall be, in all regards, treated as confinement in a penal institution and the person so committed may be convicted of escape if he leaves the place of commitment without authority. The court may revoke such commitment, at any time, and transfer the person to an appropriate state or local correctional facility. Upon presentation of a

certified statement from the director of the treatment facility to the effect that the confined person has successfully responded to treatment, the court may release such confined person prior to the termination of the period of time for which such person was confined and may suspend the remainder of the term upon such conditions as the court may prescribe.

B. The court trying a case in which commission of the offense was related to the defendant's habitual abuse of alcohol and in which the court determines that such defendant is an alcoholic as defined in § 37.1-217 and in need of treatment, may commit such person, upon his conviction and with his consent and the consent of the receiving institution, to any facility for the treatment of alcoholics licensed or supervised by the State Mental Health, Mental Retardation and Substance Abuse Services Board, if space is available in such facility, for a period of time not in excess of the maximum term of imprisonment specified as the penalty for conviction. Confinement under such commitment shall be, in all regards, treated as confinement in a penal institution and the person so committed may be convicted of escape if he leaves the place of commitment without authority. The court may revoke such commitment, at any time, and transfer the person to an appropriate state or local correctional facility. Upon presentation of a certified statement from the director of the treatment facility to the effect that the confined person has successfully responded to treatment, the court may release such confined person prior to the termination of the period of time for which such person was confined and may suspend the remainder of the term upon such conditions as the court may prescribe. (Code 1950, § 54-524.102; 1972, c. 758; 1974, c. 447; 1975, cc. 14, 15; 1978, c. 640; 1979, cc. 413, 435; 1992, c. 852.)

§ 4.1-333. Interdiction of intoxicated driver or habitual drunkard. —
A. When after a hearing upon due notice it appears to the satisfaction of the circuit court of any county or city that any person, residing within such county or city, has been convicted of driving any automobile, truck, motorcycle, engine or train while intoxicated or has shown himself to be an habitual drunkard, the court may enter an order of interdiction prohibiting the sale of alcoholic beverages to such person until further ordered. The court entering any such order shall file a copy of the order with the Board.

B. The court entering any order of interdiction may alter, amend or cancel such order as it deems proper. A copy of any alteration, amendment or cancellation shall be filed with the Board. (Code 1950, § 4-51; 1956, c. 53; 1982, c. 66; 1993, c. 866.)

§ 4.1-334. Interdiction for illegal manufacture, possession, transportation or sale of alcoholic beverages. — When any person has been found guilty of the illegal manufacture, possession, transportation, or sale of alcoholic beverages or maintaining a common nuisance as defined in § 4.1-317, the court may without further notice or additional hearing enter an order of interdiction prohibiting the sale of alcoholic beverages to such person for one year from the date of the entry of the order, and thereafter if further ordered. (Code 1950, § 4-52; 1954, c. 484; 1982, c. 66; 1993, c. 866.)

§ 4.1-304. Persons to whom alcoholic beverages may not be sold; penalties. — No person shall, except pursuant to subdivisions 1 through 5 of § 4.1-200, sell any alcoholic beverages to any person when at the time of such sale he knows or has reason to believe that the person to whom the sale is made is (i) less than twenty-one years of age, (ii) interdicted, or (iii) intoxicated.

Any person convicted of a violation of this section shall be guilty of a Class 1 misdemeanor. (Code 1950, § 4-62; 1970, c. 686; 1974, c. 460; 1979, c. 537; 1981, c. 24; 1982, c. 66; 1983, c. 608; 1985, c. 559; 1990, c. 771; 1993, c. 866.)

§ 4.1-349. Punishment for violations of title or regulations; bond. —
A. Any person convicted of a misdemeanor under the provisions of this title without specification as to the class of offense or penalty, or convicted of violating any other provision thereof, or convicted of violating any Board regulation, shall be guilty of a Class 1 misdemeanor.

B. In addition to the penalties imposed by this title for violations, any court before whom any person is convicted of a violation of any provision of this title may require such defendant to execute bond, with approved security, in the penalty of not more than \$1,000, with the condition that the defendant will not violate any of the provisions of this title for the term of one year. If any such bond is required and is not given, the defendant shall be committed to jail until it is given, or until he is discharged by the court, provided he shall not be confined for a period longer than six months. If any such bond required by a court is not given during the term of the court by which conviction is had, it may be given before any judge or before the clerk of such court.

C. The provisions of this title shall not prevent the Board from suspending, revoking or refusing to continue the license of any person convicted of a violation of any provision of this title.

D. No court shall hear such a case unless the respective attorney for the Commonwealth or his assistant has been notified that such a case is pending. (Code 1950, § 4-92; 1984, c. 603; 1993, c. 866.)

ARTICLE 1.1.

Detoxification Center Program.

§ 9-173.1. **Establishment of programs; purpose; rules and regulations.** — A. The Department of Criminal Justice Services shall promulgate rules and regulations, no later than October 1, 1982, the purpose of which shall be to make funds available to local units of government for establishing, operating and maintaining or contracting for local or regional detoxification center programs to provide an alternative to arresting and jailing public inebriates.

B. The Department of Criminal Justice Services shall promulgate rules and regulations for the implementation of such programs.

C. Detoxification center programs established or operated pursuant to this section shall be governed solely by the rules and regulations promulgated by the Department of Criminal Justice Services therefor. The Department of Criminal Justice Services shall establish a grant procedure to govern the award of funds as may be appropriated for such purposes to local units of government. (1982, c. 666.)

§ 9-173.2. **Definitions.** — The following terms, whenever used in this article, shall have the following meanings:

"Detoxification center program" means any program or procedure whereby a local governing body, or any combination of local governing bodies, establishes, operates or maintains or otherwise arranges or contracts for the establishment, operation or maintenance of a facility, whether operated by the locality or by a private agency, for the placement of public inebriates as an alternative to jailing such persons. A judge of the district court in the jurisdiction in which the facility will be located shall approve specific methods and means of transportation available to law-enforcement officers for transporting public inebriates to such programs.

"Public inebriate" means any person who is drunk in a public place and would be subject to arrest for drunkenness under § 18.2-388. (1982, c. 666.)

APPENDIX 4

LIST OF INDIVIDUALS INTERVIEWED During the 1992 Study

Representatives interviewed in Alexandria were:

Harriet Reed Williams, Arlington Community Services Board
Richard Kauffman, Alexandria Recreation Department
Larry Black, Arlington Magistrate's Office
David Bogard, Arlington Sheriff's Office
David Speck, Alexandria City Council
Mike O'Brien, Prince William County Criminal Justice Services
John Blake, Arlington County, Police Department
Steve Holl, Arlington County, Police Department
Jerry Lesko, Prince William County, Police Department
John E. Kloch, Commonwealth Attorney, Alexandria
Tim Harmon, Fairfax-Falls Church CSB Alcohol and Drug Services
Joan Volpe, Fairfax-Falls Church CSB, SAS Director
Linda M. Ghitton, ARHA
Archie Alexander, ARHA
Brian Moran, Asst. Commonwealth Attorney, Arlington
Jim Dunning, Alexandria Sheriff's Office
Goodman Ohpang, Alexandria Office of Housing
Bill Brown, Fairfax County Police Department
Lenny George, Alexandria Police Department
Dan O'Flaherty, Alexandria District Court
Linda Eichenbaum, Alexandria Adult Probation and Parole

Representatives interviewed in Roanoke were:

Bobby D. Casey, Magistrate's Office
Gerald S. Holt, Sheriff's Office Roanoke County
Harold A. Phillips, Roanoke County Police Department
Don Shields, Roanoke City Police Department
Jim Phipps, Court-Community Corrections
Donald Caldwell, Roanoke City Commonwealth Attorney
Eddie Blair, Mental Health Services Roanoke Valley
Henry Altice, Mental Health Services Roanoke Valley
Harris Greene, Roanoke City Jail
Margo Kiely, Mental Health Services Roanoke Valley
George Snead, Director of Public Safety, City of Roanoke
Ellen Brown, Director, Total Action Against Poverty
Vic Robinson, Mental Health Services of Roanoke Valley
Anthony Reed, Mental Health Services of Roanoke Valley
Kathleen Carroll, Mental Health Services of Roanoke Valley

Amy Mason, Downtown Roanoke Incorporated
R. M. Surrusco, M.D., Emergency Room Medical Director
Roanoke Memorial and Community Hospitals
John Chambliss, Roanoke County

Representatives interviewed in Richmond were:

Marty Tapscott, Chief of Police, City of Richmond
Susan Crump, Vice President, United Way Planning Division
James C. May, Ph.D., Substance Abuse Director,
Richmond Community Services Board
Phil Jordan, Richmond Crisis Intervention
Nancy Gowen, Outreach Case Manager, Homeless Services
James Hopkins, Director, Rubicon Intake Services
Larry Everette, Employee Assistance Counselor,
Richmond Public Schools & Past Chair, Richmond Community Services Board
Mary Winfree, Central Richmond Association & St. Paul's Episcopal Church
Karen B. Redford, CSAC, Supervisor, Treatment Alternatives to Street Crime
(TASC)
Lenora Vann, Richmond Crisis Intervention
Judge Ralph Robertson, Richmond General District Court
Aldine R. West, Team Leader, Richmond Community Services Board
Beulah Forbes, Substance Abuse Counselor, The Daily Planet
Christi L. Schroeder, Working Supervisor, Richmond Police Department
Virginia Ritchie, President, Central Richmond Association
D. Eugene Cheek, Judge, Richmond General District Court, Criminal Division

APPENDIX 5 BIBLIOGRAPHY

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COMMONWEALTH of VIRGINIA

DEPARTMENT OF

Mental Health, Mental Retardation and Substance Abuse Services

KINGE, DAVIS, Ph.D., LCSW
COMMISSIONER

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TEL (804) 786-3921

December 17, 1993

J. Michael McMahan, Chairman
M. O. Mohr Center Advisory Committee
413 East Market Street - Suite 103
Charlottesville, Virginia 22902

Dear Mr. McMahan:

Commissioner Davis asked me to respond to your letter of October 28, 1993 in which you provided comments on the recommendations of "The Impact of Public Inebriates on Community and Criminal Justice Services Systems" (House Document 20). This document, published in January of this year, was the first of two reports to address problems related to arrest, processing and treatment of individuals who are repeatedly arrested for public intoxication. The second report is scheduled for publication in January of 1994 for presentation to the 1994 session of the General Assembly.

The concerns you have mentioned have been noted and have been discussed by the Detoxification Task force which assisted in the development of both reports. Michael Costanzo, who is the Team Leader of the M.O. Mohr Center is a member of that task force and may have advised you of the proposed recommendations of the second report. I would point out that none of the recommendations provides for more regulation, bureaucracy or develops legal sanctions that are not already provided for in the Code of Virginia.

If you have concerns about the recommendations of the final report, please contact Ken Batten in my office. I believe the recommendations will enhance services to the public inebriate with out imposing undue hardship on any one system and improve a problem that affects many of our communities throughout the Commonwealth.

Sincerely,

John F. Draude, Jr. Ph.D., Director
Office of Substance Abuse Services

/s/

pc: Mellie Randall, Director of Program Planning & Consultation, OSAS
Ken Batten, CJS Program Consultant, OSAS