2007 ANNUAL REPORT

VIRGINIA STATE CRIME COMMISSION

Authority of the Commission

Established in 1966, the Virginia State Crime Commission ("Commission") is a legislative agency authorized by Code of Virginia § 30-156 *et seq.* to study, report, and make recommendations on all areas of public safety and protection. In doing so, the Commission endeavors to ascertain the causes of crime and ways to reduce and prevent it, to explore and recommend methods of rehabilitation for convicted criminals, to study compensation of persons in law enforcement and related fields and examine other related matters including the apprehension, trial, and punishment of criminal offenders. The Commission makes such recommendations as it deems appropriate with respect to the foregoing matters, and coordinates the proposals and recommendations of all commissions and agencies as to legislation affecting crimes, crime control and public safety. The Commission cooperates with the executive branch of state government, the Attorney General's office and the judiciary who are in turn encouraged to cooperate with the Commission. The Commission works with governments and governmental agencies of other states and the United States. The Commission is a criminal justice agency as defined in Code of Virginia § 9.1-101.

The Commission consists of thirteen members that include nine legislative members, three non-legislative citizen members, and one state official as follows: six members of the House of Delegates appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; three members of the Senate appointed by the Senate Committee on Rules; three non-legislative citizen members appointed by the Governor; and the Attorney General or his designee.

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ANIMAL CONTROL OFFICERS

2007 UPDATE

Last year, the Crime Commission was mandated by House Joint Resolution 116, patroned by Delegate Terry Kilgore, to review animal control officer program training, funding, and the need for regulation. Statewide survey results indicated that training, both the adequacy of training and the availability of regional training opportunities, were concerns for the majority of responding localities, among other cited issues. As a result, the Animal Control Officer Committee was created to address the study mandate, discuss the issues cited in the survey and develop recommendations for improving animal control in the Commonwealth.

Animal Control Officer Committee members include representatives from the following organizations: Virginia Department of Criminal Justice Services, Virginia Department of Game and Inland Fisheries, Virginia Department of Agriculture and Consumer Services Office of the State Veterinarian, Division of Risk Management within Virginia's Department of Treasury, Virginia Municipal League, Virginia Association of Counties, Virginia Animal Control Association, Virginia Sheriffs' Association, Virginia Association of Chiefs of Police, and Crater Regional Training Academy.

The full committee met three times throughout 2007, on March 21st, June 13th, and December 5th, and reported on its progress to the Crime Commission at the December 13th meeting. Two additional smaller workgroup meetings were also held in July and October. Committee members heard presentations from the following: Virginia Animal Control Association, Department of Criminal Justice Services, Crater Regional Training Academy, and Office of the State Veterinarian. Recognizing that animal control officer duties have increased over the past years, the Committee focused on training and safety issues. Specifically, members were provided with detailed information on the animal control officer Job Task Analysis ("JTA") that was created by the Department of Criminal Justice Services in 2001 to revise minimum training standards. Committee members reviewed and compared the current required training standards, established and maintained by the Office of the State Veterinarian, to discern animal control officer duties, training needs, and liability issues.

Based on all of the meetings, it was determined that the Office of the State Veterinarian may not be the proper oversight agency for animal control officers. Additionally, a need exists for increasing the training standards from 84 to 120 hours, which the Crater Regional Academy has accomplished without negative feedback from the localities. The Committee unanimously agreed that more work needs to be done and committed to continue to meet in 2008. It was also agreed at the last meeting to invite representatives from the Virginia Department of Health and the Farm Bureau to serve on the Committee.

CONFIDENTIALITY OF JUROR INFORMATION

House Bill 2423, introduced by Delegate H. Morgan Griffith in the 2007 General Session of the Virginia General Assembly, proposed to make all "personal information" about the jurors in a criminal case confidential upon the conclusion of the trial. Under the bill, "personal information" is defined to include "name, age, occupation, home and work addresses, telephone numbers, e-mail addresses, and any other identifying information that would assist another in locating or contacting the person." At the conclusion of the trial, the judge would "seal" all personal information automatically. Thereafter, the information could only be released "upon motion for good cause shown, with restrictions upon its use and further dissemination as may be deemed appropriate by the court."

This bill was passed by the House of Delegates. The engrossed bill was referred to the Senate Courts of Justice Committee, which sent a letter to the Crime Commission, asking it to review the bill. Commission staff reviewed the bill, along with applicable case law concerning the pertinent First Amendment issues. A review of other states' criminal procedure statutes was also conducted to see if any similar legislation had been enacted elsewhere in the country.

Public policy typically favors transparency in most aspects of the criminal justice process once formal charges have been brought against a defendant. Generally, the public and the press are allowed to review court documents in criminal cases involving adults, and are allowed to attend all court hearings.

The immediate impact of HB 2423 would make it more difficult, though not impossible, to contact or interview jurors after the conclusion of a criminal case. There are a number of possible, legitimate reasons why someone would wish to interview jurors after a criminal trial is completed. Law enforcement officers might seek to interview jurors in cases where allegations of bribery or corruption have been made. Habeas counsel for defendants routinely interview jury members to determine if any misconduct, such as deliberately refusing to follow the instructions of the court, occurred during deliberations. Criminologists, sociologists, and social psychologists have conducted studies in recent years where the decision making processes of jurors are analyzed; interviews with actual jury members are frequently crucial to such studies. And, newspaper reporters, or even historians, might wish to interview the members of a jury as part of a thorough review of an important criminal case.

In accord with the many legitimate reasons people have for being informed about the particulars of criminal cases, the United States Supreme Court has recognized, in a number of rulings, that the public and the press have a right to access court documents and judicial records. In Nixon v. Warner Communications, Inc., 435 U.S. 589, 597 (1978), the Court noted that there existed under the common law, and is still present today, a general right to "inspect and copy…judicial records and documents." In addition to this common law right, the Supreme Court has also held there to be a First Amendment right to access particular judicial records and documents. In a case involving the sealing of court documents, the United States Court of Appeals for the Fourth Circuit held, in Stone v. University of Md. Med. Sys. Corp., 855 F.2d 178, 182 (1988), that "regardless of whether the right of access arises from the First Amendment or the common law, it may be abrogated only in unusual circumstances."

The right of the public to inspect court documents is present in criminal cases as well as civil cases. In Press-Enterprise Co. v. Superior Court of Cal., 464 U.S. 501, 503 (1984), the United States Supreme Court held that the press had a right to receive transcripts of a closed voir dire hearing conducted in a criminal case involving rape and murder, even though the lawyers' questions to the veniremen explored "personal problems…which

could be somewhat sensitive as far as publication of those particular individuals' situations are concerned."

While the press and the public have enormous rights when it comes to accessing court documents and other information pertaining to criminal trials, most states do have some mechanism by which a court, for good cause shown, can seal juror information. Only one state, though, was identified as having a provision which mandates juror information be sealed automatically, in all criminal cases, as proposed by HB 2423. In 1995, California Code of Civil Procedure § 237 was amended, requiring that the names of the jurors in all criminal cases are to be sealed upon the rendering of a verdict. They remain sealed unless a person with a valid interest petitions the court to release the information.

To date, there have not been any facial challenges to this California statute; i.e., no one has argued that the statute is intrinsically unconstitutional, although a few appellants have argued that the application of the statute in their particular cases led to an unconstitutional result. It would appear, based on the very small number of appellate cases in California that have involved the statute, that most petitioners having a valid interest in contacting jurors after a trial are successful in obtaining the necessary information from the trial court.

Therefore, while implementing HB 2423 would apparently be a radical change in Virginia, it would not necessarily be unconstitutional—provided that the model offered by California was followed, and the personal information of jurors were released, upon petition, to any person having a legitimate purpose or need for contacting them. This could even include, hypothetically, the defendant himself, if circumstances so dictated.

While HB 2423 appears to be a radical change, enactment of the proposed statute would not greatly modify the status quo. An informal review of several circuit court clerks' offices around the state revealed that, while the court files in criminal jury cases do contain the names of the jurors who decided the case, they do not contain any other contact information. The deputy clerks who were interviewed all maintained that any such contact information was never kept in the case file, and was never released to anyone, for any reason. Therefore, the only information that is currently available to the public, which would not be available if the bill were passed, would be the names of the jurors. If HB 2423 were enacted, acquiring the names would still be possible, for legitimate reasons, but would require the approval of the court.

Based upon this analysis, the Crime Commission voted to endorse the concept behind HB 2423. After discussing whether the sealing of the juror information should occur automatically in all criminal cases, or only if a specific motion were made by the Commonwealth's Attorney, the Commission voted to endorse the former policy, and recommend HB 2423 in its original form.

FIRST RESPONDER AUTHENTICATION CREDENTIALS

At the Crime Commission's May 22, 2007, meeting, the Honorable Robert Crouch, Jr., Assistant to the Governor for Commonwealth Preparedness, presented the Commission with information on the use of First Responder Authentication Credentials ("FRAC") in Virginia. Mr. Crouch reported that recent, tragic events around the nation have served to highlight concerns regarding the need to expeditiously verify the identity of public and private members of the emergency response community at natural and man-made disaster sites.

In many high profile incidents, the lack of identity trust between jurisdictions resulted in the inability of emergency responders to reach incident scenes, and response and recovery activities were significantly delayed because incident scene commanders could not rapidly verify an individual's identity. In some instances, first responders from other parts of the country who arrived at a scene to render assistance experienced delays while waiting for their identities to be verified. In other cases, individuals falsely claiming to be first responders have taken advantage of unsuspecting, and vulnerable victims. There have also been cases of individuals reporting to be someone they were not and taking advantage of another person's assets. These incidents and others have shed light on the need to have a standard credential for emergency response officials. Such a credential would verify the identity and other pertinent information of emergency responders at incident scenes and allow access into, and out of, secured areas and across different jurisdictions. It was emphasized that there needed to be a standard process and requirements to obtain the credentials.

It was reported to the Commission that a Federal Credentialing Standard, Homeland Security Presidential Directive 12 ("HSPD-12"), signed by the President in 2004, is mandatory for executive branch agencies such as the FBI, the DEA, the Secret Service, and the Pentagon Force Protection Agency. It established a mandatory federal government-wide interoperable standard for secure and reliable forms of identification that (i) can verify an individual's identity, (ii) are strongly resistant to identity fraud, tampering, counterfeiting, and terrorist exploitation, (iii) can be rapidly authenticated electronically, and (iv) are issued through an official accreditation process. The Federal Information Processing Standards ("FIPS 201"), were created by the National Institute of Standards and Technology in response to HSPD-12, and define requirements for identity proofing, registration, and the issuance of identification credentials.

Mr. Crouch emphasized that state, local, and private sectors need to agree upon common credentialing standards for members of the emergency response community. FRAC is a standards-based smart card that is issued to the emergency response community that will be recognized and accepted as a true representation of their identity and other pertinent data. It is the only interoperable identity credential for all federal, state, local and private sector emergency responders. It facilitates rapid identity verification for response and recovery efforts.

The Commonwealth is the first state to develop a pilot FRAC program with federal funding. Over 2,200 FRACs were issued to members of the emergency response community in Arlington County and the City of Alexandria. The pilot FRAC is designed to securely establish emergency responders' identities at the scene of an incident, and confirm first responders' qualifications and expertise, thereby allowing incident commanders to dispatch them quickly, and enhance cooperation and efficiency between federal, state and local first responders. The Virginia Department of Transportation has acted as the leader of the initiative and has received $700,000 in federal funds to issue cards, which cost about $35 each, to emergency responders in the national capitol region of Virginia.

Following Virginia's lead, other states and localities are electing to adopt the HSPD-12 and FIPS-201 standards, thereby achieving multi-jurisdictional interoperability. Maryland, for example, has developed a standard FRAC that is interoperable with Virginia's FRAC. Pennsylvania is also in the early stages of developing a FRAC program.

Mr. Crouch reported to the Commission that Virginia has submitted a grant application to continue the FRAC program in other regions. The Commonwealth will continue to educate state and local officials on the FRAC program and its interoperability with partners and will continue to work with state agencies, such as the Virginia Department of State Police and the Virginia Department of Emergency Management, to implement the FRAC programs. It will also continue to support state and local agencies' adoption of FIPS-210 compliant credentials for employee identification and physical access control.

Commission members expressed concerns over the selection process for card holders, the availability of continued federal funds to support the costs, and the fact that FRAC cards may create barriers for certain groups, such as volunteer fire departments and rescue squads that are so prevalent in rural areas. Mr. Crouch reported that one of the long term goals is to include volunteers. An additional concern was raised concerning the length of time needed to check cardholders at an incident scene. Mr. Crouch replied that there are 100 readers being distributed in Arlington County and that they are very quick and easy to use. The Commission requested that the Governor's office receive input from, and understand the priorities of, the Virginia State Police, the Virginia Sheriff's Association, and volunteer fire and rescue squads and to involve those agencies and groups in the process.

GANG STATUTES

In 2000, Virginia created for the first time a series of statutes aimed specifically at punishing criminal gang behavior. Article 2.1, titled "Crimes by Gangs," was added to Chapter 4 of Virginia's Criminal Code. It created a definition of a criminal street gang, made it a crime to recruit a person into a criminal street gang, and made it a crime for a gang member to engage in certain criminal acts on behalf of, or in association with, a criminal street gang.

The definition of a criminal street gang, provided in Va. Code § 18.2-46.1, contains four parts: a group or association of three or more people; a primary objective to engage in the commission of criminal activities; an identifiable name or identifying sign or symbol; and members who have "individually or collectively…engaged in the commission of, attempt to commit, conspiracy to commit, or solicitation of two or more predicate criminal acts, at least one of which is an act of violence, provided such acts were not part of a common act or transaction."

Also provided in Va. Code § 18.2-46.1 is a definition of "predicate criminal act," which consists of a list of various criminal statutes and a reference to all of the "acts of violence" listed in Va. Code § 19.2-297.1. No crime is created by Va. Code § 18.2-46.1. It is the next statute, Va. Code § 18.2-46.2, that makes it a crime for a gang member to engage in "any predicate criminal act committed for the benefit of, at the direction of, or in association with" a criminal street gang.

Over the past eight years, there have been numerous bills introduced to modify § 18.2-46.1. Staff examined all of the gang statutes in Article 2.1 to determine if any structural changes might be possible to improve the statutes and eliminate the need for constant modifications.

Because of the way Va. Code § 18.2-46.2 is written, it is not a "gang crime" if a gang member

engages in a criminal offense that does not fall within the definition of a "predicate criminal act." For instance, if a gang member were to engage in grand larceny, at the specific request of a gang leader, he could not be prosecuted under Va. Code § 18.2-46.1, because grand larceny is not included in the list of crimes defined as "predicate criminal acts." The gang member could only be prosecuted for the act of grand larceny. By contrast, if a gang member were to commit a misdemeanor assault on behalf of his gang, that would result in two criminal charges—assault, and criminal street gang participation in violation of Va. Code § 18.2-46.1, as assault is a "predicate criminal act."

There are two consequences to limiting "gang crime" prosecutions to "predicate criminal acts." One, illustrated above, is that there are many felonies a gang member can commit on behalf of his gang, yet not be subject to a charge under Va. Code § 18.2-46.1. The second is that every time the legislature wishes to expand the number of crimes for which criminal street gang participation charges could be available, they modify the definition of "predicate criminal act." This, in turn, changes the actual definition of a "criminal street gang," and expands the reach of the gang participation statute set forth in Va. Code § 18.2-46.2. While the original definition of a criminal street gang was crafted so as to limit the number of groups or associations that would meet the legal definition, changes in the definition have resulted in a gradual expansion of the definition over the previous eight years. In 2000, when the definition was first created, there were only 15 predicate criminal acts that qualified, in addition to the "acts of violence" listed in Va. Code § 19.2-297.1. To date, there are 33 criminal acts that qualify, in addition to "acts of violence."

The list of "predicate criminal acts" now includes offenses such as domestic assault, which are not generally thought of as being "gang crimes." The danger of expanding the list of "predicate criminal acts" in this manner is that, with a sufficiently large list, groups of people that probably would not be thought of as a criminal street gang will nevertheless meet the legal definition. For instance, a family that lives together, and derives much of their income from drug dealing, could theoretically meet the definition in Va. Code § 18.2-46.1, even though they do not otherwise engage in behaviors commonly associated with a criminal street gang.

One way to remedy this situation would be to leave the existing definition of "predicate criminal act" as is, and modify the wording of Va. Code § 18.2-46.2. By making it a "gang crime" for a gang member to engage in any felony or certain specified misdemeanors on behalf of his gang, the legislature could ensure that all gang related offenses are recognized as such and punished, and prevent the definition of a "criminal street gang" from becoming so expansive as to incorporate groups of people that probably should not be thought of as "criminal street gangs." This simple solution would only require a brief modification to Va. Code § 18.2-46.2, and if enacted, would eliminate the need to frequently amend Va. Code § 18.2-46.1.

ILLEGAL IMMIGRATION

An apparent lack of action by the federal government to successfully address the issue of illegal immigration has resulted in calls for action at the state and local levels of government. The Commonwealth of Virginia and its localities have not been immune from this trend. Indeed, a considerable number of legislative measures aimed at addressing various aspects of illegal immigration have been proposed to the General Assembly of Virginia, at an increasing rate, in recent years. The number of immigration related bills in the Virginia General Assembly has steadily increased since the 2003 session. Of the nearly 50 bills during the 2007 session of the General Assembly, only 4 were signed into law. These recent efforts aimed at prompting state action related to illegal immigration, combined with uncertainty over what measures are effective or even legally permissible, compelled a thorough look at the issue in the Commonwealth. The Crime Commission formed its Illegal Immigration Task Force ("Task Force") to address this necessity.

The mission of the Task Force was framed with the statutory authority of the Crime Commission in mind. Consequently, the mission of the Task Force was appropriately limited in scope to the impact of illegal immigration on Virginia's criminal justice system. The members of the Task Force were selected from across Virginia. These highly-qualified individuals have diverse experiences and backgrounds that enabled the Task Force to study the issue from a variety of perspectives. The 21 voting members consisted of an array of legislative leaders, law enforcement and corrections experts, prosecutors, members of civic and cultural organizations, and faith-based leaders. The Task Force was also aided by two citizen advocates, two independent legal advisers, and a congressional liaison.

The Task Force conducted five meetings between May and October of 2007. General topics covered at these meetings included legal issues affecting state action, illegal immigrants as criminals, illegal immigrants as victims of and witnesses to crime, and enhancement of communication and relations between law enforcement and immigrant communities. Twenty presentations were made before the Task Force. These presentations included those by representatives of the United States Immigration and Customs Enforcement ("ICE"), legal experts, local law enforcement officers, a representative of the International Association of Chiefs of Police ("IACP"), a representative of the National Latino Peace Officers Association, representatives of non-profit organizations, and Crime Commission staff.

A total of 32 proposals for recommendations were submitted by individual Task Force members for consideration at its final meeting. Sixteen of the proposals were approved as official Task Force recommendations. Three were found to be outside the scope of the Task Force's mission and were recommended for referral to the Governor's Commission on Immigration. All of the Task Force's 16 recommendations were approved by the Crime Commission. Included are recommendations regarding the role of the federal government, data collection, education for immigrant communities, training for law enforcement, cooperation and communication with ICE, and the role of jails and prisons. The recommendations represent the Task Force's and Crime Commission's desire to bring forth measures that are not only legally permissible, but also constructive and effective.

FEDERAL IMMIGRATION LAWS AND PREEMPTION OF STATE MEASURES

Immigration-Related Legislation in Virginia

There were a significant number of bills introduced over the last five legislative sessions, even though there are several existing Virginia Code sections that already address illegal immigration. Currently, there are 23 Virginia Code sections that directly address illegal immigration. Of these 23, 15 deal with criminal justice or public safety. Four

provisions address public benefits/assistance, one creates an identification requirement pertaining to drivers licenses, and two impose reporting requirements for colleges/universities and state mental health facilities.

Criminal Violations under Federal Immigration

The U.S. Code contains 24 sections that deal specifically with crimes related to immigration. The unlawful activities that are forbidden by these sections can be divided into four categories: (i) aiding of illegal immigrants by third parties; (ii) illegal entrance and departure; (iii) unlawful acts involving immigration documents; and (iv) employment.

Preemption

In general, Article 7 of the U.S. Constitution makes the "Constitution, and the laws of the United States" the "supreme law of the land." Also known as the Supremacy Clause, it prevents the creation of, or "preempts," existing state or local law that conflicts with existing federal law. The power to regulate immigration is considered an exclusive federal power.

Although the federal power to regulate immigration is considered "exclusive," the U.S. Supreme Court has never held "that every state enactment which in any way deals with aliens is a regulation of immigration and thus per se pre-empted by this constitutional power, whether latent or exercised." Specifically, the Court has held that the regulation of immigration is "essentially a determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain." The Court, in DeCanas v. Bica 424 U.S. 351 (1976), outlined a three-part test for determining whether a state measure is preempted: whether (i) the state law regulates immigration, (ii) it was Congress' "clear and manifest purpose" to ouster state power, or (iii) the state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

There is some confusion concerning state law enforcement authority to arrest for criminal violations of federal immigration law. Currently, three statutes in the U.S. Code grant specific authority for state law enforcement officers to effect arrests for violations of immigration law. Section 1252c allows state and local law enforcement officers to arrest and detain an illegal immigrant who was previously convicted of a felony and removed from the U.S. Section 1324 allows state and local officers to effect arrests under the federal anti-harboring statute. Section 1357(g), commonly called the 287(g) program, provides the ability for state and local law enforcement agencies to enter into a memorandum of understanding with ICE for the purpose of authorizing state officers to enforce immigration law. Despite the explicit authorization found in these three statutes, there is a belief, held by some, that state and local law enforcement have "inherent authority" to enforce criminal violations of immigration law.

ILLEGAL IMMIGRANTS IN VIRGINIA JAILS AND PRISONS

To ascertain the approximate number of proxy illegal immigrants held in Virginia jails, Crime Commission staff contacted the Virginia State Compensation Board. The Compensation Board oversees the Local Inmate Data System ("LIDS") database. Staff specifically requested records for all individuals who spent time in a Virginia jail between Fiscal Years, ("FY") 2003 through 2007. Staff received over 1.8 million records. Due to the large amount of records, staff analyzed the most recent fiscal year, FY07.

Each record represents an offense committed by an individual; thus, there were far more offenses listed than number of individuals. Specifically in FY07, there were over 925,000 listed offenses committed by over 215,000 individuals. After receiving all of the records, staff had to determine a way to best approximate whether an individual was here in the United States legally or illegally. As a result, three criteria were developed for analyzing the LIDS data to determine who qualifies as an illegal alien.

First, the individual had to be born in a country other than the U.S. If the individual was born in the U.S., he or she was not included because he would automatically be a U.S. citizen. Second, the individual had to have citizenship in a country other than the U.S. However, an individual born in another county and with citizenship from a country other than the U.S. could still be in the country legally. For instance, he could be here on a temporary work visa, student visa or as a legal permanent resident. It should be noted that these two criteria, birth country and citizenship outside of the U.S., are what ICE uses as a proxy for investigations into whether an individual is illegally present in the U.S. or has violated residency or visa restrictions. To address the situation where a person is not a U.S. Citizen, but is here legally, a third criteria was added; the individual had to have an invalid social security number. The goal of the third criteria was to provide a more thorough examination of our jail population than even that employed by ICE, and thereby derive a more accurate approximation of the number of proxy number of illegal immigrants in Virginia jails.

Estimated Figures of Illegal Immigrants in Virginia Jails

The total number of individuals in a Virginia jail at some point during FY07 was 215,769. Of this number, 6% (13,735 of 215,769) were determined to be proxy illegal according to staff's three-prong criteria; 94% (202,034 of 215,769) were determined to be proxy legal.

It must be underscored that the figures set forth represent the most conservative estimate of proxy illegal immigrants in Virginia jails. If those with invalid social security numbers who were born in a foreign country, but whose citizenship status was unknown, were included, an additional 887 offenses would be added; if including those with invalid security numbers and unknown birth country and citizenship status, an additional 12,793 offenses by 7,629 additional individuals would be added. In the latter calculation, the estimated percentage of proxy illegal immigrants in Virginia jails would be raised to 10%.

Staff purposefully set forth the most conservative estimate for a number of reasons. First, staff did not want to appear to inflate the estimated number of illegal immigrants in Virginia jails. Second, staff did not know for certain how much of the additional percentage included individuals who were intoxicated, mentally ill, or otherwise unable to articulate a social security number or who were currently on a student or tourist visa. It was concluded that it was too great an assumption to accept a less conservative approach. However, the potential range of proxy illegal immigrants in jails being anywhere between 6% to 10% should be recognized. It should also be recognized that the overall findings are based upon the best available resources for analysis at this point in time.

Summary of Jail Findings

In summary, the findings from the analysis indicate that the proxy illegal immigrant population comprised anywhere from 6% to 10% of Virginia's jail population in FY07. When looking at country of birth, individuals born in Mexico comprised the largest group of individuals held in jails across the Commonwealth. The majority of offenses for which proxy illegal immigrants were being held involved alcohol-related offenses and possession of fake identification documents.

Proxy Illegal Immigrants in Virginia Prisons

Crime Commission staff contacted the Virginia Department of Corrections ("DOC") to obtain an approximation of the number of proxy illegal immigrants in Virginia prisons. Again, staff asked for all records on individuals under DOC supervision for FY03 through FY07. Staff received over 100,000 records. Each record received was analyzed in terms of the most serious offense committed by an individual from his or her most recent event. So, if one was held on multiple convictions, only the most serious offense was counted for purposes of this analysis.

Determining Status

Unlike the Compensation Board's LIDS database, staff did not use Social Security numbers as a determination of illegal status. This was due to the fact that examination of that particular data entry field showed that DOC does not make extensive use of it for identification purposes and, thus, do not pay as much attention to cleaning out erroneous data in that field. Staff was unable to establish a three-prong criterion for DOC data and used the two-pronged criteria of examining country of birth and citizenship status that is employed by ICE.

The number of individuals under DOC supervision between FY03 through FY07 was 129,876. Of this number, 6,936 were foreign nationals (meaning born in a country other than the U.S.). Of the 6,936 foreign nationals, 44% or 3,064 individuals met the second prong of not having U.S. citizenship. Hence, proxy illegal immigrants comprised 2% (3,064 of 129,876) of individuals under DOC supervision from FY03 through FY07. In FY07, proxy illegal immigrants comprised 1.5% (368 of 23,958) of the total number of individuals under DOC supervision.

Summary of Prison Findings

Proxy illegal immigrants comprised approximately 2% of Virginia's prison population between FY03 through FY07. Individuals born in El Salvador comprised the largest group of proxy illegal immigrants, followed by an increasing number of individuals from Mexico. The majority of offenses occurred in Northern Virginia; however, cases involving proxy illegal immigrants do appear to be "spreading out" across the Commonwealth. The offenses committed by proxy illegal immigrants have remained fairly consistent over the past five fiscal years, including grand larceny, drug possession, robbery, DUI, and kidnapping/ abduction.

THE ROLE OF THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT

In March 2003, ICE was established as the largest investigative arm of the Department of Homeland Security. It investigates a wide range of national security, financial and smuggling violations including drug smuggling, human trafficking, illegal arms exports, financial crimes, commercial fraud, human smuggling, document fraud, money laundering, child pornography and exploitation, and immigration fraud.

The Washington D.C. Special Agent in Charge Office ("SAC DC") of ICE is responsible for enforcement in the District of Columbia and the Commonwealth of Virginia. The SAC DC office is located in Northern Virginia and is responsible for performing duties within Northern Virginia and the District of Columbia. A Resident Agent in Charge Office ("RAC") located in Harrisonburg services the western part of Virginia and a RAC office in Norfolk services Southeast Virginia.

Given ICE's role as the federal agency responsible for the enforcement of immigration law, representatives of ICE were asked to present the Task Force with information on ICE initiatives and available resources. The Task Force was presented with information on ICE's 287(g) program. Pursuant to this program, the Secretary of the Department of Homeland Security is authorized to enter into agreements with state and local law enforcement to allow designated officers to become trained and authorized to perform immigration law enforcement functions pursuant to a memorandum of understanding. The program is voluntary. Participating state and local law enforcement officers are provided with training by ICE on how to identify, process and detain illegal immigrants encountered during their regular duties. The memorandum of understanding details the scope of authority and enforcement activities, supervision requirements, and training requirements. The Task Force was informed that the memorandum of understanding is flexible and

may be tailored and subject to modification as needed.

The Task Force was also presented with information on ICE's Law Enforcement Support Center. The Law Enforcement Support Center ("LESC") operates an Immigration Alien Query, which provides access to the approximately 93 million records held by ICE. The LESC mission is to provide investigative assistance to local, state, and federal law enforcement in the identification of illegal immigrants who are suspected of criminal activity. The LESC allows law enforcement officers to easily and quickly obtain information and assistance from ICE on law enforcement matters. The LESC database includes information on such individuals as lawfully admitted aliens or those who are here to apply to become lawful aliens, anyone who has previously been deported, students who enter on a visa, and those who constitute a national security interest who are trying to enter the U.S.

As of 2003, all 50 states have online access to the LESC. The Task Force was informed that from October 1, 2006, to May 7, 2007, there have been approximately 500,000 queries nationwide to the LESC. The Task Force was informed that LESC technicians receive about 2,000 requests for information per day and they expect to answer about 700,000 requests this year. Virginia has been online with the LESC since 2001. A representative from ICE informed the Task Force that the LESC is a very important tool for Virginia law enforcement and that its use by Virginia law enforcement is increasing with each year. Virginia law enforcement ranks tenth among the most frequent users of the LESC nationwide. In the past three fiscal years, LESC responded to a combined total of 22,283 electronic queries from Virginia law enforcement. In Fiscal Year 2004, the LESC received 4,878 queries from Virginia law enforcement. In Fiscal Year 2005, it received 8,880. In Fiscal Year 2006, the number decreased to 8,525. In Fiscal Year 2007, as of the July 24 meeting, the LESC had received 9,668 queries from Virginia and was expecting to receive about 12,000 by the end of the year. Ultimately, it was reported that the LESC received 12,073 inquiries from Virginia law enforcement agencies between August 1, 2006 and July 31, 2007, with 694 resulting in the issuance of detainers.

Upon questioning from the Task Force as to how many of the inquiries received from Virginia law enforcement led to the identification of illegal immigrants, the Task Force was informed that such information was not available. Specifically, it was stated that the person inquired about could be identified through the LESC as a legal permanent resident, a lawful permanent resident, a previously deported felon, or a visa overstay. U.S. citizens are not in the database, nor are illegal immigrants who have not been encountered. In instances where a query does not result in the production of any information on an individual, it may indicate that the person is either a U.S. citizen or an illegal immigrant who has not been previously encountered.

A representative of the Task Force emphasized the need to know how many of the inquiries made by Virginia law enforcement to ICE resulted in the identification of illegal immigrants and, further, how many of those against whom detainers were issued were eventually picked up by ICE and deported. Task Force members also urged the importance of knowing criteria that will be used to determine whether or not an illegal immigrant charged with a crime will be detained and picked up by ICE. In response to these inquiries, ICE representatives indicated that they do not have information on the number of inquiries made to the LESC that have resulted in the identification of an illegal immigrant and, further, do not have statistics on the number of illegal immigrants against whom detainers were issued who were eventually picked up and deported. Additionally, ICE was unable to provide the Task Force with criteria that could be used to provide local law enforcement agencies with more concrete expectations as to when ICE will and will not detain and pick up an illegal immigrant in custody.

An ICE representative informed the Task Force that the most important factor in determining whether or not to hold an individual is the amount of bedspace available in any one location at that time. Available space is an issue throughout the country, not just in Virginia. A Task Force member stressed that when known illegal immigrants commit crimes the public has a perception that the government should do something about it and that all localities in Virginia should have the same policies with regard to illegal immigrants. Consequently, it is important to know when ICE will respond to a situation as well as what ICE's capacity is to dealing with a statewide approach to illegal immigrants. The ICE representatives informed that ICE's ability to utilize its limited resources to detain and remove an illegal immigrant is determined by two factors: i) the severity of the offense, and ii) the amount of available bed space. The amount of available bed space, in turn, is dependent upon the amount of funding available to ICE to pay for that space. Currently, ICE has funding for approximately 650 beds in Virginia. The availability of ICE officers to come and pick up the illegal immigrant in question is also a factor.

The Task Force was also informed about how ICE's Office of Detention and Removal Operations ("DRO") promotes the public safety and national security by ensuring the departure from the U.S. of all illegal immigrants and other removable aliens through its Criminal Alien Program. DRO conducted more than 198,000 removals in FY 2006, including over 89,000 criminals. On average, over 29,000 aliens are held in custody on any given day. Over 1.2 million active cases are being managed by DRO staff. Since the creation of ICE, Fugitive Operations Teams have removed over 109,000 illegal immigrants and other aliens from the fugitive population.

The primary objective of the Criminal Alien Program is to ensure that all criminal illegal immigrants and other removal aliens serving criminal sentences are processed for removal prior to their release from federal, state, and local custody. This is intended to provide for the reduction of the average detention time in ICE custody, thereby decreasing the number of beds and the number of personnel required to manage the detained population. Initiating removal proceedings against criminal aliens in jails and prisons is a primary goal of the Criminal Alien Program. It is using the number of charging documents issued on illegal immigrants encountered in jails and prisons as a measure of productivity towards achieving this goal. Since the beginning of FY07, DRO has seen over a 100% increase in monthly charging documents issued. The Criminal Alien Program is aggressively pursuing criminal prosecutions of immigration violators located in jails and prisons. In FY07, DRO presented 2,159 cases to the Office of the U.S. Attorney; of these, 1,274 were accepted.

The Washington Field Office of DRO covers Virginia. This field office has increased staffing within Virginia by adding an office in Roanoke and by increasing officers in Harrisonburg, Richmond, Norfolk, and Fairfax. The number of charging documents issued in Virginia has increased from 80 in FY06 to 1,228 in FY07. The field office has also coordinated with the Virginia Department of Corrections to establish ICE onsite representation at intake centers. The field office seeks to continue the improvement of all processes for communication and identification of illegal immigrants and promote ICE Agreements of Cooperation in Communities to Enhance Safety and Security (ACCESS), a program that provides local law enforcement agencies an opportunity to team with ICE to combat specific challenges in their communities.

The Task Force was informed that DRO is starting to build a relationship with local jails in populous areas similar to that which exists with Virginia DOC. They frequently visit local and regional jails in an effort to improve relations. The Task Force was informed that even if a jail does not have a 287 (g) agreement in place with ICE, the jail can contact LESC if it suspects that an individual in custody may be an illegal immigrant. LESC will

run an Illegal Alien Query (IAQ). If the individual is an illegal immigrant, ICE can issue a detainer that will authorize the jail to detain the individual.

BRIDGING THE GAP BETWEEN LAW ENFORCEMENT AND IMMIGRANT COMMUNITIES

In an effort to better understand particular issues and needs concerning communications between law enforcement and immigrant communities, as well as related concerns with the ramifications of the enforcement of federal immigration law by local law enforcement, the Task Force took testimony from representatives from Virginia's law enforcement community. Specifically, the Task Force heard from Chief Mark A. Marshall, the Chief of the Smithfield Police Department and Fourth Vice-President of the IACP; Sergeant Leonardo Reyes of the Virginia Beach Police Department, in his capacity as President of the Virginia Chapter of the National Latino Peace Officers Association; Officer Juvenal Valdez of the Norfolk Police Department; and Captain Steve Drew and Lieutenant Harvey Powers of the Richmond Police Department.

The Task Force requested the above individuals to provide background information and a description of the practices currently used in their localities. All of the agencies noted that there are both cultural and language issues that serve as barriers between the immigrant community and police, and that communication is the key component to overcoming these barriers. It was stressed that the public safety of all is improved when immigrants, legal and illegal alike, feel comfortable with coming forward and speaking to law enforcement as victims and witnesses. This assertion was bolstered by presentations made before the Task Force regarding concerns with illegal immigrants as victims of employment abuse, domestic violence, and human trafficking.

RECOMMENDATIONS

Role of the Federal Government

Recommendation # 1 - Resolution:

The Task Force recommended a resolution, addressed to Virginia's representatives serving in the U.S. Senate and House of Representatives, reflecting that i) the regulation and enforcement of immigration law is the responsibility of the federal government, ii) federal law preempts most state and local measures aimed at addressing the effects of illegal immigration, iii) despite the federal government's preemption over the field of illegal immigration, it has failed to properly address the issue, thereby forcing the state and local governments to attempt to address an issue which is largely preempted, and iv) the limited state and local measures that can be implemented will be of limited effect unless and until the federal government provides the dedicated members of ICE with the resources needed to do its job.

Data Collection

Recommendation # 2 - Local Inmate Data System:

LIDS should include a field requiring the input of confirmation, upon consultation with ICE, of the immigration status of any inmate who i) was born in another country, and ii) is a citizen of another country, or for whom this information is unknown.

Recommendation # 3 - Department of Corrections Data:

The data system used by the DOC should include a field requiring the input of confirmation, upon consultation with ICE, of the immigration status of any inmate who i) was born in another country, and ii) is a citizen of another country, or for whom this information is unknown.

Recommendation # 4 - Department of Corrections; Social Security Number Verification:

The DOC should be required to verify the validity of inmates' social security numbers in its records and to omit from its records those that are discovered to be false.

Recommendation # 5 - Data of the U.S. Immigration & Customs Enforcement:

It is recommended that ICE maintain data on i) the number of inquiries made by state and local law enforcement agencies to its Law Enforcement Support Center, ii) the number of these inquiries that are found to be illegal immigrants, legal nonimmigrants, legal permanent residents, and U.S. citizens, iii) the number of detainers issued for those found to be illegal immigrants, nonimmigrants, and legal permanent residents, and iv) the number of deportations that result from the detainers issued. ICE should provide the data to the Commonwealth upon request.

Recommendation # 6 – Cross Check LIDS Against NCIC/LESC

It is recommended that the information within LIDS for all inmates currently in jails be cross-checked against the illegal alien databases of the National Crime Information Center and the LESC illegal immigrant databases.

Education

Recommendation # 7 - Bridging the Language Barrier between Law Enforcement and Immigrant Communities:

Law enforcement agencies should enhance their ability to overcome language barriers with immigrant communities by arranging for law enforcement officers to be trained in different languages and cultures and by hiring more multi-lingual personnel. Virginia DCJS should partner with community organizations, such as the Hispanic Chamber of Commerce, to provide language training at no cost to officers and to explore the possibility of tuition assistance or grant opportunities for officers who seek to earn language degrees at community colleges.

Recommendation # 8 - Greater Education for Immigrant Communities on Laws, Regulations, and Safety:

Law enforcement agencies, state and local governmental agencies, and community organizations should work together to educate immigrant communities on laws, regulations and safety issues relevant to immigrant communities.

Law Enforcement & Public Safety

Recommendation # 9 - Building Relationships between Law Enforcement and Immigrant Communities:

Law enforcement agencies should continue to build stronger working relationships and tighter bonds with immigrant communities by working to establish trust through crime prevention programs, neighborhood watch programs, citizen police academies, community outreach events, and community information meetings.

Recommendation # 10 - Regional Anti-Gang Task Forces:

It is recommended that i) all regions of the Commonwealth that have not already done so form an anti-gang task force, and ii) all anti-gang task forces include, as a member, a representative from ICE.

Agreements with ICE Pursuant to 8 U.S.C. 1357(g) – "287(g)"

Task Force Recommendation # 11 – Authorization for the Department of State Police and the Department of Corrections:

Request that the Governor execute 287(g) agreements with the U.S. Immigration and Customs Enforcement to authorize the Virginia State Police and Virginia DOC to designate officers to be trained and authorized to assist federal authorities in the detection, apprehension, detention, and removal of illegal immigrants confronted in their normal criminal justice functions. Virginia State Police's authority should be limited to illegal immigrants confronted in the course of investigating violent felonies, drug offenses, and gang-related crime.

The Role of Jails & Prisons

Recommendation # 12 - Offenses Triggering Response by ICE:

The Crime Commission should work with ICE to develop a list of felonies and misdemeanors not already covered by ICE, which, if committed by a person illegally present in the country, will guarantee that ICE will detain and take custody of the suspect at the time of his or her trial or at the conclusion of his or her sentence, whichever is longer. If ICE cannot guarantee detention and deportation of criminal illegal aliens for all offenses that qualify under federal law, then it must advise the Commonwealth of the reason(s) for that decision so that the Commonwealth may evaluate any options at its disposal to facilitate deportation.

Recommendation # 13 - Presumption Against Bail:

Va. Code § 19.2-120 should be amended to include illegal immigrants charged with a state crime, or for whom a federal warrant is outstanding, among those for whom there exists a presumption against bail, unless and until notification is received from ICE that it does not plan to detain the individual. Upon such notification being received, the presumption shall no longer exist. This recommendation is contingent on the ability of ICE to implement Recommendation # 12.

Recommendation # 14 - Inquiry into Immigration Status and Reports to ICE:

Va. Code § 53.1-218 should be amended to require direct reporting to LESC of ICE, of any inmate who i) was born in another country, and ii) is a citizen of another country, or for whom this information is unknown and, further, to require that confirmation of such an inmate's immigration status be requested. The jailer must inquire as to the country of birth and citizenship of every person.

Task Force Recommendation # 15 – Training for Certain Jail and Prison Officers:

Clarify the requirements of Va. Code § 53.1-218 to ensure that officers responsible for intake and detention of inmates at local and regional jails and state prisons obtain training on the detection of illegal aliens coming into our criminal justice system.

Task Force Recommendation # 16 – Reimbursement Rates Received from ICE for Use of Bed Space and Funding for Construction of Extra Bed Space:

Jailers should receive a higher rate (100%) of the reimbursement received from ICE for use of bed space, rather than it going to the General Fund, and the state should fund new construction of extra bed space at a rate of 50%, rather than the current 25%.

PROPOSALS REFERRED TO THE COMMISSION ON IMMIGRATION

Three proposals were determined to fall outside the scope of the Task Force's mission, and, consequently, were referred to the Governor's Commission on Immigration for consideration.

Verification Cards for Purpose of Showing Identity:

A "verification card" should be created and issued to those who are in the United States without legal presence to help state and local authorities properly identify such persons in the Commonwealth. Such a document shall not provide legal status or rights, but rather will merely serve as verification that the individual is who he or she claims to be.

Verification of New Employees Through "Basic Pilot Program;" Loss/Suspension of License for Knowing Employment of Illegal Immigrants:

A business that knowingly employs illegal immigrants, after investigation by the Attorney General or local commonwealth's attorney. The determination of an employee's immigration status can only be made by the federal government. A first time violation will result in a minimum suspension of license, not to exceed ten business day and a three year probationary period. It permits the business to avoid the loss of license if it discharges the illegal immigrants. Any loss of

license requires a hearing and court order. All employers are also required to verify the immigration status of all new employees through the federal government's "E-Verify" program.

Documentation Required for Certain Benefits:

Any person who applies for a state administered public benefit program that requires participants to be U.S. citizens, must provide documentation that they are legally present in the U.S. Self-declarations of U.S. citizenship, even under the penalty of perjury, are not sufficient to document citizenship.

ACKNOWLEDGEMENTS

Law Enforcement Agencies

Commander Steve Drew, Richmond Police Department, 2nd Precinct; John W. Jones, Executive Director, Virginia Sheriffs' Association; Chief Mark A. Marshall, Smithfield Police Department, Fourth Vice-President, International Association of Chiefs of Police; Lieutenant Harvey Powers, Richmond Police Department, 2nd Precinct, Sector 212; Sergeant Leonardo Reyes, President, Virginia Chapter, National Latino Peace Officers Association; Sergeant Quinn Stansell, Mecklenburg County Sheriff's Office, North Carolina; Officer Juvenal Valdez, Norfolk Police Department

Organization Representatives

Clement D. Carter, Williams Mullen, Volunteer with the Virginia Hispanic Chamber of Commerce Foundation - Legal Clinic; Rená E. Cutlip-Mason, Director of Legal Services, Tahirih Justice Center; Tim Freilich, Legal Director, Virginia Justice Center for Farm and Immigrant Workers; Jeanne L. Smoot, Director of Public Policy, Tahirih Justice Center; Jessica M. Vaughan, Senior Policy Analyst, Center for Immigration Studies

U.S. Immigration & Customs Enforcement (ICE)

Vincent E. Archibeque, Field Office Director, Office of Detention & Removal; Jorge E. Artieda, Associate Legal Adviser, Enforcement Law Division, Office of the Principal Legal Adviser; Scott Blackman, Director, Law Enforcement Support Center; Mary F. Loiselle, Acting Deputy Assistant Director, Detention Management Division, Office of Detention & Removal; Mark McGraw, Assistant Special Agent in Charge; William F. Reid, Special Agent in Charge

Virginia State Agencies

Robyn M. deSocio, Executive Director, Virginia Compensation Board; Andrea Ross, Systems Analyst, Department of Corrections; Anne M. Wilmoth, Chief Information Officer, Virginia Compensation Board

JUROR DISQUALIFICATIONS IN CRIMINAL TRIALS

Senate Bill 952, introduced by Senator Frederick Quayle in the 2007 General Session of the Virginia General Assembly, would have added a new subsection to § 19.2-262 of the Code of Virginia. The new subsection would have provided a list of persons who would be disqualified from serving as jurors in a particular criminal case:

1. Any person who is related to the accused by blood or marriage;

2. Any person who is related by blood or marriage to an officer or employee of the court;

3. Any person who is related by blood or marriage to the attorney for the Commonwealth;

4. Any person who is related by blood or marriage to a person against whom the alleged offense was committed;

5. Any person who is an officer, director, agent, or employee of the accused;

6. Any person who is an officer, director, agent, or employee of an officer or employee of the court;

7. Any person who is an officer, director, agent, or employee of the attorney for the Commonwealth;

8. Any person who is an officer, director, agent, or employee of a person against whom the alleged offense was committed;

9. Any person who has any interest in the trial or the outcome of the case;

10. Any person who has expressed or formed any opinion as to the guilt or innocence of the accused; or

11. Any person who has a bias or prejudice against the Commonwealth or the accused.

SB 952 was referred to the Senate Courts of Justice Committee, which sent a letter to the Crime Commission, asking it to review the bill. Commission staff reviewed the bill, in conjunction with the constitutional requirements and applicable state law provisions that apply in criminal cases.

The clear purpose behind SB 952 is to ensure that the jurors trying a criminal case are unbiased and will be objective in reaching their verdict. This basic objective is a fundamental tenet of the criminal justice system. Both the Sixth Amendment of the United States Constitution and Article 1, section 8 of the Virginia Constitution expressly guarantee an accused the right to an "impartial jury." This principle also has been reiterated repeatedly by the Virginia Supreme Court. To cite one example, the Court stated, in Breeden v. Commonwealth, 217 Va. 297, 298 (1976), "The right of an accused to trial by an impartial jury is a constitutional right. The constitutional guarantee is reinforced by legislative mandate and by the rules of this Court: veniremen must stand indifferent in the cause."

The reference to the "rules of this Court" in the above quotation is to Rule 3A:14(a) of the Rules of the Virginia Supreme Court. This rule mandates that a trial court ask prospective jurors certain questions to ascertain if they have any bias, even before counsel for both sides begin their voir dire. The questions that are listed in Rule 3A:14(a) are so similar to the proposed prohibitions listed in SB 952 that they appear to have been the immediate template for the language of the bill:

Examination. After the prospective jurors are sworn on the voir dire, the court shall question them individually or collectively to determine whether anyone:

(1) Is related by blood or marriage to the accused or to a person against whom the alleged offense was committed;

(2) Is an officer, director, agent or employee of the accused;

(3) Has any interest in the trial or the outcome of the case;

(4) Has acquired any information about the alleged offense or the accused from the news media or other sources and, if so, whether such information would

affect his impartiality in the case;

(5) Has expressed or formed any opinion as to the guilt or innocence of the accused;

(6) Has a bias or prejudice against the Commonwealth or the accused; or

(7) Has any reason to believe he might not give a fair and impartial trial to the Commonwealth and the accused based solely on the law and the evidence.

Thereafter, the court, and counsel as of right, may examine on oath any prospective juror and ask any question relevant to his qualifications as an impartial juror. A party objecting to a juror may introduce competent evidence in support of the objection.

Because the Rules of the Virginia Supreme Court are binding upon all trial courts, the goal of SB 952 is already being carried out during the voir dire for criminal trials. Question (7) of Rule 3A:14(a), in particular, demonstrates by its general nature the importance of ensuring that the members of the jury are unbiased in the case.

Considering how similar the language of SB 952 and Rule 3A:14(a) is, enacting the bill would only serve to place duplicative language into the Code of Virginia. Based upon this analysis, the Crime Commission declined to endorse SB 952, making no recommendation on the bill and taking no additional action.

JUVENILE JUSTICE

House Joint Resolution 136, introduced by Delegate Brian Moran and passed during the 2006 Virginia General Assembly Session, directed the Virginia State Crime Commission to study the Virginia Juvenile Justice System over a two year period. Specifically, the Commission was to examine recidivism, disproportionate minority contact with the juvenile justice system, improving the quality of and access to legal counsel based on American Bar Association recommendations, accountability in the courts, and diversion. The Commission was also tasked with analyzing Title 16.1 of the Code of Virginia to determine the adequacy and effectiveness of Virginia's statutes and procedures relating to juvenile delinquency.

During 2007, Commission staff met with a group of Juvenile and Domestic Relations District Court ("JDR") judges, surveyed Virginia's JDR court judges, provided a study update to the Virginia Advisory Committee on Juvenile Justice ("VACJJ"), met with local juvenile justice professionals around the state, attended Court Service Unit ("CSU") directors' meetings, consulted with multiple juvenile justice professionals and advocacy groups, and attended both national and statewide trainings provided for juvenile justice professionals. During the 2008 Virginia General Assembly Session, staff monitored juvenile justice legislation directly related to issues studied during the 2007 year.

Focus Groups and Juvenile and Domestic Relations District Court Observations

Staff members visited nine localities during 2007. The localities were selected with the goal of obtaining a diverse geographic and demographic representation to include:

- Augusta County;
- City of Alexandria;
- City of Bristol;

- City of Fairfax;
- City of Richmond;
- City of Virginia Beach;
- Henry County;
- New Kent County; and,
- Roanoke County.

There, staff observed JDR court proceedings and participated in focus groups with local juvenile justice professionals. In every locality, all interested parties were invited to send representatives to the focus groups. The following individuals were requested to attend: school representatives, including truancy officers, school resource officers and program directors; CSU employees, including directors, intake officers and program coordinators; judges, both circuit court and JDR court; law enforcement representatives; and any interested parties from juvenile-oriented groups, such as representatives from advocacy or locality specific programs.

Topics discussed included the issues cited in HJR 136, as well as additional issues brought forth by the focus group participants. The following is a summary of the current juvenile justice issues that the participating localities mentioned in the focus groups.

Funding

The top issue from every locality was lack of funding. Localities mentioned the need for funding for programming, additional and expansion capabilities, and positions. The most frequently cited programs in need of funding were prevention programs, halfway homes, mental health and substance abuse programs. The most frequently cited needs in regard to manpower were to raise the rate of compensation for court appointed attorneys and to allot more positions in CSU.

Truancy and Children in Need of Services ("CHINS")

A few of the localities cited the possibility of lowering the mandatory school attendance age; however, only a minority of the focus groups had this sentiment. Virginia raised its school attendance requirement from 16 years of age to 18 during the 1990's. Truancy cases were mentioned as having a high impact on every court docket. Almost all the localities mentioned the need for faster turnaround between a juvenile's truancy infraction and his or her court appearance. Most of the localities mentioned time spans of months between the infraction and the court appearance, making the judgment less effective - juveniles respond better to immediate sanctions. Some of the participants even suggested the possibility of creating immediate sanctions within the school system instead of having to go to the courts for truancy.

Prevention and reduction of truancy was a major concern in all of the localities due to the fact that most high school aged juveniles were being charged for truancy infractions, but in reality, they had a pattern of frequent absences since elementary school. CHINS court workers and judges both agreed that the courts need more authority to take action on parents who don't send their young children to school.

School Involvement in Juvenile Justice System

Localities that mentioned high involvement and cooperation by the school system cited fewer problems with truancy cases. Most of the localities' JDR courts that reported an active level of cooperation with the schools also noted that the schools maintained working alternative programs, such as alternative education, GED courses, and trade programs. School systems that invest and apply these alternative programs are able to attract non-traditional or non-college bound students. When localities do not provide these services, students that are not college bound have little incentive to participate in their education. The localities that reported low to no cooperation with the school system cited higher problems with truancy cases and few to no alternative programs in the schools.

Mental Health and Mental Resources ("MH/MR")

All of the nine localities voiced the need for more mental health resources for juveniles, both within the juvenile justice system and immediately in the community. The provision of MH/MR services was one of the issues that differentiated the localities that staff visited in Virginia. As was expected, more affluent localities had their own MH/MR programs in place. These programs were funded by the localities, but they mentioned that the need persists to serve more people. Most of the rural localities had few resources to provide sufficient, if any, MH/MR services.

One issue that some localities mentioned was the need to determine mental health status before adjudication. They noted that juveniles are not usually given an assessment until they reach detention, where a mental health evaluation can shape their treatment, but is too late to affect their outcome in court.

Transfer

Since the authority of transferring a juvenile to circuit court was changed in the 1990's, juveniles are automatically transferred for some charges. For other charges, the Commonwealth's Attorney has the ability to determine whether to charge a juvenile as an adult. The authority once rested solely on JDR court judges.

It was often repeated that the authority for transfer should be reverted to JDR court judges for two reasons. First, it was suggested that any discretion for transfer be removed from Commonwealth's Attorneys' offices as they are not as specialized in juvenile justice matters as JDR court judges. Second, it was suggested that the authority be removed from Commonwealth's Attorneys as they frequently use the threat of transfer as a plea bargaining tool with juveniles.

Juvenile Detention Alternatives Initiative ("JDAI")

Most participants in the focus groups supported JDAI. While only one locality staff visited was actively involved as a test site for JDAI, most of the other localities employed the JDAI detention assessment instrument, which helps determine whether an apprehended juvenile should be detained. There were a few problems noted, with either JDAI or the assessment instrument, in the focus groups. They included:

- The instrument does not have the juvenile's history or family/ living situation as weighted options for determining whether to detain a juvenile.

- Local CSU workers need a blanket system for override authority on the instrument.

- There is no legal holding area for juveniles once it has been determined that they will not be detained. The police officers who brought the juvenile in must then stay with the juvenile until the parents arrive to pick up the juvenile. Police officers lose hours on a shift when they apprehend a juvenile. They note that the process is too complicated and the process time required takes away from their regular patrol.

- Law enforcement and juvenile workers aren't always in communication about juveniles' needs and detention. For the communities that had regular meetings and/or open dialogue between the CSU and law enforcement, they were able to solve many of the obstacles that other communities had not discussed.

Disproportionate Minority Contact ("*DMC*")

Disproportionate Minority Contact was acknowledged to be an issue by many of the localities, but causes were not clear. Representatives from CSUs and judges stated that they work with juveniles only after they enter the system and that this population already contains a disproportionately large percentage of minorities at intake. In one locality, a law enforcement officer addressed this issue by mentioning that their office had done its own study a couple years before on the subject. The study found that many juvenile crimes are not directly witnessed by law enforcement officers, but are reported to the police by citizens.

Study findings concluded that citizen phone calls are a primary reason for disproportionate minority contact with the courts. While most of the localities were not current JDAI test sites, they frequently used the JDAI intake assessment tool as a method of reducing DMC.

Office on Youth

A few of the rural localities mentioned the need to reestablish the Office on Youth, once a statewide program that assisted in juvenile issues, providing social and delinquency services. One of the localities visited was able to continue their Office on Youth and its services, albeit at a much lower capacity, through federal grants. The localities cited that when the offices were fully funded and operational, the services they provided greatly supplemented the needs for delinquents and CHINS.

Corroboration of all Local Offices Involved in Juvenile Justice

Overall, the localities with positive relationships among its court system, schools, and law enforcement agencies reported fewer problems and a higher level of ability to provide juveniles with programs and services. Some of these localities had even established regularly scheduled meetings with representatives from schools, JDR courts, law enforcement, CSU, non-profits with juvenile programming, and other community members active in youth services. One of the courts even had its own volunteer program that helped lighten the load for regular employees of the JDR court.

Prevention

Some localities mentioned the current use of early prevention programs and all localities insisted on the need to start prevention programs, especially related to truancy at an elementary level. When records of truant and delinquent children were examined, it was shown that problems arose during elementary school years. The most troubling issue mentioned was that many delinquent children had received some sort of advisement for mental health treatment at an early age. For example, one group mentioned that often a delinquent's elementary school record shows that a teacher recommended the juvenile for mental health services.

Parental Involvement

A major issue brought to light by all the localities was cyclical delinquency as a result of inadequate parenting, which usually results in a multi-generational pattern of the same. A few localities mentioned the need for mandatory parenting skills classes to be required of all parents of truant children, delinquent children, CHINS and children in need of supervision ("CHINSup").

Another pattern of parental instability was the lack of parental ability to enforce school attendance. Again, this was mentioned as a problem that starts at the elementary level. A suggestion noted, as a corrective method, was to sanction the parents of elementary aged truant children. This suggestion would require the proactive cooperation of school systems to inform the courts in a timely manner of a child missing from school. The courts would need clear enforcement of attendance with the power to impose sanctions, including jail time, for those not taking young children to school.

Substance Abuse Reduction Effort ("SABRE")

A few of the rural localities mentioned the usefulness of the SABRE program, which is now extinct. This statewide program, cut due to budgetary issues, addressed drug dependency through each CSU. SABRE required mandatory drug treatment for first-time offenders. It also provided for retesting, treatment, and reintegration programs. The localities referring to this program insisted on its success and wanted the program to be reinstated.

Diversion

When discussing diversion opportunities, participants noted that diversion is limited due to Virginia's law of allowing only one official diversion opportunity per juvenile. While some localities had active diversion programs, most of

the rural localities had few to no diversion programs. These localities mentioned their only option is to divert a juvenile without being able to provide treatment or services for improvement.

Counsel

The lack of ability for court appointed counsel and public defenders to meet with their juveniles before trial was mainly attributed to transportation issues and inadequate contact information. Especially in the rural localities, counsel mentioned that either juveniles have no access to transportation or, when they are being detained before trial, the detention center is in a distant locality. Counsel did have a solution to this problem - allow counsel to videoconference with the juvenile, via the internet, from the local courthouse to the detention center. Many times, the inability to meet was stated as the fault of incorrect contact information for the juvenile, as it was not current or became outdated due to the transient lifestyle of the caretakers. It should be noted that both court appointed counsel and public defenders had heavy caseloads, as observed by Commission staff and mentioned in the focus groups. Other difficulties faced by appointed counsel were the inadequate pay and the requirement to attend court multiple times (usually stated to be around four to six appearances) so that the reimbursement rate of $120 only covered travel expenses.

Juvenile and Domestic Relations District Court Judge Survey

Following the courtroom observations and focus groups, Commission staff met with a work group of JDR judges to discuss relevant issues faced in the juvenile justice system. A preliminary draft of the judicial survey was given to the judge's workgroup for them to review and make suggestions. The Commission then sent an in-depth survey to all JDR judges in the Commonwealth during the fall. To date, the response rate stands at 74%. Included in the survey were questions focused on the adequacy of Virginia's statutes, overall perceptions of Virginia's juvenile justice system, and juvenile access to counsel and quality of representation. The surveys are in the final stages of analysis and detailed results are expected this fall.

Intake Officer Survey

The Crime Commission partnered with graduate students from the School of Public Policy at the College of William and Mary to survey CSU employees. The purpose of the survey was to determine the type of diversion programs available, their effectiveness and their implementation methods. The students were able to send surveys to intake officers from 33 of the 35 Virginia CSUs. Using a web based survey, 51 officers from 15 CSUs responded. While many of the goals of the survey were unable to be further studied due to lack of statewide recording, the survey was able to establish some consistent placement factors used by intake officers. The students completed their survey and presented the findings to Commission staff on December 6, 2007.

Multiple State Survey of Attorneys' Fees

A survey of surrounding states was conducted by staff to compare Virginia's compensation rate of attorneys' fees for court-appointed attorneys in juvenile justice cases. Out of the six states surveyed, Virginia has the lowest reimbursement rate, due to low initial cap limits, for court appointed attorneys handling juvenile cases. Kentucky is the only state in the survey, like Virginia, that has a fixed cap for court-appointed fees. While Kentucky has fixed caps, the caps are significantly higher than Virginia's and range from $300 to $900 per case. The other four states in the survey (Maryland, North Carolina, Tennessee, and West Virginia) have no fixed caps and allow for a waiver either by a judicial or administrative official.

The following is a synopsis of each state's compensation rates:

- Virginia has a fixed cap of $120 per case and allows an extra $120 with a judge's discretion at a rate of $90 per hour. An additional waiver may be requested, but requires the approval of both

the presiding judge and the chief judge of the court. There is no cap in capital murder cases.

- Kentucky provides a rate of $40 per hour with caps ranging from $300 to $900, dependent on the type of case. For violent felonies, the hourly rate is $50 with the caps ranging from $1,200 to $1,500.

- Maryland provides an hourly rate of $50 with waiveable caps dependent on the discretion of agency heads.

- North Carolina's compensation gives an hourly rate of $65 without caps. The vouchers must be approved by the judge.

- Tennessee's system provides a more elaborate compensation plan dependent on the type of charge and in-court versus out-of-court rates. The compensation rate is $40 out-of-court and $50 in-court with the caps ranging from $3,000 to $4,000 dependent on the charge. For capital cases, the hourly rate ranges from $60 to $100 based on the counsel and location.

- West Virginia provides $45 per hour for in-court time and $65 per hour for out-of-court time with ambiguous caps.

Continuation

Because of the detailed information that was produced during the study, another year is needed to fully examine the newly-identified issues in conjunction with the current ones cited in the resolution. The goals for the continuation of the study through 2008 include: ascertaining juvenile justice related training opportunities for Commonwealth's Attorneys and their assistants, examining the role of Commonwealth's Attorneys offices in the JDR court; determining the training provided for Intake Officers; reviewing juvenile law training provided for circuit court judges; discovering truancy patterns and exploring Department of Education programs directed toward truancy issues; determining the number of juveniles identified as having mental health and/or substance abuse needs in detention centers and Virginia Department of Juvenile Justice correctional facilities; monitoring juvenile justice legislation; re-entry back into the community; and creating a list of proven practices for CSUs.

During the 2008 Virginia General Assembly Session, House Joint Resolution 113, patroned by Delegate Brian Moran, directed the Crime Commission to continue its study of juvenile justice. This resolution also incorporated House Joint Resolution 160, introduced by Delegate Clarence Phillips, that specifically requested additional study items as follows: (i) review the severity of offenses committed by juveniles in the Commonwealth; (ii) evaluate the effects on the learning environment and educational process, particularly for other students, when juvenile offenders are returned to the public school classroom; (iii) identify and examine more effective methods of rehabilitating juveniles, particularly juveniles who commit serious offenses; and (iv) recommend such changes as the Commission may deem necessary to provide a more effective juvenile justice system.

ACKNOWLEDGEMENTS

At this time, the Crime Commission would like to thank all individuals, agencies, and localities that have continuously aided in this study.

LAWRENCEVILLE CORRECTIONAL CENTER

At the Crime Commission's May 22, 2007, meeting, the Honorable Gene Johnson, Director of the Department of Corrections, and Ms. Kim Lipp, of the Department's Architecture and Engineering Services, presented an update on the Department's master plan and construction projects. It was reported that bed space shortages will rise to unacceptable levels without the construction of major facilities. The legislature has provided funding for 4,472 beds at five facilities as follows:

Facility	Beds	On-Line
Deerfield Expansion	600	December, 2006
Green Rock	1,024	May, 2007
Pocahontas	1,024	September, 2007
St. Brides Phase 2	800	December, 2007
Grayson County	1,024	June, 2010

It has been estimated, however, that there will be a bed space shortage of 3,300 by June 30, 2012, without the construction of another prison. In 2007, the legislature provided $1.2 million to begin working towards a site in Charlotte County.

Director Johnson also provided the Commission with a report on the Lawrenceville Correctional Center, the Commonwealth's only privately-operated prison. The Lawrenceville Correctional Center is operated by The GEO Group, Inc. It is a medium security prison with a contractual capacity of 1,425. At the time of the May 22 meeting, concerns had been expressed over reports of a high amount of contraband, particularly drugs and cellular phones, discovered at the center as compared with that discovered at the state-run prisons. Director Johnson reported to the Commission that the Department had hired an outside consultant, MGT of America, Inc. ("MGT"), to conduct an independent review of the security operations of the center.

The Commission traveled to the Lawrenceville Correctional Center for its September 11, 2007, meeting to tour the facility and receive a report on the independent review. It was reported that MGT had reviewed the security operations systems at the center with specific emphasis on the security systems designed to eliminate, detect, and control contraband, and had issued recommended corrective measures. It was found that until December of 2006, drug testing at the center had been specifically targeting those inmates who were suspected of using drugs, and placed less emphasis on random testing as compared to the state-run prisons. This led to a higher number of inmates who tested positive for drugs as compared with the other institutions, precluding a proper comparison.

MGT issued 50 recommendations, ranging from the establishment of procedures designed to ensure the random selection of inmates to be tested for drugs, to the filling of staff vacancies and the use of drug dogs. The report indicated that both the leadership of the Department and the administrators of the center recognized the problems and have taken aggressive action to implement corrective measures. In fact, the report of the independent consultant revealed that many of the reported problems were previously identified by the Department of Corrections and the Lawrenceville Correctional Center and corrective action had already been taken.

MANDATORY MINIMUM CRIMES IN VIRGINIA

Under Virginia law, a mandatory minimum sentence is one that must be imposed, and cannot be suspended, by the trial judge if a defendant is found guilty of the offense. Using the statutory authority granted to the Crime Commission, and at the direction of the Chairman, Delegate Dave Albo, staff conducted a study on the various criminal statutes in Virginia that carry a mandatory minimum sentence.

There are currently 36 criminal statutes in the Code of Virginia that contain some type of mandatory minimum sentence. Altogether, they create roughly 82 offenses for which a mandatory minimum sentence is applicable. Of these 82 offenses, 60 are felonies, and 22 are misdemeanors. The sentences vary in range from a mandatory $250 fine, to life imprisonment. The types of offenses for which mandatory minimum sentences have been specified fall into many different categories: drugs, DUI offenses, firearms, sexual assault, non-DUI related driving offenses, and even trespass.

The enactment of mandatory minimum laws is a comparatively recent phenomenon in Virginia. The first was passed in 1968, with the creation of Virginia's habitual offender laws. Three more were enacted in the 1970's: the use of a firearm in the commission of certain felonies; a second offense of that crime; and the escape from a correctional facility by a felon. The vast majority of mandatory minimum offenses have been created in the last 20 years; dozens have been created since 2000 in a trend that does not currently show any signs of abating.

Typically, most of the mandatory minimum crimes enacted in a year deal with a specific category of offense, reflecting a pressing concern at that time. For instance, in 2003, all of the enacted mandatory minimum punishments involved DUI offenses. In 2007, eight out of the ten mandatory minimum crimes enacted dealt with child pornography and the use of computers to solicit children.

A review of the literature published on the topic of mandatory minimum punishments finds very few universal conclusions. This is to be expected; a mandatory minimum statute that requires a fine to be paid for speeding cannot be fairly compared to a statute requiring a mandatory minimum life sentence for dealing drugs. The differences in penalties, and in the types of offenses involved, prevent generalities from being made. However, most peer-reviewed studies have not established any long-term deterrent effects directly resulting from the passage of a mandatory minimum statute. Some studies have found that the enactment of a mandatory minimum penalty led to a decrease in convictions for that offense, due to plea bargaining—defendants opted to plead to a lesser offense, rather than risk a conviction which would mean a lengthier incarceration. Other studies have found that a decrease in crime rate following the passage of a mandatory minimum sentence was due to other factors than the deterrent impact of the new mandatory minimum punishment. For example, a very detailed study that analyzed the impact of mandatory minimum jail sentences in Arizona for drunk driving found that the decrease in drunk driving arrests following the enactment of the "stiffer penalties," was more closely correlated with a corresponding public awareness campaign about the new laws and the dangers of drunk driving, rather than the specific deterrent effect of the laws themselves.

This is not to say that there may not be other compelling reasons for a mandatory minimum penalty to be enacted. Such statutes do allow a legislature to register its strong disapproval of a crime, and formally declare that criminals who commit such acts will not be allowed to escape unpunished. In this way, a legislature can indirectly express its understanding and sympathy for the victims of those crimes.

The passage of mandatory minimum sentences can

also provide a tool for prosecutors to induce guilty pleas, via plea bargaining, thus saving time and financial resources of the state. A similar benefit may be that with the "threat" of a mandatory minimum sentence, a defendant may be persuaded to provide cooperation to the prosecutors, either by testifying against co-defendants, or by providing information about other, unrelated criminal cases.

Conclusion

While mandatory minimum laws may provide useful benefits in some situations, they can also lead to unanticipated or even undesirable effects, such as lower conviction rates, or an unjust sentence in an individual case. Trying to determine in advance whether the passage of a mandatory minimum penalty will have mostly positive or negative consequences, or no real impact at all, is extremely difficult. The following general considerations may provide some guidance as to whether or not a particular proposal for a new mandatory minimum punishment will be good policy or not.

How much jail or prison time are such offenders currently receiving? If most defendants convicted of the crime are already receiving a lengthier incarceration than what is proposed, then the new mandatory minimum probably will not accomplish much. In fact, it may lead to lighter sentences if judges are "guided" by the mandatory minimum language to sentence all defendants to exactly that amount of time.

What will be the fiscal impact on jails or prisons? If the proposed mandatory minimum will lead to much greater periods of incarceration, then the overall impact on state and local budgets must be considered. The increased costs may need to be considered in Virginia's budget and in future, long-term planning.

Do Commonwealth's Attorneys support the proposal? As the constitutional officers who either will make use of the mandatory minimum statute, or ignore it (by refusing to charge defendants with that statute and substituting a lesser charge), their input must be sought before the new penalty is enacted. There is little good to be accomplished in passing criminal legislation that is viewed as unnecessary, or worse, a hindrance, by prosecutors.

Is the proposed mandatory minimum sentence consistent with penalties for related crimes? If a mandatory minimum sentence is enacted without keeping a broader view on the penalties for similar crimes, it can lead to illogical sentencing schemes. For example, the mandatory minimum penalty for distributing less than tengrams of methamphetamine, third offense, is five years. Yet, the mandatory minimum penalty for manufacturing that same quantity of methamphetamine is only three years. Distributing any amount of an anabolic steroid, even as an accommodation, carries a mandatory minimum sentence of six months. No mandatory minimum penalty exists for distributing heroin, though, unless the quantity is 100 grams or greater. Discrepancies like these arise when mandatory minimum sentences are enacted in a piece-meal fashion, without considering the existing penalties for similar conduct.

What unforeseen or collateral effects might occur? Will passage of the mandatory minimum make convictions more difficult for prosecutors to obtain? Will it make victims reluctant to testify (a concern for domestic violence and abuse cases)? Will it make defendants more likely to seek a jury trial, as they may feel they have nothing to lose?

While predicting the long-term consequences of a mandatory minimum statute is difficult, these considerations can provide a useful starting point in determining whether, as a policy, the proposed penalty will benefit, or be detrimental to, the Commonwealth.

METHAMPHETAMINE CRIME IN VIRGINIA

Methamphetamine is a highly addictive stimulant drug that can have extremely deleterious effects on a person's physical and mental health. Placed in Schedule II of the federal Controlled Substances Act in 1971, methamphetamine abuse declined throughout that decade, but a resurgence occurred in the 1980's and 90's; today methamphetamine is considered by the U.S. Drug Enforcement Administration to be a "major drug of abuse." Using the statutory authority granted to the Crime Commission, and at the direction of Vice-Chairman Senator Ken Stolle, staff conducted a study on methamphetamine use and production in Virginia.

In 2001, the Virginia Criminal Sentencing Commission ("VCSC") studied illegal methamphetamine use and distribution in Virginia, and found that "the number of cases involving methamphetamine had been increasing in Virginia since the early 1990's, but remained a small fraction of the drug cases in the state and federal courts." In 2004, they updated their research with an even more extensive study, and found that while methamphetamine arrests were growing at a faster rate than arrests for other drugs, they still accounted for less than two percent of all drug arrests in 2003. The total number of methamphetamine cases in Virginia's circuit courts had increased from the early 1990's (there were 20 cases in 1992, 23 cases in 1993, and 43 cases in 1994), but there were still fewer than 200 cases a year. (There were 122 cases in 2000, 140 cases in 2001, 129 cases in 2002, and 166 cases in 2003, as computed at the time of publication in 2004). By comparison, in 2003 there were over 2,700 convictions involving cocaine, and 380 cases involving heroin. The federal district courts in Virginia had a similar increase over the same time period in the number of cases involving methamphetamines: there were 19 cases in 1992, 8 cases in 1993, and 6 cases in 1994, compared with 42 cases in 2001 and 64 cases in 2002. However, the number of methamphetamine cases in federal courts in Virginia was significantly fewer than the number of cases involving cocaine—in 2002, there were 352 cases involving crack cocaine and 153 cases involving other forms of cocaine.

More troublesome was the data showing the increase in the number of illegal "meth labs" in Virginia. Methamphetamine can be produced using simple over-the-counter cold or allergy medications and other low cost, readily available chemicals. The production methods also create large quantities of environmentally hazardous chemicals—five to six pounds of hazardous waste for every pound of methamphetamine manufactured. The later clean-up of a clandestine methamphetamine manufacturing site can cost a locality or the federal government thousands of dollars. The illegal production of methamphetamine is, therefore, a serious problem.

According to the VCSC 2004 report, there were 30 illegal "meth labs" seized in Virginia by law enforcement in 2003; that number had more than doubled to 63 labs in the first ten months of 2004.

Referencing the same sources that the VCSC used in its 2004 study, the relevant figures for illegal methamphetamine use and manufacture were examined to see if there had been any changes in the general trends in the past three to four years.

The arrest rates in Virginia for methamphetamine offenses have remained relatively constant since 2004; there were 470 arrests in 2003, 541 arrests in 2004, 570 arrests in 2005, and 567 arrests in 2006. While higher than the methamphetamine arrest rates in the first part of this decade—203 arrests in 2000, 194 arrests in 2001, and 332 arrests in 2002—the figures do seem to indicate that the rate is no longer growing. By comparison, there were over ten times as many arrests for cocaine and "crack" in these years: 6,551 arrests in 2003; 7,259 arrests in 2004; 8,052 arrests in 2005; and 8,894 arrests in 2006. There were also more arrests for heroin than for methamphetamine in each of these years: 664 arrests in 2003; 692 arrests

in 2004; 672 arrests in 2005; and 678 arrests in 2006. Overall, methamphetamine arrests continue to amount to less than two percent of all drug arrests in the Commonwealth. This data suggests that methamphetamine use in Virginia remains fairly small compared to other Schedule I and II illegal drugs.

This general conclusion is supported by recent information gathered by the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, in the National Survey on Drug Use and Health ("NSDUH"). According to the most recently released data (from the 2005 survey), 0.2% of respondents reported having used methamphetamine in the last month, compared with 1.3% of respondents who reported having used either cocaine or "crack," and 0.1% that used heroin. The NSDUH indicates that methamphetamine use has declined overall throughout the United States between 2002 and 2005, and the combined data from those years indicates persons in the West were more likely (1.2% of respondents) to have used methamphetamine in the past year than persons in the South (0.5% of respondents).

The VCSC was contacted for recent Pre/Post Sentence Investigation ("PSI") data concerning methamphetamine convictions in Virginia's circuit courts, in an attempt to see if any trends were discernable. VSC spent much of 2007 re-examining the topic of methamphetamine use in Virginia, updating their 2004 report with an even more exhaustive study. Their most recent review of the PSI data indicates that in FY03, there were 146 convictions for offenses involving methamphetamine; in FY04, there were 204 convictions; in FY05, there were 157 convictions, and for FY06, there were 73 convictions. The number of convictions thus appears relatively stable, and the preliminary results suggest that the rate of methamphetamine convictions in Virginia courts is not increasing. By comparison, there were 2,512 convictions involving cocaine or "crack" in FY05, and 249 convictions involving heroin.

In the federal district courts in Virginia, there were 109 convictions involving guideline defendants where the primary offense involved methamphetamine in FY03, 87 such convictions in FY04, 138 convictions in FY05, and 145 such convictions in FY06. By comparison, there were 608 such convictions involving cocaine or "crack" in FY03; 584 cocaine or "crack" convictions in 2004; 649 convictions in 2005; and 608 convictions in 2006.

As with the arrest data and the information obtained from the NSDUH, the number of convictions involving methamphetamine in Virginia, in both state and federal courts, indicates that illegal methamphetamine use has not grown rapidly in the past few years, and is much less wide-spread than cocaine.

With increasing awareness of the dangers posed by the illegal production of methamphetamine, both Governor Mark Warner and the Virginia General Assembly took steps to address this growing concern in both 2005 and 2006.

In 2005, the General Assembly inserted a new subsection into Va. Code § 18.2-248, dealing solely with the manufacture of methamphetamine. Anyone who manufactures any amount of methamphetamine is now guilty of a felony punishable by 10 to 40 years imprisonment; a second conviction is punishable by imprisonment from ten years to life; a third conviction is punishable by imprisonment from ten years to life, with a mandatory minimum sentence of three years, provided the prior convictions are alleged and proven at trial.

That same year, the General Assembly also enacted a new subsection into Va. Code § 18.2-248 making it a Class 6 felony, punishable by one to five years imprisonment, to possess two or more methamphetamine precursor drugs with the intent to manufacture methamphetamine. And, a new statute was created, making it a felony for any adult to allow a child, over whom he has a custodial

relationship, to be present in the same dwelling where methamphetamine is being manufactured. The punishment is 10 to 40 years imprisonment, to be served consecutively with any other sentence.

Later that year, on September 1, 2005, Governor Mark Warner issued Executive Directive 8, mandating that the State Health Commissioner issue an order limiting the quantities of methamphetamine precursor ingredients that may be lawfully purchased. Pursuant to this Directive, the Virginia Department of Health issued an Order that limited the quantities of ephedrine or pseudoephedrine that a person could buy in any one transaction, required retailers to keep any products containing those ingredients "behind the counter," and further required that records be maintained on the identity of all customers who purchased such products.

In 2006, the General Assembly enacted legislation, Va. Code § 18.2-248.8, that mandated very similar requirements and restrictions. A violation of this section is a Class 1 misdemeanor. Also in 2006, a heightened penalty was inserted into subsection C of the Va. Code § 18.2-248, for "anyone who manufactures, sells, gives, distributes or possesses with the intent to manufacture, sell, give, or distribute" certain large quantities of controlled substances—quantities that previously would not have been eligible for the heightened penalties under subsection H of that statute. Under this new legislation, any offense involving ten grams of methamphetamine is punishable by imprisonment from five years to life, with a minimum mandatory of five years.

These legislative enactments may be having some effect on the presence of illegal "meth labs" in Virginia. Previously, there had been an alarming rise in the presence of such labs in Virginia between 2002 and 2004. According to data maintained by the United States Drug Enforcement Administration's El Paso Intelligence Center, law enforcement seized 10 "meth labs" in 2002, 31 labs in 2003, and 75 labs in 2004. In 2005, the number of seized labs had decreased to 52, and in 2006, the number was 23.

Conclusion

While methamphetamine is a dangerous drug that has been the focus of much attention in the past few years, the data from a variety of sources seems to indicate that the expansion in illicit use and manufacturing in Virginia, first noticed in the early years of this decade, appears to have halted; arrest rates and number of court cases seem to have stabilized. These same sources reveal that cocaine remains much more of a wide-spread problem in Virginia. The worrisome trend of the rapidly growing number of "meth labs" in the Commonwealth, observed in 2004, appears to have dissipated. This is possibly due to the increased penalties enacted in 2005 and 2006 for manufacturing methamphetamine, and the stricter regulation of "pre-cursor" chemicals, making it more difficult for illegal production to take place. Close attention must continue to be paid to illegal methamphetamine use and manufacture in Virginia, but the most recent data is, overall, very encouraging.

ACKNOWLEDGEMENTS

Dr. Richard Kern and the staff of the Virginia Criminal Sentencing Commission

RESTRICTIONS ON SEX OFFENDERS

During the 2007 session of the Virginia General Assembly, Delegates Mamye BaCote and John Cosgrove both introduced bills that sought additional restrictions on convicted sex offenders. House Bill 2175, introduced by Delegate BaCote, sought to prohibit sex offenders from loitering within 100 feet of any place he knows or has reason to know is a day-care center, to include publicly operated recreation or community centers. Currently, sex offenders are prohibited from loitering within 100 feet of a school or day care center. Delegate Cosgrove's bill, House Bill 2404, attempted to increase the distance from schools and day care centers, within which sex offenders may not reside, from 500 feet to 1,000 feet. The House Courts of Justice Committee was unable to determine the legality or impact of both bills, so both bills were left in committee. The House Courts of Justice Committee referred, by letter, both bills to the Crime Commission for further study.

In order to comply with the study request, the Commission staff reviewed applicable law from both the United States Supreme Court and a number of states that have living restrictions for convicted sex offenders.

The most significant constitutional issue for any sex offender legislation is whether the restrictions violate the Ex Post Facto clause of the United States Constitution. Courts will specifically determine if the legislature intended to make the new restrictions a criminal punishment, or if there was a civil, non-punitive intention for the restrictions. There is no Ex Post Facto issue with the current restrictions in § Va. Code 18.2-370.2 (loitering) or 18.2-370.3 (residence restriction) since they are part of the punishment for committing the actual criminal act. They are not applied retroactively, so the statutes fall outside of Ex Post Facto analysis. HB 2175 is consistent with the current statutory structure and has no Ex Post Facto issues. HB 2404, however, is applied retroactively, which could lead to an Ex Post Facto challenge.

There is also a possibility that future restrictions could violate the Eighth Amendment prohibition against cruel and unusual punishment if the restrictions force offenders to move out of the state. The Virginia Supreme Court has stated, in dicta, that punishment which forces individuals to leave the state would amount to banishment.

Under Virginia law, there are no issues for extending the living restrictions for sex offenders, described in HB 2404. There are, however, problems with HB 2175. Specifically, the bill uses the terms "publicly operated recreation center" and "community center." Neither term is defined in the Code of Virginia or by case law. This could cause a great deal of confusion on what actually constitutes a "recreation" or "community" center, to the point that it could be considered unconstitutionally vague. Each term is also further modified by the term "serving children." Again, this term is undefined by law and could lead to confusion. Any future version of HB 2175 should include definitions for "community" and "recreation" center and "serving children."

Aside from legal issues, there are some practical problems with increasing residency restrictions that have recently come to the attention of state officials in Florida and California. In Florida, 16 convicted sex offenders were living under a highway bridge, with state approval, because there was no other place for them to live. In California, sex offenders have been avoiding the 2000 foot living restriction by declaring themselves homeless. Since that law took effect in November of 2006, there was a 27% increase in offenders reporting no permanent address by the fall of 2007. These news reports highlight the potential, significant social ramifications of living restrictions. To date, the problems illustrated by the news stories have not been studied extensively by academics or social scientists, since most of the living restrictions have

been enacted only recently around the country.

The Commission declined to pursue any legislation regarding living restrictions for convicted sex offenders.

"ROMEO AND JULIET" LAWS

A Crime Commission member's constituent sent a letter requesting the possibility of Virginia adopting a "Romeo and Juliet" law, which would be a legislative effort to ameliorate the sex offender registry requirement for teenagers convicted of consensual sex crimes. The member requested the Crime Commission staff to look into the feasibility of adopting a "Romeo and Juliet" law in the Commonwealth.

To comply with the study request, Commission staff reviewed applicable law from Virginia and the states that have adopted "Romeo and Juliet" measures. Under existing Virginia law, an individual convicted of specific sex crimes must register as a sex offender. Such crimes include carnal knowledge, sodomy, indecent liberties, and the production and distribution of child pornography. Under Virginia law, it is possible for an 18 year-old to be convicted of these consensual sex acts, which require registration as a sex offender for a period of ten years. Currently, it is also possible for a 17 year-old to take a provocative picture of his girl/boyfriend and be convicted of producing child pornography, which carries a designation of "violent sexual offender" and a lifetime registration requirement.

The Florida legislature recently passed a "Romeo and Juliet" law, which effectively allows those convicted of very narrowly defined sexual criminal acts to be removed from the Florida sex offender registry. Under Florida's scheme, an offender must petition the court to be removed from the registry if (i) the victim was between the ages of 14-17, (ii) the perpetrator was no more than four years older than the victim, and lastly, (iii) the perpetrator must have no other criminal, sexual convictions. Furthermore, this relief only applies to violations of Florida's "sexual battery" statute and the "lewd and lascivious" behavior statute (similar to our indecent liberties statute). This "Romeo and Juliet" law is also applied retroactively.

Georgia, on the other hand, has removed teenage consensual sexual conduct as a registerable offense.

In 2006, the Georgia General Assembly amended their code section as it relates to sodomy and statutory rape. Specifically, in the sodomy statute, where the victim is (i) at least 13 but less than 16 years of age and (ii) the perpetrator is 18 years of age or younger and is no more than four years older than the victim, the perpetrator is now guilty of a misdemeanor and shall not be subject to the Georgia registry requirements. Likewise, in the statutory rape section, if the victim is (i) at least 14 but less than 16 years of age, and (ii) the person convicted of statutory rape is 18 years of age or younger and is no more than four years older than the victim, the perpetrator is guilty of a misdemeanor. However, unlike the Florida provision, the amended sections are not applied retroactively.

If a "Romeo and Juliet" law in Virginia is desired, the Florida scheme is preferable because (i) the Georgia method is significantly broader than the Florida scheme and automatic and (ii) the Florida method is case-specific and would require an individual to petition the court, allowing more flexibility in each case if there are important facts that need to be considered. The Commission declined to pursue any legislation regarding a "Romeo & Juliet" law.

VIRGINIA PRISONER RE-ENTRY POLICY ACADEMY

At the Crime Commission's December 13, 2007, meeting, The Honorable Barry Green, Interim Deputy Secretary of Public Safety, and Jane Brown, Director of the Office of Community Partnerships for the Virginia Department of Social Services, briefed the Commission on the Virginia Prisoner Re-Entry Policy Academy.

Mr. Green reported that the growth of Virginia's state responsible population in prisons and those held in local jails is expected to average 1,000 per year over the next six years. This forecast will require construction of a new prison each year over the next six years. A new, 1,000 bed, medium security prison costs approximately $100 million to construct and, once opened, costs about $25 million per year to operate. Mr. Green further reported that the 2007 local responsible population was 20,703 and that, in addition, jails held 5,980 state responsible offenders. The local responsible population is expected to grow an average of 4.8% per year for the next six years, with an average growth of about 1,100 inmates per year. In calendar year 2006, 12,811 inmates were released from prisons back into their communities, with the largest number returning to Norfolk, followed by Newport News, Virginia Beach, Portsmouth, and Richmond.

The Commission was informed by Mr. Green that the average age of inmates at commitment was 33 years, and that 56% entered without a high school diploma or GED, 22% had no history of employment, 67% had a history of substance abuse, and 15% had a mental illness requiring treatment. Of new commitments, more than 42% had been in prison at some time in their past. Over 46% were probation violators, 9.5% of whom had committed a technical violation; the remainder had committed a new crime. While incarcerated, 36.2% participated in either GED and/or vocational and educational training and 32% of

those with a history of substance abuse received treatment. Ninety-two percent of those eligible for job assignments worked.

Mr. Green stated that Virginia DOC measures recidivism as the percentage of inmates who are recommitted to DOC within three years of release. Virginia's recidivism rate is currently 29%. Virginia has the 8th lowest recidivism rate of the 30 states that measure recidivism in the same manner.

Mrs. Brown informed the Commission that the National Governor's Association ("NGA") Center for Best Practices announced in 2003 that Virginia was among seven states selected to participate in its Prisoner Re-Entry Policy Academy. Virginia's Policy Academy project team brought together representatives from agencies and organizations that deliver services to ex-offenders and their families. The NGA assisted state teams in developing effective prisoner re-entry strategies designed to strengthen public safety and reduce recidivism through the improvement of both pre-release and post-release services. Four sub-committees were established to identify causes of recidivism, based upon categories of need or barriers to successful re-entry. These involved: i) financial obligations, community resources and housing; ii) family and community reintegration; iii) employment and education; and iv) health, mental health, and substance abuse. Each sub-committee developed work plans that proposed actions to address barriers to successful re-entry.

In June of 2006, the Governor issued Executive Order 22, establishing the Virginia Prisoner Re-Entry Policy Academy, comprised of 24 Executive Branch agency heads. Order 22 strengthens support for the NGA Policy Academy, fosters successful transition of offenders into communities, and supports the fulfillment of Va. Code § 2.2-221.1, which directs the Secretary of Public Safety to establish a system for coordinating the planning and provision of re-entry services. Among other responsibilities, the Policy Academy provides coordination at the executive level for re-entry initiatives across the state, explores programs that will aid in offender reintegration, and addresses policies and practices that impede successful reintegration.

The Virginia Re-Entry Model is being piloted in five localities. The pilot programs allow for testing and evaluating implementation of the model developed from Virginia's participation in the NGA Policy Academy on Prisoner Re-Entry. The pilot programs were selected on a voluntary basis and include Greensville Correctional Center, Coffeewood Correctional Center, Haynesville Correctional Center, Powhatan Correctional Center, Fluvanna Correctional Center, and the surrounding communities. Albemarle County and Charlottesville are also implementing the Virginia Re-Entry Model as a jail-only pilot program, and southwestern Virginia has begun a regional pilot program to implement the model for federal offenders returning to the community.

The Virginia Re-Entry Model is characterized by pre-release planning, community collaboration, integrated service delivery, and connection to positive community influences and family support. Program participants are provided information about services and obligations that affect them and their families during their incarceration. Representatives from the correctional family and the local re-entry council meet with the offender to develop plans for the offender's return to the community. Further, in the year following release, the offender will enjoy ongoing contact with representatives of the local re-entry council. The program model includes family mentoring during the re-entry process and for the year following release. Guidance is provided on parenting skills, strengthening relationships through communication, conflict resolution and problem solving, education, and financial skills.

Program volunteers have identified three major challenges upon release: the payment of debts, obtaining employment, and locating housing. Mrs. Brown reported that better release planning, interagency coordination, integrated service delivery and links to positive community influences

will help to decrease re-entry barriers and help to increase the opportunities for former prisoners to become contributing members of their community. Successful reentry, she asserted, will improve public safety, support families, and will amount to a good stewardship of tax dollars. Mrs. Brown concluded by stating that Virginia State Senator Toddy Puller chairs a sub-committee that would be making recommendations to the General Assembly in the near future.

Y-STR DNA TESTING TECHNOLOGY

At the Crime Commission's December 13, 2007, meeting, Shawn Armbrust, Executive Director of the Mid-Atlantic Innocence Project, and Cassie Johnson, Forensics Supervisor and Technical Leader at Orchid Cellmark, presented information on the use of Y-STR (Short Tandem Repeats found on the male-specific Y chromosome) DNA testing technology. The presentation was requested so that the Commission's members could be informed about the new technology and possible legislation being considered by the Forensic Science Board of the Virginia Department of Forensic Science ("DFS").

The Commission was informed about the three primary types of DNA testing: STR, Mitochondrial DNA, and Y-STR. It was reported that both STR and Mitochondrial DNA testing enjoy widespread acceptance in the forensic community, are used in labs across the country and internationally, and are used by DFS. It was further reported, however, that Y-STR testing also enjoys widespread acceptance in the forensic community and is used across the country and internationally but, to date, is not used by DFS. This is significant because Va. Code § 19.2-327.1, which allows for a motion by a convicted felon for scientific analysis of newly discovered or previously untested scientific evidence, requires that the testing requested involve a method employed by DFS. Thus, while convicted felons in Virginia can apply for STR and Mitochondrial DNA testing, they cannot obtain Y-STR testing.

The presentation highlighted the advantages of Y-STR testing and how the pursuit of justice could be advanced in Virginia through the use of this technology as an authorized method of testing. STR testing, the Commission was informed, examines both male and female DNA, looks at 13 areas of the DNA to develop the STR profile and, with the exception of identical twins, a sample can

be identified as coming from a specific individual. The methods used for Y-STR testing are very similar to that of STR testing. Y-STR testing, however, only examines male DNA and specifically ignores female DNA. It looks at 17 areas of the Y chromosome to develop a Y-STR profile. It should be noted, however, that all men from the same lineage will have the same Y-STR profile.

In the majority of cases, Y-STR testing is utilized after more conventional DNA testing is attempted or if screening indicates that little male DNA is present. It has also been demonstrated that Y-STR testing may be particularly useful in sexual assault cases. Often times, in sexual assault cases, there are large amounts of female DNA, but only small amounts of male DNA. Often, the male DNA is obscured by that of the female and is difficult to interpret. Other times, there are no or few sperm cells, such as with seminal fluid from vascetomized males. In such cases, male DNA can be detected from epithelial cells in ejaculate, even if sperm is not present. It was further reported that Y-STR testing can be useful in homicide cases, specifically in cases where there is a mixture of male and female blood, fingernail clippings from the female victim, or where there are ligatures from strangulation. In all these scenarios, there may be contact DNA from the male in the sample. In such instances, the amount of female DNA may overwhelm any male DNA that may exist. Because Y-STR testing is a male specific test, it can easily distinguish the male DNA from that of the female.

The information presented to the Commission highlighted examples in which the availability and use of Y-STR testing led to exonerations. In an example involving the testing of a cutting from a pair of underwear, STR testing detected only female DNA. Using Y-STR testing, however, it was found that a DNA profile from a male contributor did exist but had been obscured by the female DNA. The Y-STR testing, therefore, was able to uncover the male DNA.

The Commission was informed that STR DNA testing detects both male and female DNA and can be uploaded into the Combined DNA Index System ("CODIS"), while Y-STR testing cannot. Y-STR testing, therefore, should be reserved for cases in which STR testing fails, is inconclusive, or not appropriate based upon the sample type.

Upon questioning, it was asserted that this new technology will only pick up a profile that would not have been identified through conventional DNA testing. It was further asserted that the testing is scientifically reliable, generally accepted, and used throughout the country. Because Va. Code § 19.2-327.1 mandates that the testing method used be one that is employed by DFS, a convicted felon cannot currently apply for this type of testing. The Department's Forensic Science Board considered endorsing proposed legislation that would amend § 19.2-327.1 to eliminate the requirement that the testing available be limited to that used by DFS. Upon questioning by the Commission, however, the DFS' Director asserted that they were working towards obtaining this new testing technology and was aiming towards putting it to use by May of 2008, thereby foregoing the need to amend Virginia Code § 19.2-327.1.

SUMMARY OF CRIME COMMISSION LEGISLATION

Juvenile Justice

House Joint Resolution 113 (Delegate Moran)

Through the passage of House Joint Resolution 136, the 2006 Session of the General Assembly directed the Crime Commission to conduct a two-year study of Virginia's juvenile justice system. In the first two years of the study, staff was specifically directed to study recidivism, disproportionate minority contact, ways of improving the quality of and access to legal counsel based upon the American Bar Association recommendations, accountability in the courts, and diversion. The Commission's staff formed a Juvenile and Domestic Relations District Court Judge workgroup to assist in the development of a statewide, juvenile and domestic relations judicial survey aimed at obtaining information concerning diversion, court-appointed counsel, and disproportionate minority contact, among other issues. Staff also met with focus groups across the Commonwealth in conjunction with juvenile court observations. The information gathered from the Commission's focus groups and judicial survey revealed a need to review specific mental health and truancy issues further. It was also determined that other goals of the study should include determining training availability and proven practices within the juvenile justice system and ascertaining successful reentry programs. The resolution resolved that the Crime Commission be directed to continue its study of the juvenile justice system for an additional year. Additionally, House Joint Resolution 160 (Delegates Phillips), which was incorporated into HJR 113, directs that the study also (i) review the severity of offenses committed by juveniles in the Commonwealth; (ii) evaluate the effects on the learning environment and educational process, particularly for other students, when juvenile offenders are returned to the public school classroom; (iii) identify and examine more effective methods of rehabilitating juveniles, particularly juveniles who commit sexual offenses; and (iv) recommend such changes as the Commission may deem necessary to provide a more effective juvenile justice system. The resolution was passed by the House and Senate.

Illegal Immigration - Joint Resolution Directed to Virginia's Congressional Delegation

House Joint Resolution 125 (Delegate Bell), and Senate Joint Resolution 93 (Senator Stolle)

These resolutions resulted from information gathered at meetings of the Crime Commission's Illegal Immigration Task Force. The Task Force was formed to address public safety issues associated with illegal immigration through the recommendation of state measures that would be both (i) legally permissible, and (ii) effective. Information presented to the Task Force revealed that many state measures previously considered were preempted by existing federal immigration laws, thereby rendering them unconstitutional. It was further learned by the Task Force, however, that the few measures that could legally be implemented on the state level would be rendered ineffective by the lack of resources provided to ICE, the federal agency responsible for apprehending, detaining, and removing persons illegally present in the U.S. In light of these facts, the Task Force and, subsequently, the Crime Commission recommended that a resolution be directed to Virginia's Congressional delegation, requesting that since Congress has chosen to preempt states from enacting or enforcing many of the laws that states have sought to enact, that Congress aggressively pursue solutions to the problem of illegal immigration by providing federal agencies with the necessary resources for the enforcement of existing federal immigration laws, or, should Congress choose not to lead on a subject that they have purposefully reserved for themselves, that it enact legislation granting the individual states the authority and funding to

address the problem of illegal immigration. HJR 125 was left in the House Committee on Rules. SJR 93 was incorporated into SJR 120 (Senator Colgan) and was left in the Senate Committee on Rules.

Admission to Bail – Illegal Immigrants Charged with Enumerated Crimes

House Bill 779 (Delegate Albo) and Senate Bill 623 (Senator Stolle)

Both bills create a new statute, Va. Code § 19.2-120.1, requiring that the judicial officer presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public if (i) the person is currently charged with a specific, enumerated offense, and (ii) the person has been identified as being illegally present in the U.S. by ICE. This new presumption is in addition to that which currently exist under § 19.2-120. The specifically enumerated offenses that will trigger the first requirement for this presumption include (i) felony "acts of violence" as defined by Va. Code § 19.2-297.1, (ii) "violent felonies" as defined by § 17.1-805, (iii) crimes against the person, with the exception of first offense domestic violence, (iv) felony drug offenses, and (v) offenses involving firearms, machine guns, sawed-off shotguns, and other weapons. As a result of evidence presented to the Crime Commission's Illegal Immigration Task Force regarding the lack of resources provided to ICE to detain, apprehend, and remove illegal immigrants for all but the most serious offenses, the bills specifically exempt from the presumption any misdemeanor crimes, as well as felony drug offenses, unless ICE commits to detaining and deporting for such offenses and agrees to reimburse the jail for the cost of incarceration from the time of the issuance of the detainer. This exception will avoid the costs to, and overcrowding in, Virginia jails that would result from the detention of illegal immigrants that ICE has no intention of detaining and removing. These bills resulted from a recommendation of the Crime Commission's Illegal Immigration Task Force. HB 779 was incorporated into HB 440 (Delegate Rust). Both bills were passed by the House and Senate and were signed into law by the Governor as Chapters 469 and 834 of the Acts of Assembly. A separate recommendation of the Task Force, not requiring legislative action, is that the Crime Commission continue to communicate with ICE to develop a list of offenses which, if committed by an illegal immigrant, will guarantee that ICE will detain and take custody of the suspect at the time of their trial, or at the conclusion of their sentence, whichever is longer.

Reports to the U.S. Immigration and Customs Enforcement

House Bill 820 (Delegate Albo) and Senate Bill 609 (Senator Stolle)

Information presented to the Crime Commission's Illegal Immigration Task Force revealed some confusion about the inconsistent application of, and adherence to, existing Va. Code § 53.1-218, which requires that when a person is committed to a correctional facility, the director, sheriff, or other person in charge inquire as to the person's citizenship and, if not a U.S. citizen, alien status. Any person that "appears" to be an illegal immigrant shall be reported to the Central Criminal Records Exchange of the Virginia Department of State Police. Information presented to the Crime Commission's Illegal Immigration Task Force revealed (i) confusion over whether the current Va. Code statute § 53.1-218 required the inquiry to be conducted post-arrest or only post-conviction, (ii) the language of the current statute permits for undue discretion in ascertaining whether the person "appeared" to be an illegal immigrant or not, and (iii) precluded the direct reporting to, and communication with, ICE. The bills create a new Va. Code § 19.2-83.2, applicable to jails, which requires an inquiry into every person taken into custody upon arrest as to whether the person (i) was born in a country other than the U.S., and (ii) is a citizen of a country other than the

U.S. For any person who answers affirmatively to (i) and (ii), or for whom the answer to either is unknown, an immigration alien query ("IAQ") shall be made to the LESC of ICE. The results of the IAQ shall be reported to LIDS, administered by the State Compensation Board, which will report any confirmed illegal immigrants to the Central Criminal Records Exchange ("CCRE") of the Virginia Department of State Police. The State Police, in turn, will record the person's status as an illegal immigrant in the criminal history record. The language of the existing Va. Code § 53.1-218 was amended to mirror these requirements for both jails and prisons, with the exception that prisons need not report the results of the IAQ to LIDS but, rather, directly to the CCRE. Enactment clauses to the bills are intended to provide for the collection and maintenance of accurate data on the number of illegal immigrants being housed in Virginia jails and prisons. Specifically, the State Compensation board is required to maintain in LIDS, and the Department of Corrections is required to maintain in its offender management system, a specific data field for the entry of the response received from the LESC of ICE pursuant to the request made in accordance with §§ 19.2-83.2 or 53.1-218. These bills resulted from a recommendation of the Crime Commission's Illegal Immigration Task Force. Both bills were passed by the House and Senate and were signed into law by the Governor as Chapters 180 and 415 of the Acts of Assembly.

Reimbursement for Jail Construction

House Bill 1392 (Delegate Sherwood) and Senate Bill 589 (Senator Howell)

These bills sought to amend Va. Code § 53.1-80, pertaining to state reimbursement of localities for jail construction at a current rate of 25%, to provide that the Commonwealth will reimburse any county or city up to one-half of the capital costs of a jail construction, enlargement, or renovation project that will increase the capacity of the jail by at least 150 beds upon a basis approved by the State Board of Corrections. The bills create an incentive for counties and cities to create bed space that could be rented, pursuant to a contract, with the U.S. Immigration and Customs Enforcement for the housing of illegal immigrants pending their removal. These bills resulted from a recommendation of the Crime Commission's Illegal Immigration Task Force. Both bills were continued to 2009 by the House Appropriations Committee and the Senate Finance Committee, respectively.

Illegal Immigration Training and Education

Budget Amendment to Item 392 – Department of Criminal Justice Services (Senator Stolle)

As a result of information presented to the Crime Commission's Illegal Immigration Task Force, and a resulting recommendation from the Task Force, funding was requested for the Department of Criminal Justice Services ("DCJS") to contract with the Virginia Center for Policing Innovation ("VCPI") to provide law enforcement training aimed at "bridging the gap" between law enforcement and immigrant communities. This request resulted from testimony from numerous law enforcement officers that (i) illegal immigrant victims and witnesses need to feel comfortable in reporting crimes to law enforcement, and (ii) whether legal or illegal, law enforcement needs input and cooperation from immigrants in order to improve the public safety for all Virginians. As a result of the budget request, DCJS was appropriated $300,000 to contract with VCPI for the training. The training will focus on (i) basic language skills in foreign languages for law enforcement and correctional personnel, (ii) educating immigrants communities on laws, regulations, and safety, (iii) building relationships between law enforcement and immigrant communities, and (iv) training for jail and correctional personnel to aid them in identifying inmates who are illegally present in the U.S.

INVOLVEMENT AND PARTICIPATION ON BOARDS

Indigent Defense Commission

Pursuant to Va. Code § 19.2-163.02, the Virginia Indigent Defense Commission shall consist of 14 members, including the Chairman of the Virginia State Crime Commission or his designee. The Crime Commission's Director served as the designee of both Senator Kenneth Stolle and Delegate David Albo during both of their terms as Chairman throughout the 2007 calendar year. The Director was an active participant of the Indigent Commission, attending all meetings and serving as a member of the Personnel Committee.

Forensic Science Board

Pursuant to Va. Code § 9.1-1109, the Forensic Science Board shall consist of 13 members, one of which shall include the Chairman of the Virginia State Crime Commission or his designee. The Crime Commission's Director and Deputy Director served as the designees of both Senator Kenneth Stolle and Delegate David Albo during both of their terms as Chairman throughout the 2007 calendar year. Upon receiving their designation, either the Director or Deputy Director attended all meetings of the Board.

Witness Protection Advisory Board

Pursuant to Va. Code § 52-35, the Superintendent of State Police is authorized to establish and maintain, within the Virginia Department of State Police, a witness protection program to temporarily relocate or otherwise protect witnesses and their families who may be in danger because of their cooperation with the investigation and prosecution of serious violent crimes and certain other enumerated offenses. In accordance with regulations promulgated as authorized by this statute, the Director of the Virginia State Crime Commission serves as a member of the Witness Protection Advisory Board. The Advisory Board is responsible, in part, for reviewing applications to ensure proper application of program policy and procedures.

OUTSIDE PRESENTATIONS MADE BY STAFF MEMBERS

Virginia Advisory Committee on Juvenile Justice: HJR 136: Status of the Crime Commission's Juvenile Justice Study (April 25, 2007); *Kristen Howard, Deputy Director, and Lauren Schultis, Policy Analyst.*

Annual Meeting of the Virginia Sheriffs' Association; Overview of Virginia's Witness Protection Program (April 27, 2007); *G. Stewart Petoe, Director of Legal Affairs*.

New Kent County Sheriff's Office; Gangs in Virginia and Virginia's Gang Laws (June 7, 2007); *James Towey, Director*.

Virginia Alliance for Sensible Community Oriented Policing; Overview of the Crime Commission's Illegal Immigration Task Force (August 11, 2007); *James Towey, Director.*

League of Women Voters; Panel Discussion on Illegal Immigration; (September 27, 2007); *James Towey, Director*.

Virginia Municipal League – Legislative Committee – Ad Hoc Committee on Immigration; Overview of the Crime Commission's Illegal Immigration Task Force; (October 4, 2007); *James Towey, Director*.