# REPORT OF THE INTERAGENCY SUBSTANCE ABUSE SCREENING AND ASSESSMENT COMMITTEE

# 2001 Annual Report

## TO THE GOVERNOR AND THE GENERAL ASSEMBLY OF VIRGINIA

# SENATE DOCUMENT NO. 19

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# Executive Summary

Pursuant to legislation adopted in 1998 and 1999, many adult and juvenile offenders in Virginia must undergo screening and assessment for substance abuse problems. The screening and assessment provisions defined in §§16.1-273, 18.2-251.01, 19.2-299 and 19.2-299.2 of the *Code of Virginia* target all felons, Class 1 misdemeanor drug offenders ordered to supervision or programming, and juvenile offenders adjudicated for a felony, a Class 1 or 2 drug-related misdemeanor, a drug-related charge that is the juvenile's first offense or any other act for which a social history investigation is ordered. Pre-trial services programs are also authorized under §19.2-123(B) to perform substance abuse screening when evaluating offenders for pre-trial release from jail. Under the law, offenders who commit their crimes on or after January 1, 2000, must undergo a substance abuse screening. If the initial screening reveals key characteristics or behaviors likely related to drug use or alcohol abuse, a comprehensive substance abuse assessment must be administered.

The Interagency Drug Offender Screening and Assessment Committee was created by §2.2-223 (formerly §2.1-51.18:3) to oversee the screening and assessment provisions contained in the *Code of Virginia*. The Interagency Committee serves to promote interagency coordination and cooperation. Since its inception in 1999, the Interagency Committee has been active in the implementation and administration of this comprehensive program. The Interagency Committee continues to assist and monitor agencies involved in screening and assessment activities. The Interagency Committee is charged with ensuring the quality and consistency of the screening and assessment process across the Commonwealth. To this end, the Interagency Committee has coordinated a variety of training seminars on screening and assessing offenders for substance abuse problems as well as federal confidentiality requirements associated with this activity. The Interagency Committee is also responsible for implementing an evaluation process to assess the effectiveness of substance abuse screening and assessment for offenders. In 2000, the Criminal Justice Research Center of the Department of Criminal Justice Services agreed to evaluate the program. A report on the first phase of the evaluation, addressing the program's implementation, is scheduled for release in July of 2002.

Data reported for fiscal year (FY) 2001 reveal that a substantial portion of offenders entering the criminal justice system in Virginia have substance abuse problems related to drugs or alcohol. For 43.6% of adult felons, the screening performed by a Department of Corrections probation officer indicated the need for a thorough assessment (Figure 1). Of the adult felons assessed, 93.0% were found to be in need of treatment services beyond substance abuse education programming. Experience to date has shown that local Alcohol Safety Action Programs have received few screening orders or referrals for misdemeanant offenders sentenced in Virginia's general district courts. In FY2001, local community-based probation programs handled a substantial number of adult misdemeanants who required screening and assessment, as well as many low-level felons ordered to participate in one of these programs. Local probation programs report that 46.5% of offenders in this group required subsequent assessment, and more

than 71% of those assessed needed treatment services more extensive than substance abuse education. Data compiled by the Department of Juvenile Justice during FY2001 suggests that as many as one in five (19.9%) of juvenile offenders needed a substance abuse assessment. Assessment of juvenile offenders revealed that nearly one-third (32.9%) were in need of substance abuse treatment services. Although not specifically directed under §19.2-299.2, pre-trial services programs also perform screening and assessment as part of the evaluation of an offender for pre-trial release from jail (as authorized in §19.2-123(B)). When approved by the locality's chief judge, the results of screenings prepared by the local pretrial services program are provided during the offender's initial appearance in court. Overall, nearly 40,000 screenings and nearly 13,800 assessments were completed in FY2001.

**Figure 1**
**Screening and Assessment Results (FY2001)**

| Agency | Screenings Completed | Assessments Required[1] | Percent of Offenders Requiring Assessment | Assessments Completed | Percent of Assessed Offenders Needing Treatment[2] |
|---|---|---|---|---|---|
| Department of Corrections | 12,458 | 5,435 | 43.6% | 7,993 | 93.0% |
| Virginia Alcohol Safety Action Programs | Not reported | Not reported | Not reported | Not reported | Not Reported |
| Local Community-based Probation Programs | 6,746 | 3,614 | 46.5% | 2,277 | 71.4% |
| Pre-Trial Services Programs | 10,641 | 4,157 | 53.5% | 804 | 28.6% |
| Department of Juvenile Justice | 9,080 | 1,810 | 19.9% | 2,701 | 32.9%[3] |
| **TOTAL REPORTED** | **38,925** | **15,574** | | **13,775** | |

[1] If the screening reveals key characteristics or behaviors likely related to drug use or alcohol abuse, a full assessment must be administered.
[2] Treatment is defined as services beyond substance abuse education.
[3] Data is based on classification produced by the juvenile screening instrument (SASSI).

The Interagency Committee's oversight of the screening and assessment program continues. Ensuring the quality of the screening and assessment process is an important goal of the Interagency Committee. In 2002, the Interagency Committee will provide additional training workshops, educational seminars and informational presentations for agency staff, judges, Commonwealth's attorneys and defense attorneys. The Department of Mental Health, Mental Retardation and Substance Abuse Services has obtained approval from the Center for Substance Abuse Treatment to develop state and local trainers in confidentiality issues. This "Train the Trainers" initiative is planned for 2002. In addition, the Interagency Committee is continuing to

refine confidentiality protocols to promote efficient exchange of information among Virginia's criminal justice agencies and treatment organizations. In an effort to improve the delivery of treatment services within the criminal justice system, the Interagency Committee is developing a treatment/sentencing matrix as an additional tool for judges and correctional agencies. The matrix, a purely advisory tool, could provide judges and probation officers with information regarding treatment services suitable for a defendant under supervision in the community, given the nature and severity of his addiction and the public safety objectives of the Commonwealth.

# Authority for Study

The Interagency Drug Offender Screening and Assessment Committee was created by §2.2-223 (formerly §2.1-51.18:3) of the *Code of Virginia* to oversee the drug screening, assessment and treatment provisions of §§16.1-273, 18.2-251.01, 19.2-299 and 19.2-299.2. The Interagency Committee is composed of representatives of the Directors or Commissioners of the Department of Corrections, the Department of Criminal Justice Services, the Department of Juvenile Justice, the Department of Mental Health, Mental Retardation and Substance Abuse Services, the Virginia Alcohol Safety Action Program and the Virginia Criminal Sentencing Commission. The Secretary of Public Safety serves as chairman.

The Interagency Committee is required by §2.2-223 to report on the status and effectiveness of offender screening, assessment and treatment to the Virginia State Crime Commission and the House Courts of Justice, Senate Courts of Justice, House Appropriations, and Senate Finance Committees of the Virginia General Assembly by January 1 of each year. This document represents the Interagency Committee's report for the year 2001.

# Background

During its 1998 and 1999 sessions, the General Assembly passed sweeping legislation that requires many offenders, both adult and juvenile, to undergo screening and assessment for substance abuse problems related to drugs or alcohol. The purpose of this legislation is to reduce substance abuse and criminal behavior among offenders by enhancing the identification of substance-abusing offenders and their treatment needs and by improving the delivery of substance abuse treatment services within the criminal and juvenile justice systems.

The screening and assessment provisions, contained in §§16.1-273, 18.2-251.01, 19.2-299 and 19.2-299.2 of the *Code of Virginia*, target all felons convicted in circuit court as well as those offenders convicted in general district court of a Class 1 misdemeanor drug offense who receive a sentence that includes probation supervision or participation in a local Alcohol Safety Action Program. In addition, a judge, at his or her discretion, may order screening and assessment for any other Class 1 misdemeanant if substance abuse is suspected. Juvenile offenders adjudicated for a felony or any Class 1 or 2 drug offense misdemeanor, as well as any juvenile for whom a social history is ordered, also fall under the screening and assessment requirements. Under the new law, offenders must undergo a substance abuse screening. If the screening reveals key characteristics or behaviors likely related to drug use or alcohol abuse, a full assessment must be administered. Assessment is a thorough evaluation that provides a complete picture of the offender's substance abuse pattern and history, social and psychological functioning, and general treatment needs.

Responsibility for conducting screenings and assessments is shared by several agencies. For adult felons, screening and assessment is conducted by the Department of Corrections' (DOC) probation and parole offices. Local offices of the Virginia Alcohol Safety Action Program (ASAP) are required to screen and assess adult misdemeanants, unless the offender is ordered to participate in a local community-based probation program. Experience to date has shown that local Alcohol Safety Action Programs have received few screening orders or referrals for misdemeanant offenders sentenced in Virginia's general district courts. In such cases, the local community-based probation program is responsible for the screening and assessment, rather than the local ASAP. Local community-based probation programs have handled the bulk of adult misdemeanants who must be screened and assessed. Juvenile offenders are screened and assessed by the court service units serving the juvenile and domestic relations court system.

The screening and assessment process is not uniform for all offender groups but, rather, is designed to work within existing court processes. For adult felons, screening occurs prior to sentencing at the direction of the court or as part of a pre-sentence investigation report (PSI), if one is ordered. Otherwise, screening of adult felons takes place after sentencing, conducted either by DOC institutional personnel or probation staff. Because nearly all adult misdemeanants are convicted and sentenced on the same day, screening for these offenders typically occurs after the sentencing hearing. However, when approved by the locality's chief judge, the results of

screenings performed by the local pretrial services program as part of its evaluation for pre-trial release are provided during the offender's initial appearance in court. For juvenile offenders, when the court orders a social history investigation of an adjudicated juvenile or when the court orders an adjudicated juvenile to undergo a drug screening, a Department of Juvenile Justice (DJJ) probation officer administers the screening in sufficient time to complete, if necessary, the more extensive substance abuse assessment and to include the findings with the social history, if one has been ordered. Juvenile offenders adjudicated without a screening or a social history report receive screening and assessment services when beginning probation supervision in the community or prior to their transfer to a juvenile correctional facility.

Only certain instruments have been selected for screening and assessing offenders for substance abuse problems. Using approved instruments promotes consistency in the screening and assessment process and enhances the coordination among the various agencies involved in the identification and treatment of substance-abusing offenders. Adult offenders are screened for drug and alcohol problems with the 16-item Simple Screening Instrument (SSI). The Interagency Committee has developed a Spanish version of the SSI for Virginia's Spanish-speaking offenders. The assessment instrument for adult offenders is the Addiction Severity Index (ASI). A more detailed evaluation of an offender's substance abuse and its impact on his or her daily life, the ASI requires approximately one hour to administer. A different set of tools is used for the juvenile offender population. The juvenile instruments are designed for the ages and life-skill development of adolescent offenders. The Substance Abuse Subtle Screening Instrument (SASSI), the instrument used to screen juveniles, has recently been revised and the SASSI-A2 version is now being utilized. Juvenile offenders are assessed using the Child and Adolescent Functional Assessment Scale (CAFAS) in conjunction with the drug and alcohol scale of the Adolescent Problem Severity Index (APSI). A full assessment of a juvenile offender using these instruments can be completed in about an hour to an hour and a half.

During its 1998 and 1999 sessions, the General Assembly established specialized staff positions within the Department of Corrections and Department of Juvenile Justice to support screening and assessment activities in those agencies. The newly-created full-time positions, known as "certified substance abuse counselors," or CSACs, require specialized training and education in the field of substance abuse, and individuals in those positions must receive certification from the state's Board of Professional Counselors. Having specialized CSAC personnel in each adult probation district and juvenile court service unit around the Commonwealth provides a level of "quality assurance" for the screening and assessment process. In addition, both DOC and DJJ now have established regional supervisor positions charged with the responsibilities of overseeing the screening and assessment program in their respective regions. In 1999 and 2000, the Interagency Committee organized and facilitated seminars to train more than 1,500 staff across agencies on the utilization of the selected screening and assessment instruments. In the fall of 2000, the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS), in conjunction with the Interagency Committee, arranged for the Legal Action Center (a nationally recognized company specializing on confidentiality issues) to conduct two training events for supervisors; the training seminars focused specifically on issues related to criminal justice referrals and the new roles of criminal justice system workers in the screening and assessment process.

The screening and assessment program is designed to be self-supporting. Offender fees are collected and deposited in the Drug Assessment Fund. Offenders convicted of drug crimes are assessed $150 for felonies and $75 for misdemeanors. These funds are used, in part, to support the training of staff to administer the screening and assessment instruments. Monies from the fund also pay for six CSAC positions within DOC. Because the instruments used for screening and assessing juvenile offenders are proprietary and must purchased by DJJ, a portion of the Drug Assessment Fund monies are used for that purpose. Both the screening and assessment tools for adults are in the public domain and are available free of charge. DJJ also uses a portion of its proceeds from the Drug Assessment Fund to monitor offenders through drug testing and other operational services that support screening and assessment activities.

In 1999, the General Assembly authorized a six-month period (July through December 1999) to pilot test the implementation of the screening and assessment provisions. Nine DOC probation and parole districts, nine local ASAP agencies, nine local community-based probation programs, and seven DJJ court service units participated in the pilot project. A variety of implementation models were piloted and the most effective methods were chosen to implement statewide. Statewide implementation began January 1, 2000. Offenders who commit their crimes on or after January 1, 2000, are subject to screening and assessment provisions.

The Interagency Drug Offender Screening and Assessment Committee was created by the 1999 General Assembly to oversee the implementation and subsequent administration of this program. Chaired by the Secretary of Public Safety, the Interagency Committee is composed of representatives of the Department of Corrections, the Department of Criminal Justice Services, the Department of Juvenile Justice, the Commission for the Virginia Alcohol Safety Action Program, the Department of Mental Health, Mental Retardation and Substance Abuse Services, and the Virginia Criminal Sentencing Commission. Under §2.2-223, the Interagency Committee is charged with (i) assisting and monitoring agencies in implementing the drug screening, assessment and treatment provisions of §§16.1-273, 18.2-251.01, 19.2-299 and 19.2-299.2, (ii) ensuring quality and consistency in the screening and assessment process, (iii) promoting interagency coordination and cooperation in the identification and treatment of drug abusing or drug dependent offenders, (iv) implementing an evaluation process and conducting periodic program evaluations, and (v) making recommendations to the Governor and General Assembly regarding proposed expenditures from the Drug Assessment Fund.

Since its inception in 1999, the Interagency Committee has been active in the implementation and administration of this comprehensive program. The Interagency Committee continues to assist and monitor agencies involved in screening and assessment activities. The Interagency Committee collaborated with agencies to develop screening and assessment policies and procedures, as well as protocols related to confidentiality. In 1999 and 2000, members of the Interagency Committee conducted numerous informational presentations for judges, prosecutors, public defenders and defense attorneys. The Interagency Committee developed a protocol outlining specific procedures for the exchange of information among agencies and service providers. The protocol also included the creation of a one-page "Consent" form, which provides authorization for the exchange of information regarding an offender. The Interagency Committee has also guided the development and enhancement of interagency Memorandums of

Agreement (MOAs) and Memorandums of Understanding (MOUs) to promote the referral of offenders for treatment and to improve the delivery of treatment services for offenders.

The activities of each agency serving on the Interagency Committee during 2001, and the agency's goals for the upcoming year, are detailed throughout the remainder of this report.

# Department of Corrections

The Department of Corrections (DOC) is responsible for screening and assessing adult felons processed through Virginia's circuit courts (§18.2-251.01). Probation and parole officers and institutional staff play a key role not only in the screening and assessment of offenders but also in connecting offenders under supervision in the community or in correctional facilities with the substances abuse education and treatment services they need.

*Program Education*

The goal of program education is to provide information to judges, Commonwealth's attorneys and defense attorneys regarding the screening and assessment legislation approved by the General Assembly. Specifically, the Interagency Committee's informational presentations have included an overview of the selected screening and assessment instruments, use of the information for judges to consider in making case dispositions, and the activities and resources required to implement this legislation. DOC, working with the Interagency Committee, has assisted in presentations at the statewide and regional circuit court judicial conferences. The informational packet mailed to circuit court judges included a detailed overview of the Department's Drug Screening, Assessment and Treatment (DSAT) policy, DOC's action plans and copies of affected legislation. Model DSAT court order language, developed by DOC with the Interagency Committee, was included in the packet. DOC encourages the use of this court order language when the court sentences offenders to fulfill screening, assessment or treatment conditions. In September 2001, the Director and Substance Abuse Program Manager made a presentation on SABRE to the National Therapeutic Community Conference in Columbus, Ohio.

*Staff Positions*

The Department of Corrections, Community Corrections division, has significantly expanded its substance abuse screening, assessment, testing and treatment staff capacity.

- Thirty-one (31) Senior Officer positions have been established as Certified Substance Abuse Counselors (CSAC);
- Twelve (12) additional positions were established to provide supervision and support services for drug offenders;
- Eight (8) Senior Officer positions have been established as Peer Group Support/Relapse Prevention Specialists;
- Four (4) Clinical Supervisor positions have been created to provide certification oversight (Three (3) are filled);
- One (1) Contract Manager to oversee Memoranda of Agreements (MOA), private provider contracts and grants was established and filled;

- One (1) Program Assessment Specialist position was created and filled to coordinate the development and tracking of outcome measures;
- Hourly wage employees will be recruited and trained to utilize large scale testing machines to serve multiple sites in four (4) locations.

*Staff Training*

DOC's DSAT Overview information packet was provided to all Community Corrections unit heads and managers. Eighteen (18) staff have received instructor training on administration of the Addiction Severity Index (ASI) assessment instrument. With this training, these 18 staff members became certified to train other DOC personnel in the administration of the assessment tool. There has been training on the automated ASI, and training is ongoing for newly hired staff.

Thirty-three (33) staff completed the Certified Substance Abuse Counselor (CSAC) didactic training class at the DOC Academy in June 2001. Four (4) CSAC supervisor positions have been added to oversee ongoing field training for this specialized staff. Expansion of the didactic training required for certification as a CSAC from 220 to 300 hours has been proposed. The next class is in January 2002.

A Glossary of Treatment Services, an informational guide describing various types of substance abuse treatment and intervention services, has been developed and issued.

*Screening and Assessment*

DOC uses the Simple Screening Instrument (SSI) and the Addiction Severity Index-5th Edition (ASI) to screen and assess offenders in the community. DOC institutions combine the ASI with other intake information into a Central Classification Services Survey (CCSS) for newly received inmates.

In FY 2001, 12,458 screenings were reported and 7,993 (64%) assessments were completed. The results indicated that seven per cent (7%) of the assessed offenders required substance abuse education and ninety-three per cent (93%) required alcohol or other drug treatment. Nearly one-half (44%) indicated a significant alcohol and other drug problem. Eighteen per cent (18%) of those assessed also had a considerable mental health problem.

The data suggest that a majority of offenders have a substance abuse problem and many are poly-substance abusers.

*Protocols*

The protocols were formulated and field-tested in nine (9) pilot Probation and Parole district offices – Alexandria, Leesburg, Lynchburg, Norfolk, Petersburg, Portsmouth, Radford, Roanoke and Virginia Beach.

Draft DSAT protocols were issued on January 19, 2000. Updated DSAT protocols were issued on July 13, 2000. These were distributed to all DOC personnel involved in the screening and assessment of offenders. They are reviewed and updated as needed.

*Treatment and Integration of SABRE*

Initially, the DSAT program did not include additional treatment resources. The introduction of the Substance Abuse Reduction Effort (SABRE) by Governor Gilmore supported by the General Assembly addressed this need.

A glossary of substance abuse services was developed and distributed to assist practitioners and lay people to "standardize" the substance abuse terminology. Subsequently, a matrix which attempts to merge services, supervision and sanctions was drafted to provide general guidance to field staff and other affected stakeholders. It is currently under review.

Mr. Ron Angelone, DOC Director, also established a Treatment and Aftercare Task Force including representatives from the Department of Correctional Education (DCE) to identify gaps in services including substance abuse services and to recommend solutions.

DOC began to refine and fill out a coordinated institutions and community treatment continuum entitled **STRAIGHT: A Program for Life** which has three (3) components:

- **START STRAIGHT – Institutional Therapeutic Communities** (Expanded)
- **STEP STRAIGHT – Community Residential Transition Therapeutic Communities** (3 contact facilities)
- **STAY STRAIGHT – Community-based Peer Support Groups and Relapse Prevention** (8 locations)

The capacity to provide education and treatment services is expanding through the DOC staff memoranda of agreements (MOA), grants and contracts with private service providers.

Currently, more than 10,000 inmates are receiving education, treatment and self-help services plus about 7,500 probationers and parolees.

*Memoranda of Agreement (MOA), Grants and Contracts*

A model MOA was developed by the Interagency Committee. Community Corrections now has thirty-three (33) MOA's with Community Services Boards. An MOA with the

Gemeinschaft House/Piedmont House to conduct a residential transition pilot project was renewed July 1, 2000. Two (2) MOA's are being concluded with Virginia Tech and Radford University for on-site substance abuse treatment services to be conducted by graduate students.

Four (4) grants to continue or expand service delivery have been extended or received:

- Dual Diagnosis, Western Region I (new)
- Partnership with Radford University [Hair Testing] (continuation)
- Residential Transition Therapeutic Communities (new)
- Purchase of Substance Abuse Treatment Services (new)

Currently, the DOC has fourteen (14) private service providers under contract for residential treatment services, and twenty-two (22) vendors are contracted for outpatient treatment services.

*Testing*

Over 300,000 drug tests conducted annual by DOC staff. Testing methods include:

- On-site hand-held devices
- On-site testing machines
- Hair testing
- Laboratory confirmation if required by the court

Twenty (20) Operation Consequences, in which DOC partners with local law enforcement to perform unannounced drug tests, targeted 3,082 substance-abusing offenders and resulted in the issuance of 1,067 arrest warrants through June 30, 2001. Two (2) operations are scheduled for Fall 2001.

*Funding*

Offenders contribute to the Drug Assessment Fund – Felons ($150) and Misdemeanants ($75). These funds ($600,000) supported six (6) CSAC positions.

Grants which have been received include:

- Dual Diagnosis, Western Region I - $365,345
- Partnership with Radford University – Hair Testing - $58,941
- Residential Transition Therapeutic Communities - $1.8 million
- Substance Abuse Treatment Services - $1.5 million

Violent Offender Incarceration and Truth-in-Sentencing (VOI/TIS) has authorized DOC to draw up to $1.07 million over several years.

General Funds provide:

- Substance Abuse Treatment - $3.6 million
- Residential Transition - $742,072
- Peer Support and Relapse Prevention - $613,026
- Testing - $650,000

*Automated Data Collection and Evaluation*

The Department of Corrections' Center for Information Technologies is working to fully automate the Addiction Severity Index (ASI) instrument used to assess the extent of substance abuse problems presented by the offender. An automated version has been introduced to the field, and training on its installation and use was provided to representatives from Community Corrections' operating units. These representatives will train other staff in the districts and centers to use the automated ASI.

DOC's objectives include the development of an offender database for use by authorized staff which will generate a variety of management reports and merger of the pre-sentence investigation report (PSI) with the ASI. The work to consolidate the PSI and ASI has developed slowly as the merger must reach several objectives:

- reduce duplicative data
- sustain PSI data necessary for the preparation of legislative impacts
- preserve the integrity of the assessment instrument
- achieve consensus on data and format
- bring all DOC units onto the DOC computer network

DOC is working with the other agencies to develop a statewide interagency report to provide evaluative data and to assist the assigned program evaluators.

*Goals for FY2002*

The DOC goals include the following:

- Increase the number of participants in residential transition therapeutic community (STEP STRAIGHT) and peer group support/relapse prevention (STAY STRAIGHT) phases of STRAIGHT: A PROGRAM FOR LIFE.
- Expand the availability of residential substance abuse services
- Enhance services for dually diagnosed offenders
- Improve the automated assessment capability (ASI)
- Develop and begin tracking outcome measures

# Department of Criminal Justice Services

Local community-based probation programs around the Commonwealth are responsible for screening and assessing adult misdemeanants ordered to supervision under one of the programs without participation in ASAP (§19.2-299.2). The Department of Criminal Justice Services (DCJS) oversees and provides funding for the state's 38 local community-based probation and 28 pretrial services programs. During the first 10 months of 2000, nearly all of the screening and assessment of adult misdemeanants has been performed by local community-based probation programs and not ASAP agencies. This is a direct result of the types of sanctions imposed for Class 1 misdemeanor drug crimes. When ordering probation supervision and/or programming in these cases, general district court judges have utilized the options available through the local community-based probation programs in their localities.

*Training Related to Substance Abuse Screening and Assessment and SABRE*

Since no major amendments were made to bail legislation during this fiscal year, minimal training was delivered to pretrial staff concerning legislative changes in bail procedures. DCJS did send out memo on June 28 to all pretrial program directors and coordinators informing them of the sole statutory change related to bail. In addition, with three new pretrial programs being developed this year, the directors and staff were all provided with training on the issues related to denial of bail subject to rebuttal during December of 2000 and April of 2001. All program directors and coordinators were also provided with amended copies of relevant pages of the Supreme Court's Magistrate Manual related to changes in offenses subject to bail restrictions.

*Summary of Substance Abuse Screening, Assessment, Treatment and SABRE Initiatives*

In FY2001, local community-based probation and pretrial services programs continued with the implementation of the statewide Substance Abuse Screening and Assessment project. In addition, the governor's SABRE (Substance Abuse Reduction Effort) initiative was launched effective July 1, 2001. DCJS received $1.5 million in FY 2001 for this effort to assist local pretrial and community-based probation programs to provide substance abuse screening, assessment, testing and treatment.

As of November 30, 28 of 38 program administrative sites have completed final financial reports indicating $ 753, 523 in SABRE expenditures during FY2001.

A great deal of collaboration through the efforts of the Interagency Drug Offender Screening and Assessment Committee occurred during FY2001. An evaluation of the screening, assessment and SABRE initiatives is underway with three staff assigned to the Criminal Justice Research Center at DCJS. DCJS Adult Corrections Unit spent a significant amount of time

providing orientation to the pretrial and community-based probation system for these evaluators. In addition the Corrections Unit provided the extensive technical assistance to the evaluators on the progression and development of the monthly report forms used by local pretrial and probation programs. The evaluators and the Research Center have developed a standardized monthly reporting instrument for reporting screening, assessment and referral activities. Training on the use of this form will commence in the following months. In addition, the Interagency Committee provided training in cooperation with the Center for Substance Abuse Treatment through contacts at DMHMRSAS. The training provided was related to issues on confidentiality of substance abuse information and was provide in two sessions, November 14 and 15, 2000 by the Legal Action Center of New York. Forty-four [44] local probation and pretrial services directors received training as part of an overall statewide effort.

The Substance Abuse Screening and Assessment legislation took effect on January 1, 2000, for the local community-based probation programs and July 1, 2000, for the pretrial service programs. Additionally, SABRE funding and initiatives became effective on July 1, 2001. During FY2001, pretrial services and local probation programs conducted 17,387 substance abuse screenings. Approximately 63% of these screenings were for pretrial defendants. Screenings indicated that 33% or 5,771 defendants and offenders required further assessment for substance abuse problems. Data reveal that 3,081 or 53% of the assessments required were conducted during the fiscal year. The low completion rate is due to the high number and percentage of pretrial defendants whose screening indicates an assessment was needed for whom an assessment was prepared because they were either not released from jail awaiting trial or not placed on pretrial supervision. Another factor is length of pretrial supervision, which ranges from 66 to 95 days. Less than 23% of pretrial defendants needing further assessment are actually assessed. Of the total assessed, 2,649 or 86% was placed in substance abuse education or treatment services during the year, the majority being offenders on local probation. The significant volume of work in assessing and in providing education and treatment services for defendants and offenders in local pretrial and probation programs added to the volume of work created by DOC probation services and DJJ juvenile services has had a significant impact on the treatment service network. Clearly the infrastructure cannot handle the volume of substance abuse treatment services necessary.

Because DCJS was not eligible to receive Drug Offender Assessment Funds nor funds for training, it had to rely on training services provided by the Department of Corrections and the Commission on VASAP to insure that local program staff were properly trained on the implementation of the program and on the screening and assessment instruments. Therefore, the training period for local programs was extended further into the first six months of the pilot program. DCJS was also not authorized to utilize SABRE funds to establish a regional system of certified substance abuse specialists or for staff to provide for quality assurance.

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On July 1, 1999, four local probation and one pretrial program began participating in the pilot screening and assessment program. Four additional local probation programs and one pretrial program were added to the pilot program as of September 1, 1999.

On December 16, 1999, DCJS developed the first protocol manual for implementation of screening and assessment services for local probation programs. A monthly report form was added on December 22.

The Screening and Assessment program officially started January 1, 2000. To qualify, a misdemeanor offender must have committed the offense on/after January 1. *Code of Virginia* §19.2-299.2 requires judges to order a screening as the result of a conviction for any drug offense punishable as a class 1 misdemeanor. The statute also permits courts to order screening as the result of a conviction for any other class 1 misdemeanor offense when the court has reason to believe there is drug abuse or dependency.

For local programs, the general district court must order a screening, unlike circuit court where a conviction triggers a screening for felony offenses (capital offenses excluded). In addition, §18.2-251 permits courts to defer proceedings for a violation of any drug charge that is a first offense and to place defendant on probation. For these cases, a substance abuse screening is required as a condition of probation.

During the pilot stage of the program, 10 local programs reported no screenings ordered by courts. Because of this, courts had ordered screenings for only 1,115 offenders during the first six months of CY2000.

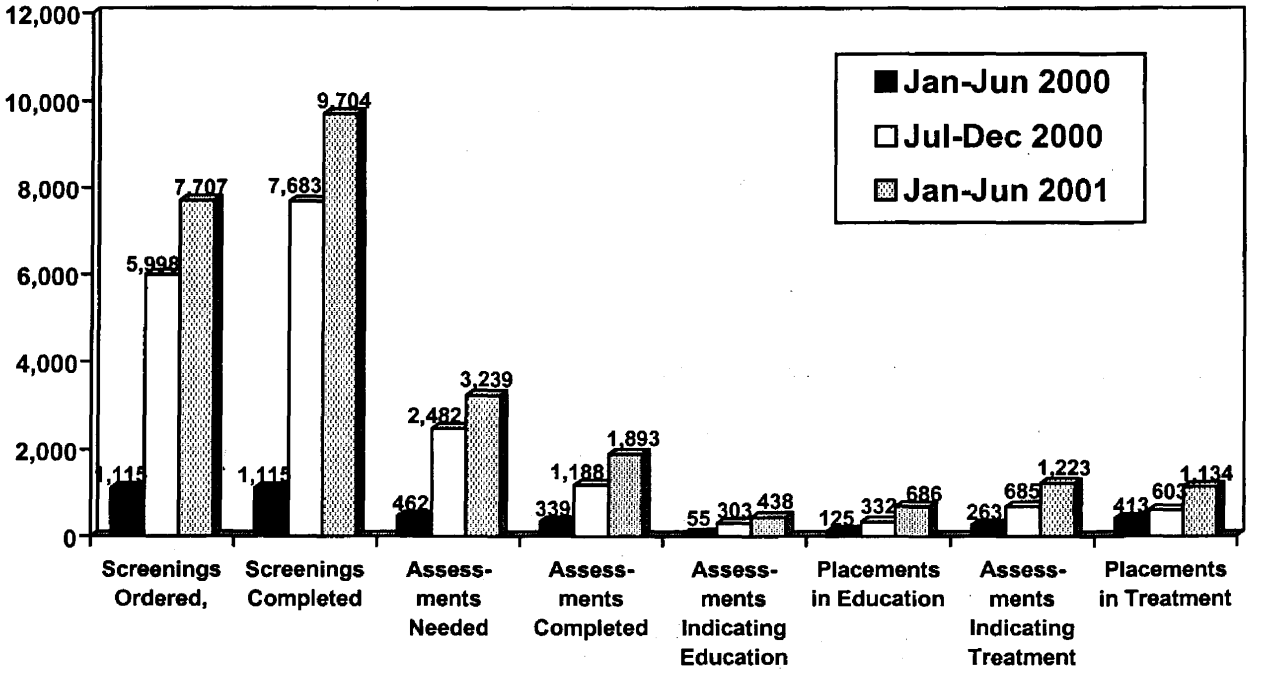
Effective July 1, 2001, the SABRE initiative was folded into the screening and assessment program. In addition, Pretrial Services programs were permitted to conduct screenings, pursuant to §19.2-123 B, for defendants awaiting initial appearance and bail reconsideration in general district court. These screenings are conducted as part of pretrial investigation provided that the chief judge of the district court approves the pretrial services program to conduct screenings.

As of today, 18 pretrial services programs have been approved for screening prior to first appearance in general district court. For the 12 not approved, conducting a confidential screening as part of the pretrial investigation was a problem or jails did not have suitable space.

A comparison of the first six months of **FY2001** to the **last six months** (see Figure 2) reveals the following: greater judicial utilization resulted in a **26% increase** in screenings ordered (from other DCJS data sources, we know that the combined caseload of pretrial and local probation services increased by 22%); assessments completed increased **59%**; placements in education increased **45%**; placements in treatment increased **107%** (placements are based on an average of 54% of those needing an ASI, according to the SSI). More importantly, only a third of those screened require an assessment as compared to the prevailing wisdom which had placed offender substance abuse problems in the 60% to 80% range. However, of those assessed, 87% required either substance abuse education or treatment. While pretrial defendants accounted for 63% of the screenings required, 61% of the screenings conducted, and 53% of the ASIs needed, they accounted for only 26% of assessments completed, 22% of placements in substance abuse education, and 25% of placements in substance abuse treatment. The primary reason for this is because less than 30% of those investigated result in a placement on pretrial services. In

addition, the relatively short period for pretrial supervision (about 66 days for misdemeanor and 96 days for felony defendants) makes scheduling an assessment or initiating treatment difficult.

**Figure 2**
**Screening and Assessment Activities—**
**Local Community-based Probation Programs and Pretrial Services Programs**




Expenditures for the first year of SABRE will also be lower than the amount awarded. Based on 28 of 38 of program sites reporting final expenditure data, at this time, about **$753,523** (50%) of the $1.5 million SABRE funds awarded has been expended. This is the result of three (3) factors. The first being that these funds are part of a grant award system which requires approval of local expenditures by DCJS. The second is that the grant award system requires program administrative and fiscal agents to accept and include grant funds in local budgets which takes time after the approval of an award, and the third being that local programs had to either renew existing contracts for services, hire new staff to provide services or establish new contracts for services. The grant process also permits localities to submit final financial reports 90 days after the end of the grant year (FY2001).

*Goals for FY2002*

DCJS has established the following performance goals for FY2002:

- Increase the monthly rate of completion of assessments to 75% of those required; and
- Reduce the time between assessment and placement in substance abuse education or treatment services.

In addition, with the Interagency Committee, DCJS would like to examine the value of continuing pretrial screenings. DCJS also believes that the Oversight Committee should consider examining pretrial placement rates and average length of supervision (ALOS). During FY2001, 19,962 misdemeanor and 20,688 felony defendants were investigated. However, only 6,264 misdemeanor and 6,736 felony defendants were placed on supervision. As stated before, the length of supervision is too short for placement in education or treatment for most misdemeanor defendants. With the current system, the majority of felony defendants would be only be able to participate in education if services were "in-house" and a few would be able to participate in treatment, if accepted by treatment providers. Many treatment providers do not want pretrial defendants in services because they do not have incentive to continue treatment beyond conviction unless courts require it as a condition of probation. The same applies to those whose cases are dismissed, nolle prossed or those who are found not guilty.

# Virginia Alcohol Safety Action Program

Under §19.2-299.2 of the *Code of Virginia*, local agencies of the Virginia Alcohol Safety Action Program (VASAP) around the Commonwealth are charged with screening and assessing offenders convicted in general district court of a Class 1 misdemeanor drug offense who receive a sentence that includes probation supervision or participation in a local alcohol safety action program (ASAP). However, for offenders ordered to enter programming under the local community-based probation agency, rather than the local alcohol safety action program, the local community-based probation program is responsible for the screening and assessment. If a local has not established a community-based probation program, the local ASAP office by statute must conduct the screenings and assessments as ordered by the court.

Experience to date has shown that local ASAP agencies have received few screening orders or referrals for misdemeanant offenders sentenced in Virginia's general district courts. Local community-based probation programs have handled the bulk of adult misdemeanants requiring screening and assessment. Most drug offenders referred to a local ASAP program are referred under §18.2-251 of the *Code of Virginia*. This group is served as part of VASAP's general operating procedures but is not considered by VASAP to fall under the provisions of §19.2-299.2.

# Department of Juvenile Justice

The Department of Juvenile Justice addresses the substance abuse needs of juvenile offenders through the integration of comprehensive screening and assessment activities and the delivery of an appropriate continuum of treatment services. This is accomplished through conducting a substance abuse screening on selected adjudicated juveniles and where appropriate, a more detailed assessment by qualified personnel utilizing standardized and validated instruments. The approach is guided by the statutory requirements of §16.1-273 (which requires a substance abuse screening for all juveniles where a pre-dispositional investigation or social history is ordered or a juvenile who is convicted of certain misdemeanor drug offenses or felonies) and §16.1-278.8:01 (which mandates a substance abuse screening for all first-time drug offenders).

The Substance Abuse Subtle Screening Inventory (SASSI) is the department's identified screening instrument. This instrument was recently revised and the current SASSI-A2 version is being utilized. The SASSI-A2 is a more reliable, sensitive, and valid tool. It includes a wider range of substance use indicators allowing for the identification of a greater number of juveniles with substance use disorders. If the initial screening with the SASSI-A2 indicates that the juvenile has a high probability for having a substance use disorder, a more comprehensive assessment, using both the Child and Adolescent Functional Assessment Scale (CAFAS) and the Drug/Alcohol component of the Adolescent Problem Severity Index (APSI), is administered.

Beginning in fiscal year (FY) 2001, the screening and assessment activities were fully funded through a combination of resources. A total of $950,000 in state general funds is utilized to support 16 Substance Abuse Specialist (Probation Officer I) positions. Grants funds administered by the Department of Criminal Justice Services (DCJS) in the amount of $995,540 are utilized to support an additional 16 Substance Abuse Specialist positions, three regional coordinator/clinical supervisor positions, and the state portion of the salaries for Substance Abuse Specialists in the locally-operated court service units in Arlington, Falls Church, and Fairfax County. The federal funds are available through June 30, 2003. The enactment of the Drug Offender Assessment Fund, §18.2-251.02, provides funds in the amount of $300,000 annually that supports relevant operating expenses to include screening and assessment instruments, urine drug testing equipment, staff training, travel expenses, and equipment needs.

Each Substance Abuse Specialist is a certified substance abuse counselor or is pursuing this credential. As of December 1, 2001, 28 of 33 incumbents were certified and/or licensed. They are responsible for coordinating or conducting the mandated substance abuse activities. In each of the Department's three geographic regions, a coordinator/clinical supervisor monitors the substance abuse screening and assessment activities and provides technical assistance to the region's court service units. These staff also assist court service unit directors and supervisors in the development and implementation of unit-specific operating practices to conform with statutory requirements and the Department's policy and procedures. They also provide clinical

supervision for designated DJJ staff to meet the initial and continuing requirements as described by the Board of Professional Counselors for certified substance abuse certification status.

The department has established a comprehensive system to track the results of the screening and assessment activities. The results are entered into the DJJ Juvenile Tracking System (JTS) for monitoring and analysis and are reviewed monthly by the Community Programs Evaluation Supervisor, Substance Abuse Program Manager and the Court Service Specialist. This process ensures compliance with agency policies and procedures. During FY2001, 9,080 screenings (SASSI) and 2,701 assessments (APSI & CAFAS) were completed. Of the total number of juvenile offenders that were screened during this period, 63% of the results indicated a low risk for substance dependence, 14% of the results indicated moderate risk and 20% of the results indicated a high risk for substance dependence.

The Department has responded to the needs of juveniles identified as needing substance abuse treatment through the development and implementation of the SABRE, *Substance Abuse Reduction Effort,* initiative. This establishes a continuum of substance abuse education and treatment services to address varying levels of clinical need and readiness for treatment. DJJ's use of its SABRE appropriation is not intended to replace or duplicate existing community-based services, but to increase service availability, reduce waiting lists and more specifically address the substance abuse needs of juveniles in the supervision of DJJ. DJJ's SABRE program will complement substance abuse programs and services that are already available through the court service units, community services boards, or other public and private agencies, including those funded through the Virginia Juvenile Community Crime Control Act (VJCCCA), the Comprehensive Services Act (CSA), and federal and state grant programs. The DJJ SABRE program does not fund residential treatment placements.

During the 2000-2002 biennium, the Department received an appropriation of $1.17 million in fiscal year 2001 and $2.34 million in fiscal year 2002. A supplemental $300,000 grant for the purchase of treatment services was made available for the 2001 calendar year. These services are procured through Memoranda of Agreement (MOA) with public sector substance abuse treatment providers to secure the services of dedicated staff to serve Court Service Unit referrals. Services are also obtained through competitive Request for Proposals (RFP) seeking to select qualified substance abuse treatment providers on a fee-for-service basis. The designated CSU Substance Abuse Specialist is responsible for linking juveniles to appropriate treatment services and monitoring the juveniles' treatment progress. These range treatment services that are available include the following options:

- ***Brief interventions*:** These services are appropriate for youth with the least severe levels of substance use related problems. Such services will typically include structured approaches including substance abuse education, skills development (e.g., problem solving, drug refusal), and/or brief motivational interventions. Brief interventions may also be provided via individual and family sessions.

- ***Outpatient individual, family, and group counseling:*** These services are appropriate for youth with mild to moderate levels of substance use related problems. Services in this category employ a variety of therapeutic approaches.

- ***Intensive outpatient programs (IOP):*** These services are appropriate for youth with moderate to severe substance use related problems. Programs in this category typically provide a minimum of 6-9 hours per week of direct services, spread over at least three days per week and typically include a mix of individual, group and family counseling and may also include ancillary services and activities such as educational support and structured therapeutic recreation.

- ***Relapse prevention services*:** These services are appropriate for youth with a range of substance use related problems who have completed a primary substance abuse treatment program, either in one of the DJJ's juvenile correctional centers, a community-based residential treatment program, and/or a community-based outpatient treatment program. Services in this category employ structured, cognitive, and behavioral skill-based approaches to prevent substance abuse relapse and may include a mix of individual, family, and group counseling.

- ***Urine drug testing:*** All services should include appropriate monitoring of substance use by youth via objective means such as urine drug screening.

During FY2001, 1,140 juveniles were referred for treatment services funded through DJJ's SABRE program. Additionally, many juveniles identified as in need of services through the screening and assessment process received treatment through resources such as private insurance, publicly funded Community Services Board programs, VJCCCA programs, DJJ Juvenile Correctional Center treatment programs (for those juveniles committed to state care).

During the 2002 fiscal year, the Department of Juvenile Justice will continue to monitor the development of this service delivery system by addressing the following implementation objectives:

- Securing long term funding for the grant funded substance abuse specialist and the regional coordinator/clinical supervisor positions.
- Improving the screening process through continued training for all relevant personnel on the administering and interpreting of the recently introduced SASSI-A2 screening tool.
- Providing relevant, ongoing educational opportunities to enhance the skills and abilities of substance abuse specialists.
- Improving the service quality, coordination of efforts, and responsiveness to the DJJ population needs through increased monitoring of contracted service providers.
- Evaluate the services provided through this delivery system to determine the impact on recidivism and other key indicators.

# Department of Mental Health, Mental Retardation and Substance Abuse Services

*Current Activities*

The Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) has been responsible for the development of draft materials regarding:

- Model Memorandum of Agreement and Protocol between Criminal Justice Agencies and Treatment Providers
- Qualified Service Agreement Protocol and Model Form
- Confidentiality Protocols and Model Consent Form
- Confidentiality Training
- Records Management Protocol
- Treatment Services Reference Guide

*Memorandum of Agreement Protocol (see Appendix B)*

The Memorandum of Agreement Protocol establishes the relationship between the criminal justice agency and the substance abuse treatment provider. The Protocol details specific responsibilities to each party, in order to avoid misunderstandings which may cause each party in the referral relationship to have different expectations regarding offender services, exchange of information and payments. The Model Memorandum of Agreement implements the Protocol.

*Model Memorandum of Agreement (see Appendix C)*

The Model Memorandum of Agreement (MOA) is recommended for use by local Criminal Justice Agencies if:

- No current MOA is in use between the local criminal justice agency and their treatment provider;
- The current agreement does not contain the elements listed in the Model MOA Scope of Services for the service provider and purchasing agency;
- The current agreement does not contain a requirement, listed in the Model MOA Scope of Services, for the designation of a contact person who is responsible for the administration of the contract between the service provider and purchasing agency;
- The current agreement does not contain a requirement for cross-training of line staff who are responsible to carry out provisions of the MOA.

The Model MOA outlines criteria for:

- Reporting requirements—The MOA specifies the type of information to be exchanged and specific time periods within which the exchange must be made.
- Delivery of Treatment Services—The MOA requires that an individual treatment plan must be developed for each offender that addresses problems that were identified by the assessment process. The MOA also requires that the referring agency be notified if the treatment plan has to be altered or if the individual has failed to adequately respond to the delivery of treatment services.
- Financial Relationships and Payments—The MOA details the specific cost of the scope of services, and how payments are made.
- Cross Training—The MOA requires that cross training of line staff providing services must occur and be repeated frequently to reduce misunderstandings that may occur.

A chart showing MOAs that have been implemented with public treatment agencies appears in Figure 3.

**Figure 3**
**MOAs between Community Services Boards and Criminal Justice Agencies (as of 8/23/01)**

| Court Services Board (CSB) | Department of Corrections | Department of Juvenile Justice | Local Community-based Probation Programs | Alcohol Safety Action Programs |
|---|---|---|---|---|
| Alexandria | 0 | 1 | | |
| Alleghany-Highlands | 1 | | | |
| Arlington | | 1 | | |
| Blue Ridge | 1 | 1 | 1 | |
| Central Virginia | | 1 | 1 | 1 |
| Chesapeake | 1 | 1 | 1 | |
| Chesterfield | 0 | 1 | 1 | |
| Colonial | 1 | | | |
| Crossroads | 0 | 1 | | 0 |
| Cumberland Mountain | 1 | 1 | 1 | 1 |
| Danville-Pittsylvania | 1 | 1 | | |
| Dickenson County | 1 | | | |
| Eastern Shore | 1 | 1 | | |
| Fairfax-Falls Church | | 1 | 1 | |
| Goochland-Powhatan | | | | |
| Hampton-Newport News | | 1 | | 1 |
| Hanover County | | 1 | 1 | |
| Harrisonburg-Rocking | 1 | | 1 | |
| Henrico Area | 1 | 1 | 1 | |
| Highlands | 1 | 1 | | |
| Loudoun County | 1 | | 1 | |
| Mid Peninsula-Northern Neck | | 1 | | |
| Mount Rogers | | 1 | | 1 |
| New River Valley | 1 | 1 | 1 | 1 |
| Norfolk | 1 | 1 | 1 | |
| Northwestern | 1 | | 1 | |
| P.D. 1 | | | | |
| P.D. 19 | | 1 | | |
| Piedmont Regional | 1 | 1 | | 1 |
| Portsmouth | 1 | | 1 | 1 |
| Prince William | 1 | | 1 | 0 |
| Rappahannock Area | 1 | 1 | | |
| Rappahannock-Rapidan | 1 | | | |
| Region Ten | 1 | 1 | 1 | 1 |
| Richmond | | 1 | 0 | |
| Rockbridge Area | | | | |
| Southside | | | 1 | |
| Valley | 1 | 1 | | |
| Virginia Beach | 1 | 1 | | |
| Western Tidewater | | | 1 | |
| Total | 27 | 26 | 21 | 8 |
| % | 68% | 65% | 53% | 20% |

MOA (yes =1) (no=0)

No entry indicates services may be provided to CJ clients along with any other clients of the CSB at no additional or special charge.

CSB has MOA with more than one Criminal Justice Agency within their Catchment Area.

*Qualified Service Agreement Protocol (see Appendix D)*

DMHMRSAS staff assisted the Interagency Committee in the development of a protocol and model form for Qualified Service Agreements. An Inter-Agency Qualified Service Agreement (QSA) is a written agreement between a program and a person/program providing support services to that program that addresses the exchange of information about the offender who is receiving substance abuse services. A QSA does not substitute for or replace a formal Consent for the Release of Confidential Information, but is used when a program routinely provides and receives service related information about an offender who is in a substance abuse program. A QSA is used to facilitate exchange of information that is needed by others so those programs can function effectively. Examples include:

- A laboratory that receives, analyzes and provides results of drug or alcohol testing;
- Third-party insurance carriers;
- Data processing; and
- Program evaluators.

*Confidentiality Narrative (see Appendix E)*

When Virginia embarked on it's multi-agency initiative to reduce substance abuse (Substance Abuse Reduction Effort - SABRE), criminal justice system workers took on new roles in the screening, assessment and referral process. These workers, with some exceptions, were not familiar with Federal laws and regulations that protect information about all persons receiving alcohol and drug abuse prevention and treatment services (42 U.S.C. §§290dd-3 and ee-3 and 42 Code of Federal Regulations, Part 2). DMHMRSAS developed a narrative for inclusion in Protocol manuals, which identified the foundation for the federal law, rules and regulations that govern the protection of information regarding offender based substance abuse treatment.

*Confidentiality Training*

DMHMRSAS arranged for the Legal Action Center, a nationally recognized company specializing on confidentiality issues to conduct two training events for supervisors. The two events were in November of 2000 and over 186 individuals from Community Services Boards, Community Corrections Agencies, Department of Juvenile Justice, Court Services Units, Department of Corrections Probation and Parole Offices and Virginia Alcohol Safety Action Programs attended these events.

*Confidentiality Protocol (see Appendix F)*

A protocol outlining specific procedures for exchange of information was developed. The protocol also included development of a one-page "Consent" form, which provides authorization for exchange of information. A records management protocol was also developed which

provides guidance for management of records in accordance with federal criteria that protects substance abuse treatment information from being released inappropriately to individuals who are not part of the screening assessment and referral process.

*Treatment Services Reference Guide (see Appendix G)*

A guide was developed for Judges, Commonwealth Attorneys, and other criminal justice agencies, which provides a brief description of the range of substance abuse services that are available in the Commonwealth. The guide is intended to provide a descriptive reference to each service and approximate length of time necessary for completion.

*Goals for 2002*

A Treatment/Supervision Placement Matrix is currently under development that will compare severity of substance abuse problems, as measured by the addiction severity index, with criminal risk assessment. This process will assist courts and other criminal justice agencies to prioritize services to offenders with the most need and potential to benefit from the service. Development of this process will require refinements in the definitions of levels of supervision that are comparable with the various levels and intensity of treatment services.

Existing MOAs will be reviewed during the next year to determine the need for modifications to the model agreement. Areas, which do not use the model MOA, will be visited to review the relationships between criminal justice agencies and the providers of substance abuse treatment services. The MOA requires improvement of the conflict resolution process. A more specific mechanism will be developed for inclusion in the Model MOA.

The number of individuals trained in the past year represents only a fraction of those who need and require the information. DMHMRSAS will develop a process in the coming year to improve capacity for Confidentiality Training in Virginia.

# Virginia Criminal Sentencing Commission

While not having direct responsibility for the screening and assessment of offenders, the Virginia Criminal Sentencing Commission (VCSC) has served an advisory role on the Interagency Committee. The VCSC oversees the system of sentencing guidelines utilized in Virginia's circuit courts. The sentencing guidelines are one tool used by the judiciary when developing sentencing decisions for felony offenders before the court. The guidelines are voluntary. Judges are free to depart from the guidelines recommendations and need only to cite a reason for the departure on the guidelines form. The nature of the guidelines system in Virginia allows judges to use their discretion when formulating sanctions for criminal defendants to account for the circumstances of each offender, such as drug or alcohol addiction. Judges can tailor a "package" of sanctions they feel is most appropriate for each case. These sanctions can include a variety of elements including incarceration, inpatient or outpatient treatment, supervision, drug testing, and education. In this way, Virginia's sentencing guidelines allow for the integration of treatment and other services into the criminal sanctioning process.

At the request of the Interagency Committee, the VCSC revised the cover sheet of the sentencing guidelines form effective July 1, 2000. The guidelines cover sheet has two additional check boxes not contained on previous versions of the form. The first check box is marked by the guidelines preparer if the offender has received a substance abuse screening per §18.2-251.01. The second check box is marked if the offender has received a full substance abuse assessment. These boxes are displayed below.

| Substance Abuse Screening and Assessment §18.2-251.01: ❑ Screening Completed ❑ Assessment Completed |
|---|

The addition of these check boxes to the cover sheet serves two functions. First, these boxes inform the sentencing judge in a direct way whether or not the offender has undergone screening and assessment. If the judge, in his review of the guidelines forms, sees that the offender has been screened or assessed, the judge can examine the results of these procedures. Screening and assessment, then, becomes another tool for judges as they consider sanctions for substance abusing offenders. These check boxes serve a second function by providing the Interagency Committee with information regarding screening and assessment activities. The Interagency Committee can use VCSC data to determine the proportion of felony offenders who receive screening and assessment services prior to sentencing and the areas of the state where this approach is most prevalent. VCSC data reveal that nearly half (47.3%) of felony offenders subject to screening and assessment provisions (offense date on or after January 1, 2000) have been screened prior to sentencing, but fewer than one in five (18.7%) offenders received a full assessment before the sentencing hearing (Figure 4). While probation officers and

Commonwealth's attorneys are both authorized to complete guidelines worksheets for the court, it is unlikely that a substance abuse screening will be performed prior to sentencing unless probation office prepares the sentencing guidelines for a case. When a probation officer completes the guidelines forms, the court has in most cases ordered the preparation of a pre-sentence investigation (PSI) report, which must include a substance abuse screening (§19.2-299). In nearly four of five guidelines cases completed by probation officers (77.8%), the offender is screened prior to sentencing. Nearly one-third (30.8%) of offenders are assessed prior to sentencing when a probation officer completes the guidelines form.

**Figure 4**
**Use of Check Boxes Provided on Sentencing Guidelines Cover Sheet (FY2001)**

| Screenings Completed | | Assessments Completed | | Total Number of Guidelines Cases |
|---|---|---|---|---|
| Number | Percent of Total | Number | Percent of Total | |
| 6,518 | 47.3% | 2,575 | 18.7% | 13,785 |

Note: Analysis includes only felony offenders convicted in circuit court during FY2001 who committed a felony offense on or after January 1, 2000, that is covered by the sentencing guidelines.

# Program Evaluation

Since its inception, the Interagency Committee has stressed the importance of a comprehensive evaluation of the screening and assessment initiative, and *Code of Virginia* language which created the Committee directs it to implement an evaluation process. Evaluation is critical in determining the success of the initiative in achieving its goals. An evaluation will also identify potential areas for improvement. The Secretary of Public Safety, as the chairman of the Interagency Committee, has directed Department of Criminal Justice Services (DCJS) Criminal Justice Research Center to conduct a thorough evaluation of this initiative.

*Evaluation Plan*

The Criminal Justice Research Center has provided the Interagency Committee with a two-phase evaluation plan. Phase 1, an assessment of program implementation, will review the development of state and local protocols that guide implementation, examine the utility of prescribed screening and assessment tools, describe variations in operations across state agencies and localities, and assess adherence to statutory directives. A report on Phase 1 of the project is anticipated by July 2002. The workplan for the implementation evaluation is shown in Figure 5.

**Figure 5**
**Evaluation Workplan**
**Phase 1: Implementation of the Substance Abuse Screening and Assessment Program**

| Activity | Timeframe |
|---|---|
| Review program materials; develop and initiate evaluation plan. | August 2000 – August 2001 |
| Hire evaluation staff. | July – August 2001 |
| Compile list of involved agencies and local offices. | August 2001 |
| Develop and implement standardized screening and assessment activity reporting form. | September 2001 – December 2001 |
| Develop interview and survey instruments. | September 2001 – December 2001 |
| Select representative local offices for site visits, interviews, and data collection. | November – December 2001 |
| Identify additional state and local databases with relevant data; obtain data. | November 2001 – February 2002 |
| Conduct site visits, interviews, and data collection. | November 2001 – April 2002 |
| Code interview and survey data; enter into database. | January - May 2002 |
| Identify case-specific data needed for Phase 2. | December 2001 – February 2002 |
| Assess case-specific data availability; develop case-specific data collection approaches and methods. | December 2001 – April 2002 |
| Conduct follow-up interview/survey data collection as needed. | January –May 2002 |
| Analyze data; compile and interpret results. | April – May 2002 |
| Develop conclusions and recommendations. | May 2002 – June 2002 |
| Write and disseminate Phase 1 evaluation report. | May 2002 - July 2002 |

Phase 2 of the evaluation is planned to assess program outcomes. The Phase 1 implementation study will be used to identify and assess the availability of outcome measures, such as how drug education and treatment affects recidivism. Phase 1 will also determine feasible data collection strategies for Phase 2. Findings from the Phase 1 evaluation may also lead to program changes that should occur prior to any outcome assessment. Therefore, an appropriate timeline and workplan for Phase 2 is to be developed upon completion of Phase 1.

*Activities To Date*

Due to funding delays, evaluation staff were not hired until Summer 2001. Two part-time research staff positions at DCJS are dedicated to the project, and one full-time DCJS evaluation researcher also currently staffs this evaluation.

In the past year, DCJS evaluation staff have worked collaboratively with the Interagency Committee in a number of ways. First, DCJS evaluation staff have attended monthly meetings of the Interagency Committee. In addition to observing the Committee's work, researchers have used the informational resources of Committee members to construct a standardized reporting form for aggregate workload data. This form will be used to collect information such as:

- number of screenings ordered or required,
- number of screenings completed,
- number of screenings indicating assessment needed,
- number of assessments completed,
- number of assessments completed indicating education and/or treatment needed, and
- number of persons actually placed in education or treatment.

In October 2001, evaluation staff began a series of preliminary site visits to gain additional information about local drug screening and assessment activities. A total of 10 programs were visited. These limited reviews of DCJS, DJJ, and DOC programs allowed evaluators to obtain a broad perspective on local practices in both large and small population districts. Evaluators interviewed key staff members at each program site (e.g., program directors, certified substance abuse counselors (CSACs), staff who conduct drug screenings and assessments, etc.) about the processes used to identify mandated offenders, conduct screenings and assessments, and place offenders into appropriate services. Researchers also reviewed written procedural protocols and case files, and observed screenings in some program sites.

The information gleaned from these visits has been valuable to the evaluation effort for multiple reasons. First, the descriptive information has been very useful in developing appropriate data collection instruments for future evaluation activities (see below). In addition, these preliminary visits revealed two important issues that presented possible impediments to the evaluation process. First, local programs showed substantial variation in their interpretation of current confidentiality regulations regarding the release of substance abuse information. Some programs believed that evaluators did not have authority to review such information. Second, case reviews revealed that two different versions of the SSI were being used in the field: an interview form and a self-report form. This issue was important because earlier conversations

with the Interagency Committee indicated that the interview version of the SSI, which includes an observational checklist, was the required screening instrument for adult offenders. Because the standardized workload reporting form was developed under this premise, data from that form would not be interpretable without the collection of additional information.

These two issues were brought to the attention of the Interagency Committee, and are consequently being addressed statewide. The Interagency Committee is examining the need for enhanced confidentiality trainings. A letter is also being sent from the Committee chair to all state and local programs that will clarify the researchers' authority under federal law to review records. In addition, Interagency Committee members confirmed that the SSI interview form is the required instrument for use in the field. State program administrators have been directed to ensure local compliance with this directive by January 1, 2002.

Due to the large number (200+) of local programs that may conduct drug screening and/or assessments for Virginia's criminal offenders, the evaluation team is currently selecting a sample of programs to include for intensive evaluation. The sample is projected to include approximately 40 local programs, and will provide a geographical representation of DCJS, DJJ, and DOC programs across the state. These programs will be visited in Spring 2002 to collect detailed information about local implementation and practice. Information will be collected primarily through personal interviews with key program participants, such as program directors, substance abuse counselors, and line staff. Interview instruments are currently under construction, and will include the following general topics:

- development of policies and procedures at the state and local levels;
- implementation of the screening and assessment process in local offices;
- training on screening and assessment instruments, local procedures, and confidentiality;
- process of collecting screening, assessment, and treatment data;
- data and file management;
- resources available for program implementation and service provision; and
- general impressions of implementation and usefulness of the initiative.

In addition, evaluators are producing written questionnaires to solicit information from other relevant parties. Priority target groups include judges, Commonwealth's attorneys, defense attorneys, and service providers. Other participants may ultimately be requested to provide additional feedback as time and resources permit.

Additional evaluation activities will continue throughout July 2002 for the Phase 1 implementation evaluation described in the timeline above. Appropriate Phase 2 activities will be initiated upon completion of Phase 1.

# Appendices

# Appendix A
# Legislation

**§ 16.1-273.** Court may require investigation of social history and preparation of victim impact statement.

A. When a juvenile and domestic relations district court or circuit court has adjudicated any case involving a child subject to the jurisdiction of the court hereunder, except for a traffic violation, a violation of the game and fish law or a violation of any city ordinance regulating surfing or establishing curfew violations, the court before final disposition thereof may require an investigation, which (i) shall include a drug screening and (ii) may include the physical, mental and social conditions, including an assessment of any affiliation with a youth gang as defined in § 16.1-299.2, and personality of the child and the facts and circumstances surrounding the violation of law. However, in the case of a juvenile adjudicated delinquent on the basis of an act committed on or after January 1, 2000, which would be a felony if committed by an adult, or a violation under Article 1 (§ 18.2-247 et seq.) or Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2 and such offense would be punishable as a Class 1 or Class 2 misdemeanor if committed by an adult, the court shall order the juvenile to undergo a drug screening. If the drug screening indicates that the juvenile has a substance abuse or dependence problem, an assessment shall be completed by a certified substance abuse counselor as defined in § 54.1-3500 employed by the Department of Juvenile Justice or by a locally operated court services unit or by an individual employed by or currently under contract to such agencies and who is specifically trained to conduct such assessments under the supervision of such counselor.

B. The court also shall, on motion of the attorney for the Commonwealth with the consent of the victim, or may in its discretion, require the preparation of a victim impact statement in accordance with the provisions of § 19.2-299.1 if the court determines that the victim may have suffered significant physical, psychological or economic injury as a result of the violation of law.

**§ 18.2-251.01.** Substance abuse screening and assessment for felony convictions.

A. When a person is convicted of a felony, not a capital offense, committed on or after January 1, 2000, he shall be required to undergo a substance abuse screening and, if the screening indicates a substance abuse or dependence problem, an assessment by a certified substance abuse counselor as defined in § 54.1-3500 employed by the Department of Corrections or by an agency employee under the supervision of such counselor. If the person is determined to have a substance abuse problem, the court shall require him to enter a treatment and/or education program, if available, which, in the opinion of the court, is best suited to the needs of the person. This program may be located in the judicial district in which the conviction was had or in any other judicial district as the court may provide. The treatment and/or education program shall be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services or shall be a similar program which is made available through the Department of Corrections if the court imposes a sentence of one year or more or, if the court imposes a sentence of twelve months or less, by a similar program available through a local or regional jail, a community corrections program established pursuant to § 53.1-180, or an ASAP program certified by the Commission on VASAP. The program may require the person entering such program under the

provisions of this section to pay a fee for the education and treatment component, or both, based upon the defendant's ability to pay.

B. As a condition of any suspended sentence and probation, the court shall order the person to undergo periodic testing and treatment for substance abuse, if available, as the court deems appropriate based upon consideration of the substance abuse assessment.

**§ 19.2-123.** Release of accused on secured or unsecured bond or promise to appear; conditions of release.

A. Any person arrested for a felony who has previously been convicted of a felony, or who is presently on bond for an unrelated arrest in any jurisdiction, or who is on probation or parole, may be released only upon a secure bond. This provision may be waived with the approval of the judicial officer and with the concurrence of the attorney for the Commonwealth or the attorney for the county, city or town. Subject to the foregoing, when a person is arrested for either a felony or a misdemeanor, any judicial officer may impose any one or any combination of the following conditions of release:

1. Place the person in the custody and supervision of a designated person, organization or pretrial services agency which, for the purposes of this section, shall not include a court services unit established pursuant to § 16.1-233;

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;

2a. Require the execution of an unsecured bond;

3. Require the execution of a secure bond which at the option of the accused shall be satisfied with sufficient solvent sureties, or the deposit of cash in lieu thereof. Only the actual value of any interest in real estate or personal property owned by the proposed surety shall be considered in determining solvency and solvency shall be found if the value of the proposed surety's equity in the real estate or personal property equals or exceeds the amount of the bond;

3a. Require that the person do any or all of the following: (i) maintain employment or, if unemployed, actively seek employment; (ii) maintain or commence an educational program; (iii) avoid all contact with an alleged victim of the crime and with any potential witness who may testify concerning the offense; (iv) comply with a specified curfew; (v) refrain from possessing a firearm, destructive device, or other dangerous weapon; (vi) refrain from excessive use of alcohol, or use of any illegal drug or any controlled substance not prescribed by a health care provider; and (vii) submit to testing for drugs and alcohol until the final disposition of his case; 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 or be placed on home electronic incarceration pursuant to § 53.1-131.2.

Upon satisfaction of the terms of recognizance, the accused shall be released forthwith.

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 or alcohol screening or testing program approved for the purposes of this subsection by the chief general district court judge, any such person charged with a crime may be requested by such agency to give voluntarily a urine sample, submit to a drug or alcohol screening, or take a breath test for presence of alcohol. A 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 any hearing to establish bail. The judicial officer and agency shall inform the accused or juvenile being screened or tested that test results shall be used by a judicial officer only at a bail hearing and only to determine appropriate conditions of release or to reconsider the conditions of bail at a subsequent hearing. All screening or test results, and any pretrial investigation report containing the screening or test results, shall be confidential with access thereto limited to judicial officers, the attorney for the Commonwealth, defense counsel, other pretrial service agencies, any criminal justice agency as defined in § 9.1-101 and, in cases where a juvenile is screened or tested, the parents or legal guardian or custodian of such juvenile. However, in no event shall the judicial officer have access to any screening or test result prior to making a bail release determination or to determining the amount of bond, if any. Following this determination, the judicial officer shall consider the screening or test results and the screening or testing agency's report and accompanying recommendations, if any, in setting appropriate conditions of release. In no event shall a decision regarding a release determination be subject to reversal on the sole basis of such screening or 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 use of alcohol or illegal drugs 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, which violations shall include subsequent positive drug or alcohol 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 or alcohol test result shall be reconfirmed by a second test if the person tested denies or contests the initial drug or alcohol test positive result. The results of any drug or alcohol 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. [Repealed.]

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. If any condition of release imposed under the provisions of this section is violated, a judicial officer may issue a capias or order to show cause why the recognizance should not be revoked.

**§ 19.2-299.** Investigations and reports by probation officers in certain cases.

A. When a person is tried in a circuit court (i) upon a charge of assault and battery in violation of § 18.2-57 or § 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, or driving while intoxicated in violation of § 18.2-266, and is adjudged guilty of such charge, the court may, or on motion of the defendant shall, or (ii) upon a felony charge not set forth in subdivision (iii) below, the court may when there is a plea agreement between the defendant and the Commonwealth and shall when the defendant pleads guilty without a plea agreement or is found guilty by the court after a plea of not guilty, or (iii) the court shall when a person is charged and adjudged guilty of a felony violation, or conspiracy to commit or attempt to commit a felony violation, of §§ 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.2:1, 18.2-67.3, 18.2-67.4:1, 18.2-67.5:1, 18.2-355, 18.2-356, 18.2-357, 18.2-358, 18.2-361, 18.2-362, 18.2-366, 18.2-367, 18.2-368, 18.2-370, 18.2-370.1, or § 18.2-370.2, or any attempt to commit or conspiracy to commit any felony violation of §§ 18.2-67.5, 18.2-67.5:2, or § 18.2-67.5:3, direct a probation officer of such court to thoroughly investigate and report upon the history of the accused, including a report of the accused's criminal record as an adult and available juvenile court records, and all other relevant facts, to fully advise the court so the court may determine the appropriate sentence to be imposed. The probation officer, after having furnished a copy of this report at least five days prior to sentencing to counsel for the accused and the attorney for the Commonwealth for their permanent use, shall submit his report in advance of the sentencing hearing to the judge in chambers, who shall keep such report confidential.

The probation officer shall be available to testify from this report in open court in the presence of the accused, who shall have been advised of its contents and be given the right to cross-examine the investigating officer as to any matter contained therein and to present any additional facts bearing upon the matter. The report of the investigating officer shall at all times be kept confidential by each recipient, and shall be filed as a part of the record in the case. Any report so filed shall be sealed upon the entry of the sentencing order by the court and made available only by court order, except that such reports or copies thereof shall be available at any time to any criminal justice agency, as defined in § 9.1-101, of this or any other state or of the United States; to any agency where the accused is referred for treatment by the court or by probation and parole services; and to counsel for any person who has been indicted jointly for the same felony as the person subject to the report. Any report prepared pursuant to the provisions hereof shall without court order be made available to counsel for the person who is the subject of the report if that person is charged with a felony subsequent to the time of the preparation of the report. The presentence report shall be in a form prescribed by the Department of Corrections. In all cases

where such report is not ordered, a simplified report shall be prepared on a form prescribed by the Department of Corrections.

B. As a part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony, the court probation officer shall advise any victim of such offense in writing that he may submit to the Virginia Parole Board a written request (i) to be given the opportunity to submit to the Board a written statement in advance of any parole hearing describing the impact of the offense upon him and his opinion regarding the defendant's release and (ii) to receive copies of such other notifications pertaining to the defendant as the Board may provide pursuant to subsection B of § 53.1-155.

C. As part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony drug offense set forth in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, the presentence report shall include any known association of the defendant with illicit drug operations or markets.

D. As a part of any presentence investigation conducted pursuant to subsection A, when the offense for which the defendant was convicted was a felony, not a capital offense, committed on or after January 1, 2000, the defendant shall be required to undergo a substance abuse screening pursuant to § 18.2-251.01.

**§ 19.2-299.2.** Alcohol and substance abuse screening and assessment for designated Class 1 misdemeanor convictions.

A. When a person is convicted of any offense committed on or after January 1, 2000, under Article 1 (§ 18.2-247 et seq.) or Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2, and such offense is punishable as a Class 1 misdemeanor, the court shall order the person to undergo a substance abuse screening as part of the sentence if the defendant's sentence includes probation supervision by a local community-based probation program established pursuant to Article 2 (§ 53.1-180 et seq.) of Chapter 5 of Title 53.1 or participation in a local alcohol safety action program. Whenever a court requires a person to enter into and successfully complete an alcohol safety action program pursuant to § 18.2-271.1 for a second offense of the type described therein, or orders an evaluation of a person to be conducted by an alcohol safety action program pursuant to any provision of § 46.2-391, the alcohol safety action program shall assess such person's degree of alcohol abuse before determining the appropriate level of treatment to be provided or to be recommended for such person being evaluated pursuant to § 46.2-391.

The court may order such screening upon conviction as part of the sentence of any other Class 1 misdemeanor if the defendant's sentence includes probation supervision by a local community-based probation program established pursuant to Article 2 (§ 53.1-180 et seq.) of Chapter 5 of Title 53.1, participation in a local alcohol safety action program or any other sanction and the court has reason to believe the defendant has a substance abuse or dependence problem.

B. A substance abuse screening ordered pursuant to this section shall be conducted by the local alcohol safety action program. When an offender is ordered to enter programming under the local community-based probation program established pursuant to Article 2 (§ 53.1-180 et seq.) of Chapter 5 of Title 53.1, rather than the local alcohol safety action program, the local community-based probation program shall be responsible for the screening. However, if a local community-based probation program has not been established for the locality, the local alcohol safety action program shall conduct the screening as part of the sentence.

C. If the screening indicates that the person has a substance abuse or dependence problem, an assessment shall be completed and if the assessment confirms that the person has a substance abuse or dependence problem, as a condition of a suspended sentence and probation, the court shall order the person to complete the substance abuse education and intervention component, or both as appropriate, of the local alcohol safety action program or such other treatment program, if available, such as in the opinion of the court would be best suited to the needs of the person. If the referral is to the local alcohol safety action program, the program may charge a fee for the education and intervention component, or both, not to exceed $300, based upon the defendant's ability to pay.

# Appendix B
# Memorandum of Agreement Protocol

## MEMORANDUM OF AGREEMENT

# Protocol

The Memorandum of Agreement (MOA) is important to establish the relationship between the criminal justice agency and the substance abuse treatment provider. Without a specific agreement that details specific responsibilities to each party, misunderstandings that will arise may cause each party in the referral relationship to have different expectations regarding offender services, exchange of information and payments.

The SABRE Interagency Drug Offender Screening and Assessment Committee has developed a Model MOA that is recommended for use if:

- No current MOA is in use between the local criminal justice agency and their treatment provider;
- The current MOA does not contain the elements listed in the Model MOA Scope of Services for the service provider and purchasing agency;
- The current MOA does not contain a requirement, listed in the Model MOA Scope of Services, for the designation of a contact person who is responsible for the administration of the contract between the service provider and purchasing agency;
- The current MOA does not contain a requirement for cross training of line staff who are responsible to carry out provisions of the MOA;

The SABRE Interagency Drug Offender Screening and Assessment Committee is aware the local relationships may necessitate amendment of the Model MOA to address unique local situations. The Committee recommends that representatives of the service provider and purchasing agency, who have authority to sign and implement such agreements, review the Model MOA and negotiate a final agreement that meets their needs. The Committee does not recommend major changes in key elements of the Model MOA. Questions or technical assistance will be provided by the SABRE Interagency Drug Offender Screening and Assessment Committee upon request.

12/21/99

# Appendix C
# Model Memorandum of Agreement

## MEMORANDUM OF AGREEMENT

I. **PARTIES TO THE AGREEMENT:** This agreement entered into this ___ day of _____20_ _, by _____ (Community Services Board) hereinafter called the "Treatment Provider" and _____(Probation and Parole, CCCA, VASAP, Court Services Unit), hereinafter called the "Purchasing Agency".

II. **PERIOD OF AGREEMENT:** From _____, 20_ _ through _____20_ _ and renewable in accordance with paragraph VIII. I.

III. **PURPOSE:** Treatment Provider to provide substance abuse education and treatment services to offenders (referrals) under the supervision of the court referred by the Purchasing Agency.

IV. **SCOPE OF SERVICES:**

A. Treatment Provider will:

1. Provide notice of receipt of referral to Purchasing Agency within five working days.
2. Open a case file that uniquely identifies referrals from the Purchasing Agency.
3. Develop a treatment plan on each referral that addresses major problem areas of the referrals as identified by the ASI and other assessment procedures.
4. Provide a summary and estimate of time necessary to carry out the treatment plan to Purchasing Agency.
5. Place treatment notes in each referral's file that reflects actions taken to address the treatment plan for each treatment session.
6. Notify Purchasing Agency of any absences from scheduled sessions, within 24 hours of occurrence or the next business day.
7. Notify Purchasing Agency of referral's failure to meet goals and objectives of their treatment plan and/or need to revise the plan if it requires substantially different provision of services and time necessary to provide them within five working days of such determination.
8. Notify Purchasing Agency of any positive drug or alcohol tests, if Treatment Provider conducts such testing, within 24 hours of occurrence or the next business day.
9. Provide written summary of the referrals response to treatment within ten working days of completion.
10. Record, maintain and provide upon request statistical data as specified in Appendix A of this agreement.
11. Designate a contact person who shall be responsible for the administration of this contract

B. Purchasing Agency will provide:

1. At time of referral, complete copies of any screening and assessment on each referral conducted by the Purchasing Agency.
2. At time of referral, summary of the referrals correctional status, criminal history, and appropriate information regarding the instant offense.
3. Results of any positive drug or alcohol tests if they conduct such testing.
4. Participation of appropriate staff in case review sessions.
5. Payment for services rendered, as specified in section VI of this document.
6. Results of any sanctions applied to offender, which affects participation in treatment.
7. Results of the court disposition of referral's case.
8. Assistance to Treatment Provider in conducting evaluations of the treatment process.
9. A contact person who shall be responsible for the administration of this contract

## V. CROSS TRAINING:

A. Cross training for line staff providing services under this agreement will be conducted to insure they are aware of the requirement of this agreement. The respective contact persons for the Treatment Provider and the Purchasing Agency shall conduct such training.

B. Cross training opportunities will be conducted periodically to enhance the service provided clients. This training will be scheduled as mutually agreed upon by the Treatment Provider and the Purchasing Agency.

## VI. PRICING AND PAYMENT TERMS:

A. (Select applicable section)

1. If the Purchasing Agency does not have funds to offset the cost of treatment services, Treatment Provider agrees to provide services to Purchasing Agency referrals following a review of DSM IV dependence criteria for adults or abuse criteria for adolescents and federally mandated populations (e.g. pregnant women, women with dependent children) to determine the service priority of each individuals case. Upon admission referrals will receive services that are no different than other clientele of the Treatment Provider, and as provided in the scope of work of this document.

2. Purchasing Agency agrees to pay (the Treatment Provider $___ per referral) (the Treatment Provider's unit costs as specified in attachment B) for services as stated in the Scope of Services. Payment to the Treatment Provider will be made quarterly on a reimbursement basis. This amount shall be reduced by any payments for treatment services by offenders if the total collected exceeds the actual unit cost of service provided. The Treatment Provider will submit an invoice that indicates number served by name, units of services delivered and any offender payments no later than the 5th day of the month following the end of the

quarter. The quarters shall be July - September, October - December, January - March, April - June.

3. Purchasing Agency agrees to reimbursement the Treatment Provider $_____ to offset the cost of an FTE dedicated specifically to provide the services as stated in the Scope of Services. Payment to the Treatment Provider will be made quarterly on a reimbursement basis. The Treatment Provider will submit an invoice that indicates number served by name, units of services delivered following the end of the quarter. The quarters shall be July -- September, October -- December, January – March, April – June.

B. If Treatment Provider conducts drug and alcohol tests, Purchasing Agency agrees to pay $ per drug test and $ per alcohol test. Payment will be based on receipt of monthly testing log, which identifies each individual and the date tested.

## VII. OFFENDER PAYMENTS:

All referrals capable of paying will be charged according to the Treatment Providers sliding fee scale, which will be paid directly to the Treatment Provider. If the offender is determined to be financially unable to pay Treatment Providers fees, services will not be denied. The Treatment Provider will be responsible for the collection of this fee through their normal means. The Purchasing Agency may assist Treatment Provider through appropriate consultation with referrals, if fees are not paid in a timely fashion.

## VIII. TERMS AND CONDITIONS:

A. **AUDIT:** If compensation is received from Purchasing Agency, the Treatment Provider shall retain all books, records, and other documents relative to this agreement for five *(5)* years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The Purchasing Agency, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period. If Treatment Provider receives no compensation for services rendered under this agreement, the normal audit procedures of the Treatment Provider will apply.

B. **APPLICABLE LAWS AND COURTS:** This solicitation and any resulting agreement shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Treatment Provider shall comply with all applicable federal, state and local laws, rules and regulations.

C. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that both parties shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

D. **CANCELLATION OF AGREEMENT:** The parties to this agreement may terminate this agreement, in part or in whole, without penalty, upon 30 days written

notice. Any agreement cancellation notice shall not relieve the Treatment Provider of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation nor relieve the Purchasing Agency from paying for services rendered prior to the date of cancellation.

E. **CHANGES TO THE AGREEMENT:** The parties may agree in writing to modify the scope of the agreement. An increase or decrease in the price of the agreement resulting from such modification shall be agreed to by the parties as a part of a written agreement to modify the scope of the agreement.

F. **CONFIDENTIALITY:** The Provider and the Purchasing Agency will jointly ensure that offender information is handled in accordance with procedures established by the Federal Confidentiality Regulations, 42 C.F.R., Part 2. In addition, both parties agree to adhere to all other Federal and State laws and regulations regarding confidentiality of offender information. The parties will have offenders sign the appropriate release of information documents.

G. **DEFAULT:** If compensation is provided to Treatment Provider for services rendered, failure to deliver goods or services in accordance with the agreement terms and conditions, shall be cause for Purchasing Agency, after due oral or written notice, to procure treatment services from other sources and hold the Treatment Provider responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies, which the Purchasing Agency may have.

H. **DRUG FREE WORKPLACE:** The Treatment Provider acknowledges and certifies that it understands that the following acts by the Treatment Provider, its employees, and/or agents performing services on state property are prohibited:

1. The unlawful manufacture, distribution, dispensing, possession or use of alcohol or other drugs; and
2. Any impairment or incapacitation from the use of alcohol or other drugs except the use of drugs for legitimate medical purposes.

The Treatment Provider further acknowledges and certifies that it understands that a violation of these prohibitions constitutes a breach of agreement and may result in default action being taken by the Commonwealth in addition to any criminal penalties that may result from such conduct.

I. **RENEWAL OF AGREEMENT:** This agreement may be renewed by upon written agreement of both parties. The maximum term of the agreement with all renewals shall not exceed five years. Any changes in the terms of the agreement and the pricing will be negotiated at the time of renewal and included in the renewal document signed by the parties.

| TREATMENT PROVIDER: | PURCHASING AGENCY: |
| --- | --- |
| By: _____ | By: _____ |
| Title: _____ | Title: _____ |
| Date: _____ | Date: _____ |

06/18/2001

# Appendix D
# Qualified Service Agreement Protocol

## INTER-AGENCY QUALIFIED SERVICE AGREEMENT

**Protocol**

An Inter-Agency Qualified Service Agreement (QSA) is a written agreement between a program and a person/program providing services to that program which include the exchange of information about the offender who is receiving substance abuse services. A QSA is not intended to substitute for or replace a formal Consent for the Release of Confidential Information, but should be used when a program **routinely** provides and receives service related information about an offender who is in a substance abuse program. Disclosures under a QSA must be limited to information that is needed by others so that their program can function effectively.

Examples include:

- A laboratory that receives, analyses and provides results of drug or alcohol testing;
- Third party insurance carriers;
- Data processing
- Program evaluators

The SABRE Interagency Drug Offender Screening and Assessment Committee has developed a Model QSA (see attachment) that is recommended for local use. Questions or technical assistance will be provided by the SABRE Interagency Drug Offender Screening and Assessment Committee upon request.

12/07/2000

# Appendix E
# Confidentiality Narrative

# CONFIDENTIALITY - Federal and State Confidentiality Laws*

For integration of substance abuse treatment and pretrial case processing to be effective, information must flow between the treatment program and the criminal justice system. Most treatment drug court programs rely on detailed information flowing regularly to the judge, prosecutor, and defense attorney. This information (including the defendant's attendance record and drug test results) enables the criminal justice court system to work with the defendant, offering praise for good performance, criticism and sanctions for failure. Programs designed to integrate substance abuse treatment with case processing cannot work unless the treatment program can disclose information about defendants to the criminal justice system. Research evaluating the efficacy of these programs also requires that substance abuse programs disclose data about their patients to others. Policy-makers considering whether to fund a program will want to know whether it works.

Are the responsibilities of probation/parole officers, who may be conducting screening, assessment and case management of substance abusing offenders , the same as counselors who provide treatment services to referred offenders.

> Yes, The federal regulations stipulates that any program that specializes, in whole or in part, in providing treatment, counseling, and/or assessment and referral services for patients with alcohol or drug problems must comply with the Federal confidentiality regulations (§2.12(e)). Although the Federal regulations apply only to programs that receive Federal assistance, this category includes organizations that receive indirect forms of Federal aid such as tax-exempt status, or State or local funding coming (in whole or in part) from the Federal government

**Federal Restrictions on Disclosure of Information About Patients**

Although the flow of information from the substance abuse treatment program to the criminal justice system and to the researcher/evaluator is critical, those planning or operating programs and research studies must keep in mind that Federal laws and regulations protect information about all persons receiving alcohol and drug abuse prevention and treatment services (42 U.S.C. §§290dd-3 and ee-3 and 42 Code of Federal Regulations, Part 2)**(see attachment #1)** . These laws and regulations prohibit disclosure of information regarding patients who have applied for or received any alcohol or drug abuse-related services, including assessment, diagnosis, counseling, group counseling, treatment, or referral for treatment, from a covered program. The restrictions on disclosure apply to any information that would identify a patient as an alcohol or drug abuser, either directly or by implication. They apply to patients who undertake treatment as a form of alternative processing, patients who are civilly or involuntarily committed, minor patients, and former patients. They apply even if the person making the inquiry already has the information, has other ways of getting it, enjoys official status, is authorized by State law, or comes armed with a subpoena or search warrant.

Again any program that specializes, in whole or in part, in providing treatment, counseling, and/or assessment and referral services for patients with alcohol or drug problems must comply with the Federal confidentiality regulations (§2.12(e)).

**The Importance of Obtaining Defendants' Consent to Disclosure of Information**

Information that is protected by the Federal confidentiality laws and regulations may always be disclosed after the defendant has signed a proper consent form. The Federal regulations also permit disclosure without the defendant's consent in several limited situations, including medical emergencies, under a court's special authorizing order, and in communication among substance abuse treatment program staff.

Disclosures to the criminal justice partner are permissible once a defendant has signed a criminal justice system consent form (§2.35). A form designed for use by the criminal justice system and recommended by the SABRE Implementation Workgroup is presented in **attachment #2.** Generally consent forms must contain each of the following items:

- The name or general description of the program(s) making the disclosure
- The name or title of the individual or organization that will receive the disclosure
- The name of the patient who is the subject of the disclosure
- The purpose or need for the disclosure
- How much and what kind of information will be disclosed
- A statement regarding revocation of consent
- The date, event, or condition upon which the consent will expire
- The signature of the patient
- The date on which the consent is signed.

The requirements regarding consent are somewhat unusual and strict but must be carefully followed. A general medical release form, or any consent form that does not contain all of the elements listed above, is not acceptable.

**Limitations on Disclosure**

All disclosures, and especially those made pursuant to a consent form, must be limited to information that is necessary to accomplish the need or purpose for the disclosure (§2.13(a)). It would be improper to disclose everything in a defendant's file if the recipient of the information needs only one specific piece of information.

The purpose or need for the communication of information must be indicated on the consent form. Once this material has been identified, it is easier to determine how much and what kind of information will be disclosed, tailoring it to what is essential to accomplish the need or purpose that has been identified.

The kind and amount of information disclosed to the criminal justice system by a treatment program will depend on the structure of the collaborative program. For example, in the criminal justice, SABRE or drug court model, the judge, prosecutor, defense counsel and probation supervision agencies see the defendant frequently to offer words of encouragement or criticism in response to the defendant's performance. In this model, the purpose of the disclosure would be "to provide information about performance in treatment" and the kind and amount of information would be "drug test results, attendance at the program, and counselor's assessment." Information that is protected by the Federal confidentiality laws and regulations may always be disclosed after the defendant has signed a proper consent form.

**Seeking Information From Collateral Sources**

When a substance abuse program that screens, assesses, or treats criminal defendants asks relatives, doctors, employers, or school representatives about defendants, it is making a patient-identifying

disclosure. In other words, when treatment program staff seek information from other sources, they are letting these sources know that the defendant is being considered for substance abuse treatment. The Federal regulations generally prohibit this kind of disclosure unless the patient consents.

The substance abuse treatment program can proceed in one of two possible ways. First, if the criminal justice partner makes the inquiries without mentioning substance abuse or treatment, there is no disclosure of the defendant's substance abuse and therefore no violation of the confidentiality rules has occurred. The second way, of course, is to get the defendant's consent to contact the relative, doctor, employer, school, health care facility, etc.

**The Duration of Consent**

The criminal justice system consent form must contain a date, event, or condition upon which it will expire. The Federal confidentiality regulations permit the criminal justice system consent to be irrevocable until this specified date or condition occurs. Thus, a defendant entering treatment in lieu of prosecution or punishment cannot prevent the court or other agency from monitoring his or her progress. The regulations require that the following factors be considered in determining how long a criminal justice system consent will remain in effect:

- The anticipated duration of treatment
- The type of criminal proceeding in which the defendant is involved
- The need for treatment information in dealing with the proceeding
- The expected date of final disposition.
- Anything else the patient, program, or criminal justice agency believes is relevant.

These rules allow programs to continue to use as a traditional expiration condition for a consent form the phrase "when there is a substantial change in the patient's justice system status."

**Prohibitions on Re-disclosing Information**

Information obtained from a substance abuse treatment program through a patient's consent **cannot be re-disclosed** unless permitted by the regulations (§2.32). The Federal confidentiality regulations require that disclosures made with written patient consent be accompanied by a written statement that the information disclosed is protected by Federal law and that the person receiving the information cannot make any further disclosure of such information. This statement should be delivered and explained to the recipient at the time of disclosure or earlier.

**Records Management**

Any records which are subject to federal confidentiality regulations must be maintained in a secure room, locked file cabinet, safe or other similar container when not in use (Sec. 2.16) ; and (b) Each program shall adopt in writing procedures which regulate and control access to and use of written records which are subject to the Confidentiality regulations. The SABRE Implementation Workgroup recommends that: (a) if information pertaining to the offenders substance abuse assessment, referral and treatment is kept in the offenders criminal justice file, each page of the information must be stamped with the prohibition against re-disclosure; (b) if information pertaining to the offenders substance abuse assessment , referral and treatment is kept in a separate section of the offenders criminal justice file, the cover page of the section must contain a notice that the information is subject

to federal confidentiality regulations and the prohibitions against re-disclosure; or (c) if information pertaining to the offenders substance abuse assessment, referral and treatment is kept in a file separate from criminal justice records, the cabinet if no other records are contained must be distinctly labeled indicating that records contained therein are subject to federal confidentiality regulations and the prohibitions against re-disclosure or if records are stored along with other criminal justice files, the cover of each file must be labeled indicating that records contained therein are subject to federal confidentiality regulations and the prohibitions against re-disclosure.

**Using Criminal Justice System Consent Forms**

Whenever possible, it is best to have a proper criminal justice system consent form signed by the defendant *before* he or she is referred to the treatment program. If that is not possible, the treatment program should have the defendant sign a criminal justice system consent form at his or her very first appointment.

If a program fails to have the defendant sign a criminal justice system consent form and the defendant fails to complete the assessment process or treatment, the program has few options when faced with a request for information from the referring criminal justice agency. It is unclear whether a court can issue an order under §2.65 that would authorize the program to release information about a referred defendant who has left the program in this type of case. This is because the regulations allow a court to order disclosure of treatment information for the purpose of investigating or prosecuting a patient for a crime only where a crime has been committed that is "extremely serious." Absconding from a program generally will not meet that criterion.

Therefore, unless a consent form is obtained by the judge or criminal justice agency or by the substance abuse treatment program at the beginning of the assessment or treatment process, the program could be prevented from providing any information to the court or to another criminal justice agency that referred the defendant.

If the defendant referred to treatment program by one court or another criminal justice agency never applies for or receives services from the program, that fact may be communicated to the referring agency without patient consent (§2.13(c)(2)). The model consent form recommended by the SABRE Implementation Workgroup is presented in **attachment #2.**

**Information About Patients**

It is essential in the planning stages of an alternative processing program that the criminal justice and treatment partners reach agreement about communications between the program and the criminal justice agency. Clear guidelines must be established: How detailed will the program's reports be? Will the program report specific treatment information, as is done in some drug courts, or only limited information? And how will the criminal justice system use the information?

These issues raise the question of fairness: For example, will the prosecutor and court be able to use information obtained from the substance abuse treatment program against a defendant who fails to complete treatment? Would such use violate the Federal laws and regulations? Finally, could a treatment program function if the negative information it obtains in the course of treatment could be used against a defendant at a later date? Will the prosecutor and court be able to use information obtained from the substance abuse treatment program against a defendant who fails to complete treatment?

The issue of program viability is inextricably linked with the question of fairness. In order to provide counseling, programs must obtain information about their patients' lives, feelings, and thoughts. Substance abuse treatment providers hear a great deal of negative information about their patients, 'whether or not their patients are involved in the criminal justice system. It would be virtually impossible for programs to function if patients felt constrained about disclosing such information. To increase the punishment of defendants, either by adding charges for new offenses or by increasing punishment in light of newly discovered evidence, as a result of disclosures they made while in treatment would be both unfair and counterproductive.

Defendants should also be informed about what kind of information will be disclosed to the court and other justice systems agencies, how often it will be disclosed, and how it will be used. The criminal justice system consent form signed by the defendant should detail the kinds of information that will be disclosed to the justice system. The Federal confidentiality regulations also require programs to notify patients of their right to confidentiality and to give them a written summary of the regulations' requirements. The notice and summary should be handed to patients when they begin participating in the program or soon thereafter (§2.22(a)).

### The Implications of Computerization

Computerizing the flow of information between the substance abuse treatment provider, the courts supervision monitoring agencies allows the system to react promptly to information from the treatment provider. For example, judges and/or probation supervision agencies with immediate access to the attendance records and drug testing results entered by the treatment provider can quickly reward or sanction improvements or slips in the defendant's behavior. Computerization also reduces the number of times the same information is gathered and recorded.

Computerization of communications between the substance abuse program and its criminal justice partners does create some confidentiality problems. A disclosure of protected information occurs each time someone "accesses" a file from a computer. Unless appropriate safeguards are built into the software, Computerization can undermine the controls on disclosure that are inherent in requiring the patient to sign a consent form before each disclosure to a new person or entity.

Computerizing the flow of information allows the criminal justice system to promptly reward or sanction a defendant's improvement or slip.

Computerization carries a risk that treatment information entered by the substance abuse treatment provider will be obtained by a person or entity not authorized to obtain it. Security of computer systems with telephone links between the treatment and justice system partners must be safeguarded. The treatment provider also must take care that the information entered into the computer is limited to that which it is authorized to disclose according to the defendant's consent form. Finally, computerization carries the risk that information about the defendant will remain accessible after the defendant has left the system and the consent form has expired. Programs planning to computerize must devise a way to delete all substance abuse information about a defendant once his or her consent form expires.

### Coding Patients' Names

The Federal confidentiality regulations protect "patient identifying information." Section 2.11 of the regulations defines this to mean the name, address, Social Security number, fingerprints, photograph, or similar information by which the identity of a patient can be determined with reasonable accuracy and speed either directly or by reference to other publicly available information. The term does not include a number assigned to a patient by a program, if that number does not consist of or contain numbers that could be used to identify a patient with reasonable accuracy and speed from sources external to the program (such as Social Security or driver's license number).

### Responding to Patients' Disclosures of Criminal Activity

#### Reporting Threatened Activity: The Duty to Warn

For most treatment professionals, the issue of reporting a patient's threat or intention to commit a crime is a troubling one. Many professionals feel that they have an ethical, professional, or moral obligation to prevent a crime when they are in a position to do so, particularly when the crime is a serious one. In working with defendants, substance abuse treatment practitioners may face questions about their "duty to warn" someone of a patient's threat to harm another.

A recent trend in the law requires psychiatrists and other therapists to take "reasonable steps" to protect an intended victim when they learn that a patient presents a "serious danger of violence to another."

There are five ways a substance abuse treatment program participating in alternative processing can proceed when patients threaten to harm others or themselves.

- The program can make a report to the court or other criminal justice agency that is its partner in the program, as long as there is a criminal justice system consent form signed by the defendant that is worded broadly enough to allow this sort of information to be disclosed. The criminal justice agency can then act on the information by warning the intended victim or notifying another law enforcement agency of the threat. However, in doing so, the criminal justice agency must be careful that no mention is made that the source of the information was a substance abuse program or that the defendant is in substance abuse assessment or treatment. (Disclosures that do not identify the defendant as someone with a substance abuse problem are permitted. See §2.12(a)(1).)

- The substance abuse treatment program can go to court and request a court order in accordance with §2.64 of the Federal regulations, authorizing the disclosure to the intended victim, or in accordance with §2.65, authorizing disclosure to a law enforcement agency.

- The substance abuse treatment program itself can make a disclosure to the potential victim or law enforcement officials that does not identify as a patient the individual who threatens to commit the crime. This can be accomplished either by making an anonymous report or, for a substance abuse treatment program that is part of a larger non-drug/alcohol entity, by making the report in the larger entity's name.

- The program can make a report to medical personnel if the threat presents a medical emergency that poses an immediate threat to the health of any individual and requires immediate medical intervention (§2.51). Thus, for example, a program could notify a private physician about a suicidal patient so that medical intervention can be arranged.

- The program can obtain the patient's consent. If none of these options is practical, what should a treatment program do? It is, after all, confronted with conflicting moral and legal obligations. If a substance abuse treatment program believes there is clear and imminent danger to a patient or a particular other person, it is probably wiser to err on the side of making an effective report about the danger to the authorities or to the threatened individual.

As in other areas where the law is still developing, if the treatment program or criminal justice individual managing the treatment aspects of the case have questions then a request for an Attorney General's Opinion or local counsel of the program should provide advice on a case-by-case basis.

In Virginia, §54.1-2400.1 of the Code of Virginia indicates that a mental health service provider, which includes a certified substance abuse counselor, has a duty to take precautions to protect third parties from violent behavior from a client when they have communicated to the provider a specific and immediate threat to cause serious bodily injury or death to an identified or readily identified person or persons.

**Reporting Past Criminal Activity**

What should a substance abuse treatment program do when a patient tells a counselor, for example, that she intends to get her children new clothes by shoplifting, a crime the counselor knows she has committed many times in the past? Does the program have a duty to tell the police? Does a program have a responsibility to call the police (or its criminal justice partner) when a patient discloses to a counselor that he participated in a crime some time in the past, or during his participation in the program? What can a treatment program do when a patient commits a crime at the program or against an employee of the program? These are three very different questions that require separate analysis.

A substance abuse treatment program generally does not have a duty to warn another person or the police about a patient's intended actions unless the patient presents a serious danger of violence to an identifiable individual. Shoplifting rarely involves violence, and it is unlikely that the counselor will know which stores are to be victimized. Petty crime like shoplifting is an important issue that should be dealt with therapeutically. It is not something a substance abuse program should necessarily report to the police.

Suppose, however, that a patient admits during a counseling session that he killed someone during a robbery three years ago. Does the program have a responsibility to report that? And is the answer any

different if the defendant admits he or she committed a serious crime while participating in treatment as part of an alternative processing agreement?

In a situation in which a patient has told a counselor that he or she committed a crime in the past, there are generally three questions the substance abuse program needs to ask as it considers whether to make a report:

- **Is there a legal duty to report the past criminal activity to the police under State law?**

  No. Information that is divulged as a result of the screening, assessment, referral and treatment process is protected information under the federal regulations and may not be disclosed to the police. Information that is divulged as a result of the Pre Sentence Investigation is not protected under the federal regulations.

- **Does State law permit a counselor to report the crime to law enforcement authorities if he or she wants to?**

  Whether or not there is a legal obligation imposed on citizens to report past crimes to the police, State law may protect conversations between counselors of substance abuse treatment programs and their patients and exempt counselors from any requirement to report past criminal activity by patients. Such laws are important to patients in substance abuse treatment, many of whom have committed offenses. Part of these patients' therapeutic process is acknowledging the harm they have done others. If substance abuse treatment programs routinely reported patients' admissions of past criminal activity to the police, their work with patients in the recovery process would be thwarted. Laws protecting conversations between counselors of substance abuse programs and their patients are designed to protect the special relationship that substance abuse counselors have with their patients, as well as the treatment process.

  Virginia State Law does not protect conversations between counselors of substance abuse programs and their patients.

- **If State law requires a report (or permits one and the program decides to make a report), how can the substance abuse treatment program comply with the Federal confidentiality regulations and State law?**

  Any substance abuse treatment program that decides to make a report to law enforcement authorities about a patient's prior criminal activity must do so without violating either the Federal confidentiality regulations or State laws. A program that decides to report a patient's crime can comply with the Federal regulations by following one of the first three methods described below:

  - If a referral is from a criminal justice agency, the substance abuse agency can make a report to the court or other appropriate criminal justice partner, if it has a criminal justice system consent form signed by the offender that is worded broadly enough to allow this sort of information to be disclosed.

  - The substance abuse treatment program can make a report in a way that does not identify the individual as a referral.

  - The treatment program can obtain a court order under §2.65 of the regulations, permitting it to make a report if the crime is "extremely serious."

By using any one of these methods, the substance abuse program will have discharged its reporting responsibility without violating the Federal regulations. However, the law enforcement agency that receives the report is prohibited by the regulations from investigating or prosecuting a offender based on information obtained from a substance abuse program, that is unless the court order exception is used (42 U.S.C. § 29O dd-3(c) and ee-3 c) and 42 C.F.R. §2.12(d)(1)). Because of the complicated nature of this issue, any program considering reporting a offender's admission of criminal activity that occurred in the past should seek the advice of a lawyer familiar with local law as well as the Federal regulations. For a discussion about how programs can deal with search and arrest warrants, see TIP 19, *Detoxification from Alcohol and Other Drugs,* p. 83 (CSAT, 1995).

## Reporting Current Criminal Activity

Is there a legal duty to report reported present criminal activity under state law,

No. Information that is divulged as a result of the screening, assessment, referral and treatment process is protected information under the federal regulations and may not be disclosed to the police. In addition §53.1-40.10 which guides the Department of Correction on "Exchange of Medical and Mental Health (includes treatment records) Information specifically excludes (part-5) substance abuse records and cites the federal regulations. The federal regulations also provide that the law enforcement agency that receives a report is prohibited by the regulations from investigating or prosecuting a offender based on information obtained from a substance abuse program.

What should the treatment program do if a defendant it is treating admits to committing a crime during treatment? Smooth operation requires trust between the partners and there is nothing more destructive of trust between the substance abuse treatment system and the criminal justice system than misunderstanding and disagreement on this issue.

To ensure that no misunderstandings occur, the substance abuse treatment program and the justice system participants should agree in writing about whether criminal activity will be reported and, if so, what kinds of activity. They should decide how much discretion the program will use in dealing with criminal activity as a therapeutic issue.

In coming to an agreement on this issue, the substance abuse treatment program and the criminal justice system must balance the goal of public safety with the goal of individual recovery. Those concerned with public safety will generally advocate drawing the line at a point that requires greater reporting of criminal activity by the treatment program. Those concerned with the effectiveness of treatment programs may argue that reporting of criminal activity must be limited if defendants are to continue to communicate freely in recovery.

Wherever the line is drawn, it is essential that the defendants participating in a substance abuse program be informed that their admissions of criminal activity committed during treatment will be reported. The criminal justice system consent form that defendants sign should make clear that certain kinds of ongoing criminal activity will be reported promptly to the court and/or prosecutor.

It is important to recognize that the Federal regulations strictly prohibit any investigation or prosecution of a offender based on information obtained from a substance abuse treatment program unless the §2.65 court order exception is used (42 U.S.C. §~29O dd-3 and ee-3 and 42 C.F.R. §2.12(d)(1)). For this reason, those creating programs should consider providing treatment providers with the capacity to apply for a court order under §2.65 of the Federal regulations in cases where offenders commit serious crimes. All that is required is a model set of legal papers that the program can submit to the appropriate court on a moment's notice. This will permit prompt reporting of crimes that threaten public safety and that call for separate investigation and prosecution.

When a referral has committed or threatens to commit a crime on treatment program premises or against program personnel, the regulations permit the treatment program to report the crime to a law enforcement agency or to seek its assistance. In such a situation, without any special authorization, the program can disclose the circumstances of the incident, including the individual's name, address, last known whereabouts, and status as a offender at the program (§2.12(c)(5)).

**Please Note.** §53.1-145 of the code of Virginia provides that Probation and Parole Officers shall notify the Department of Social Services (DSS) of any individual on post release supervision pursuant to §19.2 -295.2, or parolee under the supervision who fails a test for the illegal use of drugs or the abuse of alcohol. If the test was conducted as part of the offenders screening, assessment, referral, and/or treatment process, this section would conflict with the federal confidentiality requirements and should not be disclosed unless the offender consents to the release of such information to DSS. If the drug/alcohol test is conducted as part of the offenders post release supervision or parole release requirements then the federal regulations do not apply.

*Reprinted in part from TIP 23, Treatment Drug Courts: Integrating Substance Treatment With Legal Case Processing. (CSAT 1996)

1/30/99

# Appendix F
# Confidentiality Protocol

## CONSENT FOR THE RELEASE OF CONFIDENTIAL INFORMATION: CRIMINAL JUSTICE SYSTEM REFERRAL

I, _____, hereby consent to
(Name of offender)
communication between _____
and _____ _____

to release the following indicated information:
**(Check all that apply)**

Substance abuse Screening and Assessment results;
Notice of progress in treatment or lack thereof;
Notice of any positive drug screening tests;
Written outline of treatment plan;
Results of final court disposition;
Notice of any absences;
Written summary of my response to treatment at the conclusion of services;
Summary of criminal history, correctional status, and instant offense;
Information to include; emotional, mental and physical health, medical records, school records, test scores academic, behavior memoranda, all court records, employment records (past and present) any military history;

_____
(Other specified information)

for the purpose of:

Pre-Trial Investigation/Supervision;
Treatment/Educational Services;
Pre/Post Sentence Investigation;
Treatment Assessment;
Probation/Parole Supervision;
Court/Parole Board Reports;

Other specified purpose; _____
(Treatment service consent may only have one purpose checked per form)

I understand that all information generated or obtained through my participation in substance abuse treatment **is protected** by Part 2 of Title 42 of the Code of Federal Regulations governing confidentiality of alcohol and drug abuse patient records and that recipients of this information may redisclose only in accordance with the above mentioned regulations and/or the resolution of the court proceedings under which I was mandated into treatment and/or through this consent for the release of confidential information. This information includes but is not limited to: substance abuse screening/assessment results; treatment plan; attendance at treatment sessions, progress in treatment or lack thereof; results of any positive drug screening tests if conducted by the treatment provider; and summary of my response to treatment at the conclusion of services. I also have read or have had explained to me any Qualified Service Agreements which provide for exchange of information regarding the processing of my case. _____
(Initials of Offender)

I understand that information generated or obtained through the processing of my case through the criminal justice system **that is not related to my participation in substance abuse treatment is not protected** under federal confidentiality regulations and may used by the courts in sentencing, the Virginia Parole Board in releasing decisions, other criminal justice agencies and the Department of Corrections in the investigation, and supervision of my case during probation, incarceration, pre trial supervision post release supervision and/or parole to include any application for supervision transfer to a member of the interstate compact.

_____
(Initials of Offender)

I understand that this consent will remain in effect and cannot be revoked by me until there has been a formal and effective release from probation, or parole or other court proceeding under which I was mandated into treatment. I attest to having read, or been read this document and fully understand same. I request that all such persons/agencies accept a photocopy of this document and release information that is checked above and is consistent with the purpose stated in this document.

Projected termination date of consent _____

_____ _____
(Date) (Signature of offender)

_____
(Signature of authorized representative, if required)

# Appendix G
# Treatment Services Reference Guide

**SUBSTANCE ABUSE SERVICES REFERENCE GUIDE***

**GENERALLY AVAILABLE COMMUNITY SERVICES**

| SERVICE | PROGRAM DESCRIPTION |
|---|---|
| **EMERGENCY SERVICES** | |
| Crisis Stabilization | Services, available 24 hours per day and seven days per week, that provide crisis intervention, stabilization |
| **INPATIENT SERVICES** | |
| Community Based Medical Detoxification | 24-hour staff monitored medical setting detox, supervised by health care professionals and medical backup. Referral to continuing care and Case Management included. |
| **RESIDENTIAL SERVICES** | |
| Intensive | 24-hour supervision of up to 30 days . Treatment includes: group and individual counseling, SA education, discharge planning, follow-up care plan, case management and drug/alcohol screens. |
| Social Detoxification (Highly Intensive Services ) | 24-hour staff monitored social setting detoxification. Referral to continuing care and Case Management services included. |
| Halfway House | 24-hour supervision. Group and individual counseling, self help, vocational, occupational, educational and SA education services. Discharge planning, follow-up care plan, case management and drug/alcohol |
| Supervised Services | Less intensive residential services which may include: supervised apartments and domiciliary Care |
| Long-Term Habilitation, Therapeutic Community | Multi Phase approach over time, Highly structured residential program designed to habilitate drug users through development of individual accountability, pro-social values and attitudes usually consists of Re-socialization, Maturation Role Modeling, Community Re-Entry phase which includes employment is an integral part of the program Length of stay based on progress. |
| **OUTPATIENT AND CASE MANAGEMENT SERVICES** | |
| Education | Usually consists of Didactic groups which may address the following: Addictive Process, Physiological and psychological effects of Addiction and Substance Abuse, Effects of Substance Abuse on Others, Addiction and Criminality, Behavior Change, Denial and Defense Mechanisms, Twelve Step/Support Programs, Recovery, HIV/AIDS Prevention, Relapse Prevention and the treatment process. |
| Outpatient | Provided to consumers on an hourly schedule, on an individual, or family basis, and usually in a clinic or similar facility or in another location. |
| Intensive Substance Abuse Outpatient Services | Intensive outpatient services include multiple group therapy sessions during the week as well as individual and family therapy, consumer monitoring, and case management |
| Intensive In-home (adolescents) | These services provide crisis treatment; individual and family counseling; life, parenting, and communication skills; case management activities and coordination with other required services; and 24 hour per day emergency response. |
| Motivational Treatment | A course of motivational treatment may involve a single session, but more typically four or eight sessions; and it may be repeated, if necessary, as long as repetition is clinically indicated. |
| Methadone Detoxification | Outpatient treatment combined with the administering of methadone. |
| Methadone Maintenance | Outpatient treatment combined with the administering of methadone as a substitute narcotic drug . |
| Case Management | Services include: identifying and reaching out to potential consumers; assessing needs and planning services; linking the individual to services and supports; assisting the person directly to locate, develop or obtain needed services and resources; coordinating services with other providers; enhancing community integration; |
| **DAY SUPPORT SERVICES** | |
| Day Treatment/Partial Hospitalization | Provides structured programs of mental health, mental retardation, or substance abuse treatment, activity, or training services, generally in clusters of two or more continuous hours per day, multiple days per week to groups or individuals in a non-residential setting. |
| **ADJUNCT SERVICES** | |
| Drug/Alcohol Testing | Unannounced, random sampling throughout treatment and supervision period. |
| Relapse Prevention | Open enrollment group at least 12 weeks of offenders who have completed an SA treatment program. Includes education in identifying high-risk drug use situations and opportunities to plan a strategy to cope with and manage these high-risk situations. |
| Self Help | Participants organize, form and conduct groups to assist and support each other to maintain Sobriety and sustain recovery. |

## SPECIALIZED DOC SERVICES

| SERVICE | PROGRAM DESCRIPTION |
|---|---|
| **DOC RESIDENTIAL (INSTITUTIONAL )** | |
| Therapeutic Community | Minimum one year highly structured institutional learning program designed to habilitate drug users through development of individual accountability, pro-social values and attitudes. Services include Re-socialization, Maturation Role Modeling, and Community Re-Entry skill development. |
| Transitional Therapeutic Community | Phase V- Highly structured residential program for TC graduates. Preferred stay of 6 months. Gradual release process based on responsible behavior. Includes employment and development of peer support group skills. |
| **DOC RESIDENTIAL (COMMUNITY)** | |
| Detention Center | 4 to 6 months military style regimen for those who do not perform well in the community but who do not require long term incarceration. Provides structure and discipline, Remedial education (GED), life skills development and Substance abuse education. Work on public projects is an integral part of the program. Intensive Supervision upon release |
| Diversion Center | 4 to 6 month minimum-security facility designed for those who do not require long term incarceration but who may not do well in community setting without intervention. Provides remedial education (GED), substance abuse education, life skills, e.g., job readiness, Parenting and other special topic groups. Employment in private sector and community service is an integral part of the program. Intensive Supervision upon release |
| Boot Camp | 120-day military- style regimen. Provides Basic education services (GED), Substance abuse education and Life Skills development. Public service work while at Camp is an integral part of the program. Intensive Supervision is provided upon release. |
| **DOC OUTPATIENT (COMMUNITY)** | |
| Peer Support Groups | Treatment support groups for TC graduates offered as a support and maintenance program. Led by former TC program participants following an established format. Facilitated by trained Probation and Parole Officers. Includes personal sharing, problem solving, group planning, continued behavior change, social support and helping self by helping others. |

## SPECIALIZED DJJ SERVICES

### DJJ RESIDENTIAL (INSTITUTIONAL)

| | |
|---|---|
| Therapeutic Community | **Barrett Juvenile Correctional Center** - Treatment services at Barrett Juvenile Correctional Center are modeled after a traditional therapeutic community but have been modified to meet the needs of the juvenile population. The DJJ LEADER behavioral management program has also been integrated into this specialized treatment program. Cadets spend at least six months at Barrett completing their treatment services.<br><br>**Bon Air Juvenile Correctional Center** – This six-month program is designed to provide intensive residential substance abuse treatment services for female juvenile offenders. It addresses substance abuse, co-existing disorders, and gender specific issues. |

## SPECIALIZED VASAP SERVICES

| | |
|---|---|
| Substance Abuse intensive Education | A 20-hr. program for first time for first time drug offenders. Usually consists of a combination of monitoring and substance abuse education. Focuses on offenders making an accurate evaluation of their alcohol/drug use and appropriate behavior changes. Alcohol/drug testing at every session. |