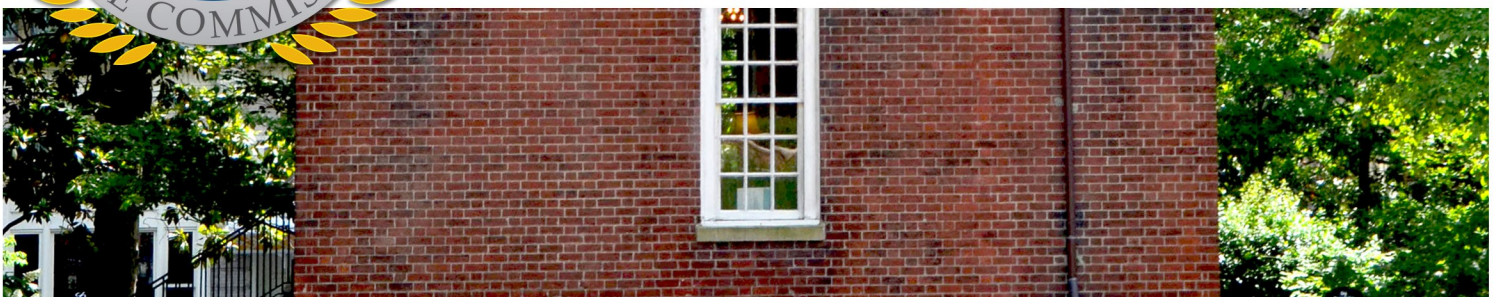




2018 ANNUAL REPORT

VIRGINIA STATE CRIME COMMISSION





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Senator Mark D. Obenshain, *Chairman*

Delegate Robert B. Bell, *Vice-Chairman*

Executive Director
Kristen J. Howard

June 30, 2019

TO: The Honorable Ralph S. Northam, Governor of Virginia
The Honorable Members of the General Assembly of Virginia

Pursuant to the provisions of the Code of Virginia §§ 30-156 through 30-164 establishing the Virginia State Crime Commission and setting forth its purpose, I have the honor of submitting the Commission's 2018 Annual Report.

Very truly yours,

A handwritten signature in blue ink, appearing to read "M. Obenshain", is written over the typed name. The signature is fluid and cursive, with a large loop at the end.

Mark D. Obenshain, Chair



2018 Annual Report

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Authority of the Crime Commission

Established in 1966, the Virginia State Crime Commission is a legislative agency authorized by the Virginia Code (§ 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 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 crime, 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 cooperates with governments and governmental agencies of other states and the United States. The Crime Commission is a criminal justice agency as defined in Virginia Code § 9.1-101.

The Crime Commission consists of thirteen members: 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.

Members of the Crime Commission

SENATE APPOINTEES

The Honorable Mark D. Obenshain, Chair
The Honorable Janet D. Howell
The Honorable Thomas K. Norment, Jr.

HOUSE OF DELEGATES APPOINTEES

The Honorable Robert B. Bell, Vice-Chair
The Honorable Les R. Adams
The Honorable Christopher E. Collins
The Honorable C. Todd Gilbert
The Honorable Charniele L. Herring
The Honorable Paul E. Krizek

ATTORNEY GENERAL

Cynthia E. Hudson, Chief Deputy, Attorney General's Office,
Designee for Attorney General Mark R. Herring

GOVERNOR'S APPOINTEES

Mansi J. Shah, Assistant Commonwealth's Attorney, Henrico County
The Honorable Arthur Townsend Jr., Sheriff, Lunenburg County
Chief John Venuti, Associate Vice President of Campus Safety/Chief of Police,
Virginia Commonwealth University Police Department

Crime Commission Staff

Kristen J. Howard, Executive Director

Christina Barnes Arrington, Ph.D., Senior Methodologist
Colin L. Drabert, Deputy Director
Meghan R. Gaulding, Policy Analyst
Elizabeth K. Greenwood, Policy Analyst
Nathan L. Hittle, Staff Attorney

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2018 Executive Summary of Activities

Staff studied three new topics during 2018, including fingerprinting of defendants, the pre-trial process, and sex trafficking. As part of the pre-trial process study, staff and numerous other stakeholders began work on the Virginia Pre-Trial Data Project. Additionally, staff continued work on two previously authorized studies: pretrial services agencies and the DNA Notification Project.

The Crime Commission held three meetings to review and discuss study findings: October 11, November 8, and December 3. At its December meeting, the Crime Commission endorsed numerous legislative and administrative recommendations from staff related to the fingerprinting of defendants, pre-trial process, and sex trafficking studies. Additionally, as a result of last year's study on the DNA Databank (Expansion of Misdemeanor Crimes), members endorsed a technical amendment relating to the collection of DNA samples for convictions under local ordinances. As a result of efforts by the Crime Commission and other stakeholders, legislation was enacted during the Regular Session of the 2019 General Assembly to:

- Combat commercial sex trafficking in Virginia through a proactive, collaborative, and multi-disciplinary approach;
- Address the significantly large number of criminal offenses identified by staff that have not been applied to criminal history records in Virginia;
- Implement various measures throughout the criminal justice process to ensure that fingerprints are consistently collected and submitted to the Central Criminal Records Exchange so that offenses can be applied to criminal history records;
- Create a specific contempt of court charge for failure to appear so as to more accurately track appearance rates across the Commonwealth;
- Improve the collection and retention of information obtained (i) during bond hearings before magistrates and (ii) when a surety is requesting a *capias* to have a defendant returned to custody; and,
- Require the collection of a DNA sample upon conviction of any local ordinance that is similar to any state law for which collection is mandated.

The Executive Director of the Crime Commission serves as a member of the Forensic Science Board pursuant to Virginia Code § 9.1-1109(A)(7) and acts as the Chair of the DNA Notification Subcommittee. The Executive Director also serves on the Virginia Indigent Defense Commission in accordance with Virginia Code § 19.2-163.02 and sits on its Budget Committee. Additionally, the Executive Director serves on the Advisory Committee on Sexual and Domestic Violence pursuant to Virginia Code § 9.1-116.2.

Staff presentations to Crime Commission members are available under the "Meetings/Presentations" section of the agency website at: <http://vscc.virginia.gov>.



FINGERPRINTING OF DEFENDANTS

Study Highlights

January 2019

For an offense to be applied to a criminal history record, fingerprints must be taken during the criminal justice process and submitted, along with a record of the charge and disposition, to the Central Criminal Records Exchange.

The following offenses must be reported to the CCRE:

- Any felony;
- Jailable misdemeanors in Titles 18.2 or 19.2;
- All misdemeanors in Title 54.1 (Professions);
- Non-payment of spousal and child support; and,
- Protective order violations.

The CCRE maintains a Hold File that contained over 700,000 offenses (as of Nov. 28, 2018) that have not been applied to criminal history records, primarily because the CCRE did not receive the defendant's fingerprints. Of these unapplied offenses, at least:

- 134,000 were felony convictions; and,
- 289,000 were misdemeanor convictions.

Study Findings

The Central Criminal Records Exchange (CCRE) is administered by the Virginia State Police (VSP). Information in the CCRE is used to generate an individual's criminal history record. Staff discovered that a Hold File exists within the CCRE which contains over 700,000 criminal offenses that have not been applied to the criminal history records of defendants. The vast majority of these offenses have not been applied because the defendant's fingerprints were not collected or submitted to the CCRE. Analysis of the Hold File revealed that:

- Offenses included both felonies and misdemeanors;
- The majority of felony offenses were for probation violations, followed by fraud, larceny, drug, and assault offenses;
- The largest categories of misdemeanor offenses included assault, narcotics, contempt of court, larceny, and failure to appear offenses;
- A majority of the offenses were for arrests made from 2010 onward;
- While the dispositions of the offenses vary, approximately 60% of the offenses resulted in a guilty finding (conviction);
- The file contained at least 55,000 unique individual convicted felons; and,
- The offenses were from jurisdictions across the entire Commonwealth.

Law enforcement agencies are responsible for taking the fingerprints of a defendant following an arrest. The chief law enforcement officer of a city or county is required to take the fingerprints following the conviction of a defendant charged on a summons. Clerks of court are required to transmit case disposition reports to the CCRE. Additionally, the Department of Corrections (DOC) takes fingerprints of defendants placed in state correctional facilities or on state probation and transmits those fingerprints to the CCRE.

Staff identified several factors that contribute to fingerprints not being taken during the criminal justice process. These factors include (i) varying procedures for how and when fingerprints are taken, (ii) lack of personnel and resources, (iii) taking fingerprints for only some offenses when the defendant is arrested on multiple charges, (iv) not fingerprinting defendants who are in custody following a direct indictment, and (v) misunderstandings about which offenses require fingerprints. Staff identified solutions to retroactively apply some of the offenses in the Hold File to criminal history records and to prospectively ensure that future offenses are successfully applied to criminal history records. Crime Commission members unanimously endorsed the following revisions to the Code of Virginia which were all enacted during the Regular Session of the 2019 General Assembly to:

1. Define "unapplied criminal history record information" (§ 9.1-101);
2. Require the CCRE to submit periodic reports to stakeholders, an annual report to the Governor and General Assembly, and to reconcile unapplied criminal history record information (§ 19.2-388);

Felony convictions that have not been applied to criminal history records include offenses such as murder, rape, robbery, assault, kidnapping, DWI, and weapons violations.

Criminal history records are used for several criminal justice purposes, including:

- First offender eligibility;
 - Bail determinations;
 - Sentencing guidelines;
 - Predicate offenses;
 - Expungements;
 - DNA databank; and,
 - Latent fingerprint comparison.
-

Criminal history records are also used for many civil purposes, including:

- Sex offender registry;
- Firearms purchases;
- Barrier crimes exclusions;
- Professional licensing; and,
- Employment eligibility.

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3. Mandate that fingerprints be taken upon finding that a defendant is in violation of the terms of a suspended sentence, probation, or parole, if the underlying offense was a felony (§§ 19.2-390 and 53.1-165);
4. Require that charges of domestic assault and battery and property offenses that are deferred and dismissed be reported to the CCRE (§ 19.2-390);
5. Require that courts determine whether fingerprints have been submitted at the time certain charges are deferred and ensure that fingerprints have been taken prior to dismissing those charges (§§ 18.2-57.3, 18.2-251, 19.2-74, 19.2-303.2, 19.2-390, and 19.2-392);
6. Require that fingerprints of defendants who are in custody following a direct indictment be taken at the first appearance (§§ 19.2-232 and 19.2-390);
7. Order that a defendant's fingerprints be taken as a condition of a suspended sentence or probation (§ 19.2-303);
8. Permit the CCRE to classify and file information and fingerprints received from DOC as criminal history record information, unless otherwise prohibited by law (§§19.2-390, 53.1-23, 53.1-145, and 53.1-165);
9. Require state probation officers to verify that the conviction for which a defendant is being supervised appears on their criminal history record before releasing them from probation and, if it does not, take the fingerprints of the defendant and notify the CCRE (§ 53.1-145);
10. Require local probation officers to verify that the conviction for which a defendant is being supervised appears on their criminal history record before releasing them from probation and, if it does not, order the defendant's fingerprints be taken by law enforcement and notify the CCRE (§ 9.1-176);
11. Require the court to review criminal history records at restitution review hearings and, if the offense for which a defendant was convicted does not appear, order that the fingerprints of the defendant be taken (§ 19.2-305.1);
12. Clarify the CCRE reporting requirements for clerks of court for suspended sentence and probation violations and for offenses charged via summons (§ 19.2-390);
13. Expand the list of offenses that require a report to the CCRE (§ 19.2-390);
14. Require VSP to develop and disseminate a model policy to law enforcement agencies on the collection of fingerprints and reporting of criminal history record information to the CCRE (§ 19.2-390.03 – new section);
15. Allow the court to modify the terms of a suspended sentence or probation at any time during the period of suspension or probation to order that the fingerprints of a defendant be taken (§ 19.2-303.02 – new section); and,
16. Require VSP to work with state and local agencies and the courts to ensure that unapplied criminal history record information currently in the Hold File is applied to criminal history records (2nd Enactment Clause).

Crime Commission members unanimously endorsed the following administrative recommendations to send letters requesting that:

17. VSP develop a brief reference guide of CCRE reportable offenses for use by law enforcement agencies and develop policies and procedures for referencing the CCRE Hold File when conducting criminal history records checks in certain circumstances;
18. State and local agencies, along with corresponding associations, provide training on the collection and submission of fingerprints and the relationship between fingerprints and criminal history records; and,
19. Office of the Executive Secretary of the Supreme Court of Virginia, in coordination with other users of the Uniform Statute Table, update and implement a revised table by July 2019.



PRE-TRIAL PROCESS IN VIRGINIA

Study Highlights

January 2019

Virginia Pre-Trial Data Project

The Virginia Pre-Trial Data Project consisted of two phases:

1. Development of the cohort; and
2. Tracking of case outcomes:
 - Final case disposition;
 - Public safety; and,
 - Failure to appear.

DCJS data showed that 59% (16,964 of 28,711) of placements made to pretrial services agency supervision in FY18 were in conjunction with a secured bond.

- The remaining 41% (11,747 of 28,711) of placements were in conjunction with a personal recognizance or unsecured bond.

The precise number of indigent defendants in Virginia's criminal justice system is currently unknown.

The Virginia Pre-Trial Data Project is an unprecedented, collaborative effort between all three branches of government and numerous state and local agencies, including the Virginia State Crime Commission, Virginia Criminal Sentencing Commission, Alexandria Circuit Court, Compensation Board, Department of Criminal Justice Services, Department of Corrections, Fairfax Circuit Court, Office of the Executive Secretary of the Supreme Court of Virginia, and the Virginia State Police.

The Crime Commission requested that staff answer the question of how effective various pre-trial release mechanisms are at ensuring public safety and appearance at court proceedings. Data was obtained from a variety of sources to develop a cohort of nearly 23,000 adult defendants charged across Virginia during a one-month period (October 2017) whose final case dispositions were tracked through December 31, 2018. Release mechanisms examined include summons, personal recognizance bond, unsecured bond, and secured bond, along with certain conditions of release such as pretrial services agency supervision. The data will allow for comparisons to be made between similarly situated defendants by type of release mechanism, offense, and locality.

The dataset will further help to inform policy-making throughout the pre-trial process on such topics as (i) the effectiveness of various pre-trial release mechanisms; (ii) judicial officer decision-making in relation to bond and conditions of release, (iii) role of Virginia's current pre-trial risk assessment instrument (VPRAI-R), and (iv) the utility of a pre-trial risk assessment instrument in relation to bond determinations. Staff anticipates that findings from this study will be presented in Fall 2019.

Crime Commission members endorsed the following recommendations relating to the Virginia Pre-Trial Data Project:

Recommendation 1: Amend the Virginia Code to create a new charge of contempt of court specifically for failure to appear (§§ 16.1-69.24 and 18.2-456). This was enacted during the Regular Session of the 2019 General Assembly.

Recommendation 2: Request that Crime Commission staff convene stakeholders to develop a plan for statewide data systems integration and case tracking across the criminal justice system and any other related systems.

Recommendation 3: Request that the Office of the Executive Secretary of the Supreme Court of Virginia be included as part of Recommendation 2 in order to determine a method for tracking the number of criminal defendants statewide who are found to be indigent pursuant to Virginia Code § 19.2-159.

Pretrial Services Agencies Update

Per DCJS data, of the 28,735 defendants placed on pretrial services agency supervision during FY18:

- 17,568 were placed without a pretrial investigation; and,
- 11,167 were placed following a pretrial investigation.

Following arrest, nearly all defendants are taken before a magistrate, where the first bond hearing is conducted and a decision to detain or set the conditions of pre-trial release is made.

As of November 2018, there were 375 bail bondsmen in Virginia with an active license.

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During 2018, Crime Commission staff worked closely with the Virginia Department of Criminal Justice Services (DCJS) and stakeholders to address concerns identified with the administration and operation of pretrial services agencies. Staff developed and disseminated over 2,000 surveys as part of a stakeholder needs assessment and also provided oversight of the DCJS Pretrial Stakeholder Work Group. While there continues to be broad support among stakeholders for the use of pretrial services agencies, many of the concerns that staff identified during the previous year's study persist, including (i) pretrial investigations not being completed for all defendants eligible for pretrial services agency supervision, (ii) release recommendations provided to judges that are at times inconsistent with the facts and circumstances of an offense, and (iii) information not being provided to all judicial officers, including magistrates, as intended in the Pretrial Services Act. Staff withheld recommendations relating to pretrial services agencies due to the ongoing Virginia Pre-Trial Data Project.

Pre-Trial Process

The pre-trial process encompasses the various stages of a criminal case from the time a defendant is charged with an offense until the trial and/or sentencing of the matter. This time period includes the initial charge, any appearances before a magistrate or the court, bond hearings, the determination of pre-trial release conditions, and compliance with those conditions. Staff found that while procedures at magistrate offices are generally uniform across the Commonwealth, procedures relating to first appearances and bond hearings vary before courts and can differ even amongst courts within the same locality. Staff also found that statewide regulations do not exist for the pre-trial use of GPS or similar electronic tracking devices.

Bail bondsmen have a large presence throughout the pre-trial process. Bondsmen guarantee a defendant's appearance at court proceedings and may impose conditions of supervision above those ordered by a judicial officer. The DCJS regulates all bail bondsmen. The State Corporation Commission also regulates surety bail bondsmen. The criminal background licensing restrictions are less stringent for bail bondsmen than for other professions regulated by DCJS. Challenges exist to providing oversight of bail bondsmen due to varying court practices and lack of communication between existing data systems. The surety on a bond can request the issuance of a *capias* for a defendant for any reason.

Crime Commission members unanimously endorsed the following recommendations relating to the pre-trial process:

Recommendation 1: Amend the Virginia Code to require magistrates to complete the existing *Checklist For Bail Determinations* form and transmit it to the court (§ 19.2-121). This was enacted during the Regular Session of the 2019 General Assembly.

Recommendation 2: Amend the Virginia Code to require the basis of arrest to be stated by a surety when requesting a *capias* (§ 19.2-149). This was enacted during the Regular Session of the 2019 General Assembly.

Recommendation 3: Amend the Virginia Code to increase the penalty for carnal knowledge of a defendant by a bail bond company owner or agent from a Class 1 misdemeanor to a Class 6 felony (§ 18.2-64.2).

Recommendation 4: Request that Crime Commission staff continue to examine issues of uniformity within the pre-trial process.



SEX TRAFFICKING IN VIRGINIA

Study Highlights

January 2019

Commercial sex trafficking is occurring in Virginia. The commercial sex industry does not involve any type of consensual sexual contact.

Sex trafficking intersects with numerous other problems facing Virginia, such as:

- Child physical and sexual abuse;
- Missing or runaway youth;
- Drug addiction and the opioid crisis;
- Behavioral issues in schools;
- Juvenile delinquency and status offenses;
- Social services and foster care placement;
- Suicide;
- Mental health;
- Health care (e.g., pregnancy, STI's);
- Gangs; and,
- Domestic violence.

Study Findings

Staff found that commercial sex trafficking is a serious problem in Virginia; however, due to the dynamics of the commercial sex industry, a lack of data, and underreporting, the full scope of the problem is difficult to determine. Commercial sex trafficking intersects with numerous other problems facing Virginia. The use of the traditional criminal justice process alone to address commercial sex trafficking is not working. Combating commercial sex trafficking in Virginia requires a proactive, collaborative, and multi-disciplinary approach to:

- Identify and intervene with at-risk youth;
- Increase awareness, education, and training;
- Identify, recover, and treat victims; and,
- Reduce recruitment and demand.

What is commercial sex trafficking?

Commercial sex trafficking is the exchange of money or some other item of value in return for a sex act. The commercial sex industry involves the following key components: trafficked person (victim), trafficker, and sex buyer.

How are victims brought into the commercial sex industry?

Victims are often induced into the commercial sex industry by traffickers who exploit their vulnerabilities. Such vulnerabilities may include dysfunctional families, past abuse, low self-esteem, and drug dependence. Traffickers prey on a victim's desire for love, hope, and a sense of belonging. These vulnerabilities make at-risk youth particularly susceptible to becoming victims of sex trafficking.

Why is it difficult to identify victims of sex trafficking?

Victims may not view themselves as victims or realize that they are being trafficked because they have formed an emotional or psychological bond with their trafficker. Additionally, victims may exhibit other indicators, such as running away from home, truancy, mental health issues, drug addiction, or behaviors (criminal or status offenses) that are not immediately linked to sex trafficking. As a result, victims of sex trafficking are difficult to identify.

Why do victims struggle to leave the commercial sex industry?

It typically takes a victim numerous attempts to successfully leave the commercial sex industry due to a multitude of challenges, such as lack of a support structure, limited basic life skills, a criminal record, lack of an education, difficulty securing employment or housing, and health issues. Resources for both adult and juvenile victims of commercial sex trafficking are limited in Virginia.

Study Recommendations

Virginia must focus efforts on addressing the root causes of sex trafficking by identifying at-risk youth, increasing awareness, education, and training across numerous professions, and reducing recruitment and demand.

The internet and social media allow for the recruitment of victims and sale of sex across urban, suburban, and rural regions.

Common categories of commercial sex traffickers include:

- Pimps
 - Gangs
 - Family Members
-

The demand for commercial sex is high and therefore steps must be taken to:

- Deter the purchase of sex;
- Hold sex buyers accountable; and,
- Educate sex buyers on the impacts to victims.

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Crime Commission members unanimously endorsed 11 recommendations to combat sex trafficking in Virginia. Recommendations 1, 2, 3, 5, 7, and 8 were enacted during the Regular Session of the 2019 General Assembly.

Recommendation 1: Amend the Virginia Code to (i) clarify that sex traffickers do not need to be a victim's parent or other caretaker in order to initiate Department of Social Services (DSS) involvement, (ii) allow DSS to take emergency custody of children who are victims of sex trafficking, (iii) require DSS to conduct a family assessment when a juvenile sex trafficking victim is identified, and (iv) clarify the jurisdiction of local DSS agencies when responding to reports of sex trafficking (§§ 63.2-1506, 63.2-1508, and 63.2-1517). (Virginia Code § 63.2-1506.1 was enacted).

Recommendation 2: Amend the Virginia Code to authorize charging sex traffickers for each individual act of commercial sex trafficking (§ 18.2-357.1).

Recommendation 3: Amend the Virginia Code to increase penalties for aiding in prostitution and using a vehicle to promote prostitution when the victim is a minor. Additionally, amend the sex offender registration, violent felony offenses, gang offenses, racketeering offenses, multi-jurisdictional grand jury, and barrier crimes statutes to provide consistency amongst felony commercial sex trafficking offenses (§§ 9.1-902, 17.1-805, 18.2-46.1, 18.2-348, 18.2-349, 18.2-513, 19.2-215.1, and 19.2-392.02).

Recommendation 4: Amend the Virginia Code to prohibit manual stimulation of another's genitals (prostitution sex acts) (§§ 18.2-346, 18.2-348, and 18.2-356).

Recommendation 5: Enact a Virginia Code section to create a statewide Sex Trafficking Response Coordinator position at the Virginia Department of Criminal Justice Services (DCJS) (§ 9.1-116.5).

Recommendation 6: Amend the Virginia Code to require the Criminal Injuries Compensation Fund (Virginia Victims Fund) to develop policies for the investigation and consideration of claims by sex trafficking victims for reimbursement of medical care and other expenses (§ 19.2-368.3). This recommendation was addressed by sending a letter request.

Recommendation 7: Enact a Virginia Code section to create a Virginia Prevention of Sex Trafficking Fund administered by DCJS to promote training, education, and awareness related to sex trafficking (§§ 9.1-116.4, 16.1-69.48:6 and 17.1-275.13).

Recommendation 8: Amend the Virginia Code to allow juvenile sex trafficking victims and witnesses to testify via two-way closed-circuit television under existing rules (§ 18.2-67.9).

Recommendation 9: Request that the DCJS Committee on Training establish compulsory minimum entry-level, in-service, and advanced training standards for law enforcement officers on the awareness and identification of sex trafficking.

Recommendation 10: Request that DCJS continue to allocate a portion of the Victims of Crime Act (VOCA) funding for treatment and services for victims of sex trafficking.

Recommendation 11: Request that Crime Commission staff continue work on this study for an additional year to consult with stakeholders, examine further areas of concern, and identify potential solutions.

Fingerprinting of Defendants

Executive Summary

During the course of two Crime Commission studies in 2017,¹ staff identified discrepancies between court data and criminal history record data in relation to the total number of charges and dispositions for particular offenses. Fingerprinting policies and procedures were suspected as the primary reason for this discrepancy. As a result, the Executive Committee of the Crime Commission authorized a study of the fingerprinting of defendants, which focused primarily on the link between fingerprinting and criminal history records.

The Central Criminal Records Exchange (CCRE) is administered by the Virginia State Police (VSP).² Information in the CCRE is used to generate an individual's criminal history record.³ Before a charge will appear on a criminal history record, an arrest report, including the fingerprints of the offender, must be submitted to the CCRE by a law enforcement agency.⁴ In order for the disposition of that charge to appear on the criminal history record, a case disposition report must also be submitted to the CCRE by the clerk of court.⁵

Criminal history records are used for a wide variety of criminal justice and civil purposes. The criminal justice purposes include, but are not limited to, determinations of first offender eligibility, terms and conditions of bond, sentencing guidelines, predicate offenses, DNA database inclusion, expungement, and latent fingerprint comparison. The civil purposes include, but are not limited to, employment and licensing eligibility, barrier crime exclusion, firearms background checks, and Sex Offender and Crimes Against Minors Registry inclusion.

Crime Commission staff discovered that a Hold File exists within the CCRE. This Hold File contains offenses and dispositions that the CCRE cannot apply to criminal history records.⁶ Approximately 90% of the unapplied offenses in the CCRE Hold File were due to missing fingerprints.⁷ Staff requested the CCRE Hold File from VSP to determine the number and type of offenses that were unable to be applied to criminal history records. Staff received the CCRE *Legacy System* Hold File in its entirety on November 28, 2018.⁸ Based on an analysis of the CCRE *Legacy System* Hold File, there were 706,944 offenses not applied to criminal history records due to missing fingerprints or other errors. Of the total number of offenses in the CCRE *Legacy System* Hold File, 33% (233,671 of 706,944) were felonies and 67% (473,273 of 706,944) were misdemeanors. A particular concern identified by staff was that the CCRE *Legacy System* Hold File contained over 134,000 felony convictions, including such serious offenses as murder, rape, and robbery.

Staff undertook measures to address the significantly large number of offenses contained in the CCRE Hold File and to prevent this issue from occurring in the future.⁹ Staff conducted research on whether offenses currently in the CCRE Hold File could be retroactively applied to an individual's criminal history record if fingerprints

had been or could be obtained. Staff determined that such offenses could be retroactively applied in certain circumstances.¹⁰

Staff also proposed numerous prospective actions that could be taken to ensure that fingerprints are consistently collected and submitted to the CCRE. As a result, legislation was enacted during the Regular Session of the 2019 General Assembly establishing numerous measures throughout the criminal justice process to ensure that fingerprints are taken and to require that criminal history records are reviewed to verify that offenses have been applied. These measures more clearly define the roles of VSP, law enforcement agencies, courts, clerks of court, Commonwealth's Attorneys, the Department of Corrections (DOC), and local community-based probation officers in the fingerprinting process. Various other aspects of the criminal justice process, such as suspended sentence and probation revocations and modifications, deferred and dismissed offenses, direct indictments, and restitution review hearings were also addressed.

Staff identified 727 statutes in the Virginia Code that contained jailable offenses for which a report to the CCRE was not required.¹¹ Staff proposed amending the Virginia Code to require additional offenses be reported to the CCRE.¹² Crime Commission members endorsed an expansion of the list to require CCRE reports for certain additional offenses.¹³ These particular offenses were selected because they were serious in nature, charged frequently, or served as predicate offenses to enhance punishments for future criminal violations. Ultimately, fourteen new offenses were added to the list of crimes that require a report to the CCRE, including the following Code sections: 3.2-6570 (cruelty to animals), 4.1-309.1 (school bus, possess or consume alcohol while transporting children), 5.1-13 (aircraft DWI), 15.2-1612 (impersonate sheriff, unauthorized person), 46.2-339 (drive school bus while required to register w/ sex offender registry), 46.2-341.21 (drive commercial vehicle after being disqualified), 46.2-341.24 (commercial DWI), 46.2-341.26:3 (refusal of breath test, 2nd DWI/refusal within 10 years), 46.2-817 (elude police), 58.1-3141 (embezzlement, <\$500 by treasurer), 58.1-4018.1 (larceny of lottery tickets, <\$500), 60.2-632 (false statement to obtain increased benefits), 63.2-1509 (fail to report rape of child), and 63.2-1727 (allow sex offender to reside/work/volunteer in day home).

Crime Commission members reviewed study findings at the October meeting and unanimously endorsed all 19 Recommendations from staff, along with Policy Decision Option 1-B, at the December meeting. No motions were made by the Crime Commission in regard to Policy Decision Options 1-A or 2.

Recommendation 1: Identify and reconcile “unapplied criminal history record information” by amending the Virginia Code as follows:

- § 9.1-101 to define “unapplied criminal history record information”;
- § 19.2-388 to require VSP to submit reports and reconcile information regarding unapplied criminal history record information with the Office of the Executive Secretary of the Supreme Court of Virginia (OES), Clerks of Court, Commonwealth's Attorney's, law enforcement agencies, and other agencies; and,

- § 19.2-388 to require VSP to submit an annual report to the Governor and General Assembly on the status of unapplied criminal history record information.

Recommendation 2: Amend Virginia Code § 19.2-390 to require that fingerprints be submitted for violations of a suspended sentence and probation, if the underlying offense is reportable to the Central Criminal Records Exchange.

Recommendation 3: Amend Virginia Code § 19.2-390 to require that charges brought by summons which are deferred and dismissed pursuant to the property (Va. Code § 19.2-303.2) and domestic assault and battery (Va. Code § 18.2-57.3) deferral statutes be reported to the CCRE.

Recommendation 4: Amend Virginia Code §§ 18.2-57.3 (first offense domestic assault and battery deferral), 18.2-251 (first offense drug possession deferral), 19.2-303.2 (certain property offenses deferral), 19.2-74, and 19.2-390 to require courts to do the following:

- determine whether fingerprints have been submitted at the time of deferral;
- order fingerprints to be taken at the time of deferral, if fingerprints were not previously submitted;
- verify that fingerprints were submitted prior to dismissing the case; and,
- report such offenses to the CCRE.

Recommendation 5: Amend Virginia Code §§ 19.2-232 and 19.2-390 to require fingerprinting of incarcerated defendants following service of a direct indictment.

Recommendation 6: Enact Virginia Code § 19.2-390.03 to require VSP to develop and disseminate a model policy to law enforcement agencies on the collection of fingerprints and reporting of criminal history record information to the CCRE.

Recommendation 7: Amend Virginia Code § 19.2-303 to require the court to order a defendant to submit fingerprints as a condition of a suspended sentence or probation for any CCRE reportable offense.

Recommendation 8: Amend Virginia Code § 19.2-390 to allow VSP to classify and file information received from correctional institutions as criminal history record information within the CCRE. In addition, amend Virginia Code § 53.1-23 to require the Department of Corrections (DOC) to provide fingerprints to the CCRE of all inmates received into a state correctional facility and to allow such fingerprints to be used as criminal history record information, unless otherwise prohibited by law.

Recommendation 9: Amend Virginia Code § 53.1-145 to require state probation officers to verify that the conviction for which a defendant is being supervised appears on his criminal history record prior to his release from supervised probation. If the conviction does not appear on the criminal history record, the state probation officer shall obtain fingerprints prior to release.

Recommendation 10: Amend Virginia Code § 9.1-176 to require local probation officers to verify that the conviction for which a defendant is being supervised appears on his criminal history record prior to his release from supervised probation. If the conviction does not appear on the criminal history record, the local probation officer shall order the defendant to submit to fingerprinting.

Recommendation 11: Amend Virginia Code § 19.2-305.1 to require the court at each restitution review hearing to verify that the charge for which the defendant was convicted appears on his criminal history record. If the charge does not appear, the court shall order the defendant to submit to fingerprinting.

Recommendation 12: Enact Virginia Code § 19.2-303.02 to allow the court to modify the terms of a suspended sentence or probation at any time during the period of suspension or probation to order a defendant to submit fingerprints.

Recommendation 13: Amend Virginia Code § 19.2-390 to clarify reporting procedures by clerks of court to the CCRE for offenses charged via summons.

Recommendation 14: Require VSP to work with state and local agencies and make reasonable efforts to ensure that unapplied criminal history record information is applied to criminal history records.

Recommendation 15: Request VSP to develop a brief reference guide of CCRE reportable offenses for use by law enforcement agencies.

Recommendation 16: Request VSP to develop policies and procedures for referencing the CCRE Hold File when conducting criminal history records checks for certain criminal and civil purposes.

Recommendation 17: Request that corresponding associations and state and local agencies provide and/or coordinate training for law enforcement officers, prosecutors, judges, clerks of court, and state and local probation officers on the collection and submission of fingerprints and the relationship between fingerprints and criminal history records.

Recommendation 18: Request that OES, in coordination with other users of the Uniform Statute Table (UST), update and implement a revised table by July 2019.

Recommendation 19: Request that Crime Commission staff continue to address the reconciliation of unapplied offenses to criminal history records and other remaining issues.

Policy Decision Option 1: Amend Virginia Code § 19.2-390 to expand the list of offenses that require CCRE reports.

- Option 1-A: Require CCRE reports for all jailable offenses.
- Option 1-B: Require CCRE reports for certain offenses not currently included.

Policy Decision Option 2: Amend the Virginia Code to require the collection of fingerprints for CCRE reportable offenses when a summons is issued.

Legislation was enacted for Recommendations 1 through 14 and Policy Decision Option 1-B during the Regular Session of the 2019 General Assembly.¹⁴ Bills introduced by Delegate Robert B. Bell (House Bill 2343) and Senator Mark D. Obenshain (Senate Bill 1602) encompassed all of the legislative recommendations and added fourteen new offenses that require a report to the CCRE. Legislation introduced by Senator A. Benton Chafin (Senate Bill 1529) also requires that a report be submitted to the CCRE for certain new offenses. Additionally, the Crime Commission sent letters to numerous agencies and entities requesting that administrative action be taken to address Recommendations 15 through 18. Finally, in accordance with Recommendation 19, Crime Commission staff will continue to monitor VSP's efforts to address unapplied criminal history record information currently in the CCRE Hold File.

Background

CRIMINAL HISTORY RECORD PURPOSES

Criminal history records are used for a wide variety of criminal justice and civil purposes. These records frequently inform critical decisions and therefore the completeness and accuracy of such records is paramount. The dissemination of criminal history record information by the CCRE is prohibited, except to specific parties or in specific circumstances as authorized by law.¹⁵

Criminal history records are used within the criminal justice system for such purposes as first offender eligibility, bail determinations, sentencing guidelines, predicate offenses, DNA database inclusion, expungement, and latent fingerprint comparison. The information contained in these records may be used at multiple stages of the criminal justice process and can impact the outcome of cases in a myriad of ways. Additionally, criminal history records are used for various civil purposes, such as employment and licensing eligibility, barrier crime exclusion, firearms background checks, and Sex Offender and Crimes Against Minors Registry inclusion.

RELATIONSHIP BETWEEN CRIMINAL HISTORY RECORDS AND FINGERPRINTS

In order for an offense to appear on a criminal history record, a report that includes the fingerprints of the defendant must be submitted to the CCRE.¹⁶ Fingerprints have been used as a means of identification for over 100 years due to their uniqueness and consistency over time.¹⁷ By collecting fingerprints at the time of arrest or disposition, a *definitive* identification can later be made of the individual who was arrested or appeared before the court on the charge. While other data included with the arrest or disposition record (e.g., name, address, date of birth, social security number, race, and sex) may allow for a means of identification, the degree of certainty does not always allow for a *definitive* identification. Without fingerprints, it is extremely difficult to conclusively link an offense on a criminal history record to the person who was arrested or convicted of that offense.

The Virginia Code requires that reports of criminal offenses be submitted to the CCRE by law enforcement agencies and clerks of court in certain circumstances.¹⁸ The Code requires law enforcement agencies to submit an arrest report, including fingerprints, to the CCRE.¹⁹ Clerks of court are not required to collect fingerprints, but are required to submit a case disposition report to the CCRE.²⁰ The CCRE links the case disposition report to the arrest report.²¹ The CCRE uses the fingerprints as “positive identification” information in order to apply the offense to an individual’s criminal history record.²² If no arrest report was submitted, or if no fingerprints were taken or provided to the CCRE, then the offense will not be applied to the individual’s criminal history record.²³ If an arrest report, including fingerprints, was submitted to the CCRE, but no case disposition report was submitted, the offense will be applied to the individual’s criminal history record, but no disposition will be noted on that record.

Virginia is a Criminal Justice Information Services (CJIS) Systems Agency signatory state and has agreed to adhere to the Federal Bureau of Investigation’s (FBI) CJIS policies, which include providing fingerprints that meet submission criteria for qualifying arrests.²⁴ Virginia benefits from this arrangement by receiving access to criminal history record information from other states that also utilize the FBI’s CJIS data programs and services.²⁵ One segment of the CJIS program is the Interstate Identification Index System (III), which is an automated system that allows for the storage and exchange of criminal history record information between the federal government and states.²⁶ Criminal history record information in the III is created and supported through the submission of fingerprint images.²⁷ Every three years the FBI audits participants in its CJIS programs for compliance with policies and standards and may impose sanctions against any participant for non-compliance.²⁸ Virginia State Police were last audited in October 2018.²⁹

Fingerprints are also necessary in order for reliable comparisons to be made as part of the expungement and criminal history record challenge process.³⁰ The Virginia Code specifically requires that the fingerprints of an individual seeking expungement be taken by law enforcement and submitted to the CCRE along with a copy of the petition for expungement.³¹ Fingerprints are used to associate the individual seeking to expunge or challenge an offense with the particular criminal history record that is being expunged or challenged.

CCRE HOLD FILE DATA

The CCRE Hold File contains offenses and dispositions submitted to the CCRE that cannot be applied to criminal history records.³² If an offense is contained in the CCRE Hold File, that offense will not appear on an individual’s criminal history record. Staff requested the CCRE Hold File from VSP to determine the number and type of offenses that were unable to be applied to criminal history records. Staff received the CCRE *Legacy System* Hold File in its entirety on November 28, 2018.³³

Based on staff’s analysis of the CCRE *Legacy System* Hold File, there were 706,944 offenses not applied to criminal history records due to missing fingerprints or other errors.³⁴ Of the total number of offenses in the Hold File:

- 33% (233,671 of 706,944) were felonies; and,
- 67% (473,273 of 706,944) were misdemeanors.

Staff determined that 60% (424,060 of 706,944) of the offenses within the CCRE *Legacy System* Hold File were convictions:

- 57% (134,258 of 233,671) of felony offenses resulted in convictions; and,
- 61% (289,802 of 473,273) of misdemeanor offenses resulted in convictions.

Felony Convictions

The remainder of the analysis primarily focused on the 134,258 felony convictions within the CCRE *Legacy System* Hold File.³⁵ Nearly all of the felony convictions were for arrests made between 2000-2016.³⁶ Table 1 illustrates the most frequent felony convictions in the CCRE *Legacy System* Hold File. The majority of the felony convictions not applied to criminal history records were probation/supervision violations,³⁷ followed by fraud, larceny, and drug offenses.

Table 1: Felony Convictions Not Applied to Criminal History Records by VCC Category³⁸

Rank	Felony VCC Category	Total	Percent
1	Probation/Supervision Violations	62,419	47%
2	Fraud	14,827	11%
3	Larceny	13,247	10%
4	Narcotics	11,233	8%
5	Assault	5,841	4%
6	Burglary	5,277	4%
7	Robbery	3,316	3%
8	Rape	1,866	1%
9	Weapon Violations	1,844	1%
10	License-Related Offenses	1,797	1%
---	<i>All Other Felony Convictions</i>	12,591	9%
	TOTAL FELONY CONVICTIONS	134,258	100%

Source: Virginia State Police, CCRE *Legacy System* Hold File. Analysis by Crime Commission staff. Figures do not equal 100% due to rounding.

Of the 134,258 felony convictions in the CCRE *Legacy System* Hold File, there were *at least* the following number of serious convictions that had not been applied to criminal history records:

- 61 convictions for capital murder under § 18.2-31;
- 271 convictions for first or second degree murder under § 18.2-32;
- 276 convictions for rape under § 18.2-61;
- 279 convictions for carnal knowledge of a child (age 13-15) under § 18.2-63;
- 385 convictions for forcible sodomy under § 18.2-67.1;
- 143 convictions for object sexual penetration under § 18.2-67.2; and,
- 619 convictions for aggravated sexual battery under § 18.2-67.3.

It must be underscored that the figures presented above represent the number of convictions for felony offenses rather than unique individual defendants.

Number of Unique Individual Defendants Convicted of Felonies

Crime Commission staff conducted a cursory analysis and estimated that there were approximately 55,000 unique individual convicted felons in the CCRE *Legacy System* Hold File.³⁹ To validate this initial estimate, staff requested individual criminal history records for each of the 134,258 felony convictions in the CCRE *Legacy System* Hold File, as well as 281 felony offenses with deferred and dismissed dispositions, and 166 felony offenses with a not guilty by reason of insanity (NGRI) disposition. The goal of this effort was to determine:

- how many unique individuals were in the Hold File for these 134,705 dispositions;
- how many of these individuals had an existing state identification (SID) number;⁴⁰ and,
- how many of these individuals did not have a SID number.

Overall, 93% (125,381 of 134,705) of the felony offenses contained in the CCRE *Legacy System* Hold File linked up with an existing SID number (i.e., a criminal history record). Specifically, there were 125,381 felony offenses that linked to 58,852 unique SID numbers.⁴¹ This total number of unique SID numbers validated staff's initial estimate of unique individuals.

The remaining felony offenses contained in the CCRE *Legacy System* Hold File had the following outcomes:

- 5% (6,802 of 134,705) did not link to a unique SID number; and,
- 2% (2,522 of 134,705) were indeterminate as the syntax requirements to request an individual criminal history record were not met.

Further Analysis of the CCRE Hold File

Further analysis is required by VSP in order to accurately determine the full scope and content of both the CCRE *Legacy System* and *Replacement System* Hold Files.

Most importantly, efforts must first be made to address the 6,802 felony offenses with no SID match. These individuals are of utmost concern because they have no existing criminal history record to preclude them from activities prohibited to felons.

Second, it is important to determine how many of the individuals with a SID number match had a prior felony or misdemeanor conviction. Individuals *without* such existing convictions are also of a high priority because they have no existing criminal history record to preclude them from activities prohibited to felons.

Third, prompt efforts must be made to address the 2,522 felony offenses that did not meet the syntax for requesting individual criminal history records. These individuals could fall into either the group with no SID match or the group with a SID match but no prior felony or misdemeanor convictions.

Fourth, instances where an individual had more than one SID number need to be reviewed and clarified. There were 1,224 cases where an individual was linked to more than one SID number.

Finally, there were thousands of felonies in the CCRE *Replacement System* Hold File (with a disposition of guilty, deferred and dismissed, or NGRI) that need to be addressed. VSP needs to promptly determine the scope of the defect in the CCRE *Replacement System* so a similar analysis can be conducted on its Hold File.

RETROACTIVE APPLICATION OF FINGERPRINTS TO OFFENSES

Staff conducted research on whether fingerprints could be taken from defendants for offenses currently in the CCRE Hold File so that such offenses could be retroactively applied to those defendants' criminal history records. Staff determined that defendants could be ordered to submit to fingerprinting in certain circumstances, including defendants who are incarcerated, as a condition of a suspended sentence or probation, or when the court had entered an order that fingerprints be taken.

The court may issue an order for fingerprints to be taken as a condition of a suspended sentence or probation.⁴² Defendants convicted of a felony offense are required to provide fingerprints as a condition of probation if ordered by the court.⁴³ Courts commonly use a form produced by the Office of the Executive Secretary of the Supreme Court of Virginia (OES), entitled *Order for DNA or HIV and Hepatitis B, C Viruses Testing and/or for Preparation of Reports to Central Criminal Records Exchange* (CC-1390), when entering such an order.⁴⁴ This order may result in the defendant being remanded into custody or directed to report to a specific law enforcement agency at a specific date and time for fingerprints to be taken.

If a defendant failed to comply with a court order to submit to fingerprinting and the period of the suspended sentence or probation ended less than a year prior to the failure to comply, the court can issue process to revoke the suspended sentence or probation for failure to comply with that order.⁴⁵ If the court ordered fingerprinting as a condition of the suspended sentence or probation, but the period of the suspended sentence or probation ended more than one year prior to the failure to comply, the court can issue process for contempt for failure to comply with its order.⁴⁶

If the court did not order the defendant to provide fingerprints as a condition of the suspended sentence or probation at the time of sentencing, the court has the authority to modify the terms of a sentence at any time while the defendant remains in the custody of a local jail.⁴⁷ Therefore, persons convicted of felony or misdemeanor offenses who are in the custody in local jails can be brought before the court and ordered to submit to fingerprinting as a condition of the sentence.⁴⁸ The court also has the authority to modify the conditions of probation at any time during the period of probation.⁴⁹ In order to add fingerprinting as a condition of the suspended sentence or probation, the court must conduct a hearing and provide reasonable notice to the defendant.⁵⁰

Additionally, staff noted that numerous defendants who were convicted of an offense, but not fingerprinted, are currently or were previously held in custody at a state

correctional facility. The Department of Corrections (DOC) is required to take fingerprints, a photograph, and a description of each person it receives into a state correctional facility for identification purposes.⁵¹ Additionally, DOC must cooperate with other agencies as it deems appropriate to take fingerprints of persons charged with the commission of a felony.⁵² If an individual was convicted of a felony offense and committed to a state correctional facility, the fingerprints taken by DOC could be used to link an offense to that person's criminal history record.⁵³

Staff also determined that the court has limited authority to require a defendant to submit to fingerprinting if such a condition was not ordered at the time of sentencing. Subject to specific exceptions noted above, the terms and conditions of a sentence cannot be modified by the court after 21 days from entry of the final order.⁵⁴ If the defendant is no longer incarcerated in a local jail or on probation, the court lacks authority under the Virginia Code to modify the terms of the suspended sentence or probation to require that the defendant submit to fingerprinting. Furthermore, if an offense in the CCRE Hold File was *dismissed* or resulted in a finding of *not guilty*, the court has no authority to require fingerprinting in relation to that offense because the defendant no longer remains subject to the jurisdiction of the court.

Recommendations and Legislation

Staff undertook measures to address the significantly large number of offenses in the CCRE Hold File and to prevent this issue from occurring in the future.⁵⁵ Consequently, staff proposed numerous prospective and retrospective recommendations to Crime Commission members to ensure that fingerprints are consistently collected and submitted to the CCRE as required.

These recommendations were based on four key principles. First, VSP must work with stakeholders to ensure that offenses currently in the CCRE Hold File are applied to criminal history records. Second, the Virginia Code must clearly define the roles and responsibilities of each stakeholder in the fingerprinting process. Third, measures must be implemented in the process to verify that fingerprints were submitted to the CCRE and to quickly identify instances where an offense does not appear on an individual's criminal history record. Fourth, stakeholders must be properly trained to perform their duties and responsibilities as part of the fingerprinting process. These four principles formed the foundation of two identical omnibus bills that were enacted during the Regular Session of the 2019 General Assembly,⁵⁶ along with letters sent by the Crime Commission requesting that various agencies and entities take administrative actions in relation to the fingerprinting process. This legislation establishes numerous measures throughout the criminal justice process to ensure that fingerprints are taken and to require that criminal history records are reviewed to verify that offenses have been applied.⁵⁷ A brief summary of these legislative changes classified by entity and new responsibilities can be found in *Appendix 1* of this report.

DEFINING UNAPPLIED CRIMINAL HISTORY RECORD INFORMATION⁵⁸

Staff discovered that the Virginia Code did not address information that had been submitted to the CCRE but not applied to a criminal history record (i.e., the CCRE Hold

File). Therefore, the following definition of “unapplied criminal history record information” was added to Virginia Code § 9.1-101:

“[I]nformation pertaining to criminal offenses submitted to the Central Criminal Records Exchange that cannot be applied to the criminal history record of an arrested or convicted person (i) because such information is not supported by fingerprints or other accepted means of positive identification or (ii) due to an inconsistency, error, or omission within the content of the submitted information.”

VIRGINIA STATE POLICE⁵⁹

The CCRE serves as a repository for criminal records and operates as a distinct division within VSP.⁶⁰ The CCRE is tasked with receiving, classifying, and filing criminal history record information, furnishing such information to authorized recipients, and maintaining a separate storage system for juvenile records.⁶¹ Numerous measures were endorsed by the Crime Commission and enacted into law in relation to the role of VSP in the fingerprinting process and the administration of the CCRE.

First, Virginia Code § 19.2-388 was amended to impose several additional responsibilities on the CCRE, including requirements to:

- submit periodic reports that identify unapplied criminal history record information to stakeholders;
- reconcile any offenses that cannot be applied to criminal history records; and,
- submit an annual report to the Governor and General Assembly on the status of unapplied criminal history record information and any updates to fingerprinting policies and procedures.

Second, Virginia Code § 19.2-390 was amended to allow the CCRE to classify and file information received from DOC or any correctional institution, including fingerprints, as criminal history record information unless otherwise prohibited by law. This change was significant because the CCRE began receiving fingerprints from DOC in June 2006.⁶² As of November 30, 2018, the CCRE had received 321,962 fingerprints of incarcerated individuals and 202,787 fingerprints of individuals on probation/parole from DOC. While these fingerprints have been submitted to the CCRE, they have only been used for “correctional status information”, and not “criminal history record information” purposes, because DOC was not considered an arresting agency by VSP.⁶³

Third, Virginia Code § 19.2-390.03 was enacted to require VSP to develop a model policy on the collection of fingerprints and reporting of criminal history record information to the CCRE. This policy must be disseminated to all law enforcement agencies in the Commonwealth. Ultimately, fingerprints submitted by law enforcement must be compatible with CCRE requirements in order to link offense information to individual defendants. VSP is in the best position to communicate these requirements to law enforcement agencies because it administers the CCRE.

Fourth, an enactment clause was included in the legislation to require VSP to make reasonable efforts to ensure that the offenses identified by staff in the CCRE Hold File are applied to criminal history records. This includes identifying and prioritizing felony convictions currently in the CCRE Hold File and providing a list of those convictions to the arresting law enforcement agency and the Commonwealth's Attorney. Such efforts should also consist of a further analysis of the Hold File by VSP as described in the CCRE Hold File Data section above. The legislation authorizes the sharing of information between VSP and other state and local government agencies in order to complete these efforts. Virginia State Police are required to report to the Governor and the Chair of the Crime Commission on the progress of these efforts by November 1, 2019.

Fifth, a third enactment clause was included in the legislation which requires VSP to work with the Virginia Department of Criminal Justice Services (DCJS) to develop a form for local community-based probation officers to use when directing defendants on supervision to submit to fingerprinting.

Sixth, the Crime Commission sent a letter requesting that VSP take administrative actions to:

- develop a brief reference guide of CCRE reportable offenses for law enforcement agencies;
- develop policies and procedures for referencing the CCRE Hold File when conducting background checks for both criminal and civil purposes; and,
- provide training to VSP personnel and other law enforcement agencies on the collection and submission of fingerprints and the relationship between fingerprints and criminal history records.

The General Assembly recognized that VSP would require additional resources in order to accomplish some of these responsibilities. Therefore, the 2019 budget bill included funding for technology enhancements to the CCRE and additional positions (\$197,920 in the first year for a modification to the CCRE and \$211,947 for three positions in the second year) to address the recommendations of the Crime Commission.⁶⁴

LAW ENFORCEMENT AGENCIES⁶⁵

Under existing Virginia law, if an individual is arrested for an offense that requires a CCRE report, the law enforcement agency that effectuates the arrest is required to collect fingerprints and submit that report.⁶⁶ If the individual is arrested and brought before a magistrate, but released on bail prior to being committed to jail, fingerprints may be collected at the facility where the magistrate is located.⁶⁷ If a person is charged via a summons, the report is not required and fingerprints cannot be taken until a specified case disposition occurs.⁶⁸

While law enforcement agencies are required to report every arrest of a CCRE reportable offense, staff discovered that in some instances a defendant may be arrested on multiple charges, but the arresting law enforcement agency may submit fingerprints for only one or some of those charges. Therefore, Virginia Code § 19.2-

390 was amended to clarify that a CCRE report and fingerprints are required for “each charge when any person is arrested.”⁶⁹

Because Live Scan technology is in place across the Commonwealth, law enforcement agencies do not have to obtain numerous distinct sets of fingerprints for the same arrested defendant.⁷⁰ The Live Scan device can process fingerprints for up to fifteen offenses at one time for an arrested individual.⁷¹ Therefore, if an individual was charged with fifteen offenses, he could be fingerprinted one time on the Live Scan device and that set of fingerprints would be applied to all fifteen offenses. If that individual was charged with more than fifteen offenses, fingerprints would be required from that person for any additional offenses in the same fifteen offense increments.

Staff found that the Virginia Code was clear that a report and fingerprints must be submitted to the CCRE when a law enforcement agency arrests an individual on a *capias* for failure to appear;⁷² however, the Code did not specify whether a report was required following an arrest on a *capias* that was issued for any other reason. To address this ambiguity, Virginia Code § 19.2-390 was amended to clarify that law enforcement agencies must submit a report to the CCRE if they arrest an individual on a *capias* for an alleged violation of the terms or conditions of a suspended sentence or probation for an underlying felony offense.

In addition to these changes, Virginia Code §§ 19.2-74 and 19.2-392 were also amended to allow law enforcement agencies to take fingerprints for offenses that were charged via summons and deferred pursuant to the first offense domestic assault and battery,⁷³ first offense drug possession,⁷⁴ and certain property offense statutes.⁷⁵

COURTS

Numerous recommendations from the Crime Commission addressed instances where a defendant’s criminal history record could be reviewed when he appeared before the court. This presented an opportune time for the court to determine whether an offense appeared on a defendant’s criminal history record and whether fingerprints had been taken and, if not, to order that the defendant’s fingerprints be taken.

Verification of Fingerprinting at Sentencing⁷⁶

Under existing law prior to July 1, 2019, the court was required to determine at every felony sentencing hearing whether fingerprints had been taken from the defendant, and if not, to order that such fingerprints be taken as a condition of probation.⁷⁷ This provision did not encompass all instances where fingerprints and a report to the CCRE were required, such as misdemeanor offenses or felony sentences that did not include a term of probation. In order to ensure that fingerprints are taken for every offense when a CCRE report is required, Virginia Code § 19.2-303 was amended to require the court to determine at any sentencing (felony or misdemeanor) whether fingerprints have been taken for any CCRE reportable offense. If such fingerprints have not been taken, the court must order fingerprinting as a condition of the suspended sentence or probation.

Felony Violations of Suspended Sentence or Probation Conditions⁷⁸

Existing law prior to July 1, 2019, was unclear whether suspended sentence revocations and/or probation violations required a CCRE report. Two arguments could be made that such a report was required. First, a suspended sentence revocation or probation violation is in effect a re-sentencing of the underlying offense.⁷⁹ Second, a felony suspended sentence revocation or probation violation could be encompassed by the “any felony” provision requiring CCRE reports upon arrest of any felony charge.⁸⁰

Conversely, arguments could also be made that such a report was not required. Suspended sentence revocations and probation violations are not technically “criminal offenses” as defined by Virginia case law.⁸¹ Moreover, neither suspended sentence revocations nor probation violations are specifically listed as offenses that require a CCRE report.⁸² Furthermore, while the Virginia Code is silent on whether a summons to show cause issued by the court requires a CCRE report and fingerprinting, an Attorney General’s Opinion advises that such judicial issued process be treated in a similar manner to a criminal summons.⁸³

In order to address this significant ambiguity, Virginia Code § 19.2-390 was amended to require the court to order that fingerprints be taken and a report be submitted to the CCRE when any defendant is found to be in violation of the terms or conditions of a suspended sentence or probation for an underlying felony offense. The legislation did not address suspended sentence revocations or probation violations for misdemeanor offenses due to the significant number of misdemeanors that do not require a CCRE report and the confusion that such a requirement could cause in the field.

Deferred and Dismissed Offenses⁸⁴

Staff identified multiple concerns within existing law prior to July 1, 2019, relating to deferred and dismissed offenses. First, for offenses charged via summons, the Virginia Code only allowed for fingerprints to be taken for offenses that were deferred and dismissed under the first offender drug possession statute (Virginia Code § 18.2-251).⁸⁵ The Virginia Code did not authorize fingerprints to be taken for any other CCRE reportable offense, if charged via summons, that was deferred and dismissed pursuant to some other statute. Furthermore, staff found that if fingerprints were not collected and submitted to the CCRE for an offense that was deferred and dismissed, such offense would not appear on the defendant’s criminal history record. This could allow a defendant multiple opportunities to have a charge deferred and dismissed when certain Virginia Code provisions, such as the first offender drug possession and first offense domestic assault and battery statutes, allow for only one such deferral and dismissal.⁸⁶

Two measures were enacted to address these concerns. First, Virginia Code § 19.2-390 was amended to require that law enforcement agencies and clerks of court submit fingerprints and reports to the CCRE for various deferred and dismissed offenses charged via summons, including first offense domestic assault and battery,⁸⁷ first offense drug possession,⁸⁸ and certain property offenses.⁸⁹ These fingerprinting

and reporting requirements are meant to ensure that all of these types of deferred and dismissed offenses appear on criminal history records.

Second, Virginia Code §§ 18.2-57.3 (first offense domestic assault and battery deferral), 18.2-251 (first offense drug possession deferral), and 19.2-303.2 (certain property offenses deferral) were amended to require the court to determine at the time of deferral whether fingerprints had been taken for the offense being deferred, and if not, to order that fingerprints be taken. Furthermore, the court must determine that fingerprints were taken for the offense that was deferred before dismissing the charge. This measure will ensure that fingerprints are taken for all of these types of offenses that are deferred and dismissed.

Direct Indictments⁹⁰

Fingerprinting is required when an individual is arrested for a CCRE reportable offense based upon a direct indictment.⁹¹ The legal instrument that authorizes this arrest is a *capias* that is issued when the direct indictment is returned.⁹² If the indictment is for a felony, a *capias* must be issued; while either a *capias* or summons may be issued for a misdemeanor offense.⁹³ Under existing law prior to July 1, 2019, if the defendant was not in custody when the direct indictment was returned, the judge was required to issue process to bring the defendant before the court.⁹⁴ However, if the defendant was in custody at the time the direct indictment was returned, such process was not required. As a result, fingerprints may not have been taken from defendants who were in custody when a direct indictment was returned.

Virginia Code §§ 19.2-232 and 19.2-390 were amended to address this gap in the process by requiring that fingerprints be taken of defendants who are in custody when a direct indictment is returned. The Commonwealth's Attorney must notify the court at the first appearance that (i) the defendant was in custody at the time the direct indictment was returned and (ii) a report to the CCRE, including fingerprints, is required for the newly indicted offense. Upon such notification, the court shall order that fingerprints be taken and a report submitted to the CCRE. The court may order that either a law enforcement agency or the agency having custody of the defendant take such fingerprints and submit the report to the CCRE.

Restitution Review Hearings⁹⁵

Last year, legislation was enacted requiring courts to conduct review hearings to ensure that defendants were complying with the terms of restitution orders.⁹⁶ These hearings often require the defendant to appear before the court, and thus afford the court an opportunity to verify that the offense for which the defendant was convicted appears on his criminal history record.

Virginia Code § 19.2-305.1 was amended to require the court to review the defendant's criminal history record at the restitution review hearing to verify that the offense for which the defendant was convicted (CCRE reportable offenses only) appears on such record. The court is not required to review the criminal history record if it previously verified that the offense appears on the record. The criminal history record must be provided to the court by the probation officer for defendants

on supervised probation or by the Commonwealth's Attorney for defendants not on supervised probation, if the Commonwealth's Attorney participated in the prosecution of the case.

If the offense does not appear on the criminal history record, the court must order that fingerprints be taken by a law enforcement agency and a report be submitted to the CCRE. If fingerprints were taken and the offense still does not appear on the record, then either the probation officer or the Commonwealth's Attorney must notify the CCRE.

Modification of the Terms of a Suspended Sentence Or Probation⁹⁷

Under existing Virginia rules, the court is limited in its ability to modify a sentence after 21 days of the final order.⁹⁸ It is likely that there are offenses in the CCRE Hold File where the defendant remains subject to the jurisdiction of the court, but where the court lacks the authority to require the defendant to submit to fingerprinting. As such, Virginia Code § 19.2-303.02 was enacted to allow the court to modify the terms or conditions of a suspended sentence or probation at any time during the period of suspension or probation in order to require the defendant to submit to fingerprinting. To satisfy due process requirements, the court must provide reasonable notice to the defendant and conduct a hearing prior to modifying these terms or conditions.

CLERKS OF COURT⁹⁹

Existing Virginia law prior to July 1, 2019, required reports from clerks to the CCRE for certain offenses, which in practice entailed clerks submitting case disposition reports to the CCRE for offenses charged via summons where fingerprints had not yet been taken or transmitted to the CCRE.¹⁰⁰ Since the CCRE had not yet received fingerprints from a law enforcement agency in relation to the summonsed offense, the case disposition report submitted by the clerk could not be applied to the defendant's criminal history record. This could cause an increase in the number of offenses in the CCRE Hold File for offenses where the law did not allow fingerprints to be taken until after the final disposition of the case. As such, Virginia Code § 19.2-390 was amended to allow clerks to submit case disposition reports to the CCRE for offenses charged via *summons* after (i) a conviction, unless an appeal is noted; (ii) a deferral or dismissal of certain drug, domestic assault and battery, and property offenses; or, (iii) an acquittal by reason of insanity.

COMMONWEALTH'S ATTORNEYS¹⁰¹

The Virginia Code did not define a role in the fingerprinting process for Commonwealth's Attorneys. The legislation imposed two new duties on Commonwealth's Attorneys to ensure that fingerprints are taken and offenses appear on criminal history records. First, as noted in the above section on direct indictments, Virginia Code §§ 19.2-232 and 19.2-390 were amended to require the Commonwealth's Attorney to notify the court at the first appearance that (i) the defendant was in custody at the time a direct indictment was returned and (ii) a report to the CCRE, including fingerprints, is required for the newly indicted offense.

Second, as addressed in the above restitution review hearings section, Virginia Code § 19.2-305.1 was amended to require the Commonwealth's Attorney to provide criminal history records of defendants who are not on supervised probation to the court at such hearings, if the Commonwealth's Attorney participated in the prosecution of the case. If it is determined during the hearing that fingerprints were taken and the offense for which the defendant was convicted still does not appear on his criminal history record, the Commonwealth's Attorney must notify the CCRE.

DEPARTMENT OF CORRECTIONS

Staff determined that DOC can serve an important role in verifying that convictions appear on defendants' criminal history records and providing information and fingerprints to the CCRE when such convictions are not present. Such verifications can be conducted by DOC staff both for defendants incarcerated in state correctional facilities and those on state supervised probation.

DOC State Correctional Facilities¹⁰²

Certain defendants may be committed to state correctional facilities to serve all or a portion of their sentence. Several existing Virginia Code provisions required or granted authorization for correctional officers to collect fingerprints for correctional record keeping purposes and to report that information to the CCRE. First, state correctional facilities are required to collect fingerprints from persons in their custody upon intake.¹⁰³ Second, DOC is directed to cooperate with "federal, state, county and city law-enforcement agencies, insofar as it may deem proper, in disclosing information concerning such persons and in the taking of fingerprints and photographs of persons charged with the commission of a felony."¹⁰⁴ Lastly, corrections officials, sheriffs, and superintendents of regional jails are required to report changes in an inmate's correctional status to the CCRE.¹⁰⁵

Because none of these authorizations specifically related to fingerprinting for criminal history record purposes, Virginia Code § 53.1-23 was amended in two ways to help ensure that the conviction for which the defendant is serving his sentence appears on his criminal history record. First, DOC will be required to submit fingerprints to the CCRE of any defendant it receives in a state correctional facility who is serving a sentence for an offense that requires a report to the CCRE. Second, at least 60 days prior to releasing the defendant from incarceration, DOC must verify that the offense for which the defendant is serving a sentence appears on his criminal history record. If the offense does not appear, DOC must take and submit the defendant's fingerprints to the CCRE and provide notice to the CCRE that the offense does not appear on the criminal history record.

It is important to note that these requirements only apply to inmates committed to DOC state correctional facilities. These verifications are not required for inmates who receive prison sentences, but are not transferred from local or regional jails to the custody of DOC.

DOC State Probation And Parole Officers¹⁰⁶

Under existing law prior to July 1, 2019, if an individual was convicted of a felony and fingerprints had not previously been obtained, the court was required to order fingerprinting as a condition of probation;¹⁰⁷ however, the Virginia Code did not grant express authority to state probation and parole officers to collect fingerprints.¹⁰⁸ While state probation and parole officers were granted authority to administer drug and alcohol tests¹⁰⁹ and to require or collect DNA samples,¹¹⁰ no such power was granted to collect fingerprints.

Because numerous defendants are ordered to report to probation as a condition of their sentence, and because some offenders in Virginia remain eligible for parole, two provisions of the Virginia Code were amended in relation to the roles and responsibilities of state probation and parole officers regarding fingerprinting.

First, Virginia Code § 53.1-145 was amended to require state probation officers to verify that the offense for which a defendant is being supervised appears on his criminal history record. For defendants currently on probation as of July 1, 2019, probation officers must verify that the offense for which the defendant is being supervised appears on his criminal history record prior to *release* from supervision, and if it does not, the officer must take and submit the defendant's fingerprints to the CCRE and provide notice to the CCRE that the offense does not appear on the criminal history record.

For defendants reporting to supervised probation on or after July 1, 2019, upon *intake* the probation officer must take and submit the defendant's fingerprints to the CCRE, review the defendant's criminal history record to ensure the offense for which he is being supervised appears on the record and, if it does not, provide notice to the CCRE.

Second, Virginia Code § 53.1-165 was amended to require DOC to take fingerprints and a photograph of any defendant whose parole was revoked for an underlying felony offense and to submit such information to the CCRE. This provision ensures that parole violations, like violations of a suspended sentence and probation, are communicated to the CCRE.

Additionally, as noted in the above restitution review hearings section, Virginia Code § 19.2-305.1 was amended to require probation officers to provide criminal history records of defendants who are on supervised probation to the court at such hearings. If it is determined during the restitution review hearing that fingerprints were taken and the offense for which the defendant was convicted still does not appear on his criminal history record, the probation officer must notify the CCRE.

LOCAL COMMUNITY-BASED PROBATION OFFICERS¹¹¹

Local community-based probation officers can also serve an important role in verifying that convictions appear on defendants' criminal history records. Existing Virginia law neither defined a role in the fingerprinting process nor granted express authority to local community-based probation officers to collect fingerprints.¹¹² As

such, Virginia Code § 9.1-176.1 was amended to require local officers to review a defendant’s criminal history record at least 60 days prior to release from supervision to verify that the offense for which a defendant was being supervised appears on his criminal history record. If the offense does not appear, the local probation officer must:

- order the offender to report to the law enforcement agency that made the arrest for such offense or to the Department of State Police and submit to having his fingerprints and photograph taken;
- provide notification of such to the CCRE; and,
- verify that the fingerprints and photographs were taken as directed.

A third enactment clause in the legislation required VSP, in coordination with DCJS, to develop a form for local probation officers to use when directing the defendant to submit to fingerprinting. The purpose of this form is to provide (i) a uniform method of ordering such fingerprinting, (ii) information to law enforcement agencies about the defendant and the offenses for which fingerprinting is required, and (iii) a method for verifying that fingerprinting was completed as directed.

Additionally, as detailed in the restitution review hearings section above, Virginia Code § 19.2-305.1 was amended to require probation officers to provide criminal history records of defendants who are on supervised probation to the court at such hearings. If it is determined during the restitution review hearing that fingerprints were taken and the offense for which the defendant was convicted still does not appear on his criminal history record, the probation officer must notify the CCRE.

OFFICE OF THE EXECUTIVE SECRETARY OF THE SUPREME COURT OF VIRGINIA¹¹³

The Office of the Executive Secretary of the Supreme Court of Virginia (OES) is responsible for maintaining the Uniform Statute Table (UST) in Virginia. The UST is used by various agencies, such as VSP, OES, and the Department of Motor Vehicles, and is in the software for Live Scan devices, to determine whether or not a specific offense is reportable to the CCRE.¹¹⁴ DCJS was tasked with managing this table before OES assumed responsibility for its maintenance.¹¹⁵ While the table is updated annually to reflect newly enacted laws, some portions of the table are under- or over-inclusive and do not accurately reflect whether an offense is or is not reportable to the CCRE.¹¹⁶ Based on this information, the Crime Commission sent a letter requesting that OES work with other users of the table to update and implement a revised version of the UST by July 2019.

ADMINISTRATIVE REGULATIONS (DCJS AND VSP)¹¹⁷

While the CCRE operates as a division within VSP, the agency responsible for the regulations relating to criminal history record information is DCJS.¹¹⁸ Several of these regulations have a significant impact on fingerprinting and criminal history record policies and procedures. One regulation outlines the challenge process by which an individual may petition to have an offense or disposition removed from their criminal history record.¹¹⁹ Another requires DCJS to conduct an annual audit of state and local criminal justice agencies to ensure compliance with the regulations and to ensure that

criminal history records are accurate and complete.¹²⁰ A third details administrative sanctions DCJS may impose on law enforcement agencies and courts when they fail to comply with fingerprinting and CCRE report submission requirements.¹²¹ It is significant to note that in the event of any conflicts of law, DCJS determinations relating to the CCRE will take precedence over VSP policies and procedures.¹²²

Staff encouraged VSP and DCJS to work jointly in reviewing these regulations to ensure that they are up-to-date, consistent with state and federal law, and to minimize any duplication of efforts or resources by each agency. Staff further requested that VSP and DCJS examine whether any of the existing regulatory duties should be transferred from DCJS to VSP.

TRAINING¹²³

Staff recommended that training be provided to numerous agencies and entities in regard to the fingerprinting process and the link between fingerprints and criminal history records. The Crime Commission sent letters requesting that the following agencies and entities provide training to their personnel and/or membership in regard to these matters:

- Commonwealth's Attorneys' Services Council;
- Office of the Executive Secretary (judges and clerks of court);
- Virginia Association of Chiefs of Police & Foundation, Inc.;
- Virginia Community Criminal Justice Association;
- Virginia Court Clerks' Association;
- Virginia Department of Corrections;
- Virginia Department of Criminal Justice Services (law enforcement officers and local community-based probation officers);
- Virginia Sheriffs' Association; and,
- Virginia State Police.

OTHER RELEVANT STATUTES AND CONSIDERATIONS

Several other existing statutes and factors impact when defendants may be fingerprinted. District court judges may require law enforcement agencies to take the fingerprints of any person who has been arrested and charged with a misdemeanor other than a traffic offense.¹²⁴ Any judicial officer is authorized to order a defendant to accompany the arresting officer to the jurisdiction's fingerprinting facility and submit to having fingerprints taken as a condition of bond.¹²⁵

Further, as previously noted, fingerprints cannot be collected from a person charged via summons until a certain qualifying disposition occurs.¹²⁶ Several issues can interfere with the collection of fingerprints following one of these dispositions. First, a person may be tried in their absence and thus not present to submit to fingerprinting. Second, there may not be an adequate number of law enforcement personnel available at the courthouse to perform fingerprinting. Third, electronic fingerprinting technology may not be available at the courthouse.¹²⁷ Fourth, not all judges, clerks of court, and law enforcement officers may be aware of this specific requirement and the defendant may leave the courthouse without being ordered to submit fingerprints. Finally, even if the court orders fingerprinting, there may be a

lack of coordination between stakeholders to ensure that the defendant submitted fingerprints as required.

FINGERPRINTING OF JUVENILES

Fingerprinting of juvenile defendants is required for delinquent acts which, if committed by an adult, would require a CCRE report.¹²⁸ The CCRE is required to maintain juvenile records separate from adult records.¹²⁹ The reporting requirements and maintenance of juvenile records differ significantly from the requirements for adult records.¹³⁰ Due to the complexity of the juvenile fingerprinting process and special considerations surrounding the maintenance of juvenile court records, staff did not undertake an examination of this process. Staff determined that a comprehensive review of these matters would require significant time and resources and that a separate study would need to be undertaken in order to thoroughly examine these matters.

ADDITIONAL OFFENSES REQUIRING A CCRE REPORT

Staff noted that under existing Virginia law prior to July 1, 2019, only the following offenses were required to be reported to the CCRE for inclusion on an defendant's criminal history record:

- treason;
- any felony;
- any offense punishable as a misdemeanor under Title 54.1 (Professions and Occupations);
- any misdemeanor punishable by confinement in jail under Title 18.2 (Crimes and Offenses Generally) or 19.2 (Criminal Procedure), or any similar ordinance of any county, city or town;
- Virginia Code § 20-61 (failure to pay spousal or child support); and,
- Virginia Code § 16.2-253.2 (violation of family protective order).¹³¹

Staff identified 727 statutes in the Virginia Code that contained jailable offenses for which a report to the CCRE was not required.¹³² Staff proposed amending the Virginia Code to require additional offenses be reported to the CCRE.¹³³ Crime Commission members endorsed an expansion of the list to require CCRE reports for certain additional offenses.¹³⁴ These particular offenses were selected because they were serious in nature, charged frequently, or served as predicate offenses to enhance punishments for future criminal violations. Ultimately, fourteen new offenses were added to the list of crimes that require a report to the CCRE, including the following Code sections:

- 3.2-6570 (cruelty to animals);
- 4.1-309.1 (school bus, possess or consume alcohol while transporting children);
- 5.1-13 (aircraft DWI);
- 15.2-1612 (impersonate sheriff, unauthorized person);
- 46.2-339 (drive school bus while required to register w/ sex offender registry);
- 46.2-341.21 (drive commercial vehicle after being disqualified);

- 46.2-341.24 (commercial DWI);
- 46.2-341.26:3 (refusal of breath test, 2nd DWI/refusal within 10 years);
- 46.2-817 (elude police);
- 58.1-3141 (embezzlement, <\$500 by treasurer);
- 58.1-4018.1 (larceny of lottery tickets, <\$500);
- 60.2-632 (false statement to obtain increased benefits);
- 63.2-1509 (fail to report rape of child); and,
- 63.2-1727 (allow sex offender to reside/work/volunteer in day home).

Conclusion

Crime Commission members reviewed study findings at the October meeting and unanimously endorsed all 19 Recommendations from staff, along with Policy Decision Option 1-B, at the December meeting. No motions were made by the Crime Commission in regard to Policy Decision Options 1-A or 2.

Legislation was enacted for Recommendations 1 through 14 and Policy Decision Option 1-B during the Regular Session of the 2019 General Assembly.¹³⁵ Bills introduced by Delegate Robert B. Bell (House Bill 2343) and Senator Mark D. Obenshain (Senate Bill 1602) encompassed all of the legislative recommendations and added fourteen new offenses that require a report to the CCRE. Legislation introduced by Senator A. Benton Chafin (Senate Bill 1529) also requires a report be submitted to the CCRE for certain new offenses. Additionally, the Crime Commission sent letters to numerous agencies and entities requesting that administrative action be taken to address Recommendations 15 through 18. Finally, in accordance with Recommendation 19, Crime Commission staff will continue to monitor VSP's efforts to address unapplied criminal history record information currently in the CCRE Hold File.

Acknowledgements

The Virginia State Crime Commission extends its appreciation to the following agencies and organizations for their assistance and cooperation on this study:

Office of the Executive Secretary of the Supreme Court of Virginia

Office of the Secretary of Public Safety and Homeland Security

Virginia Association of Chiefs of Police & Foundation, Inc.

Virginia Association of Commonwealth's Attorneys

Virginia Criminal Sentencing Commission

Virginia Department of Corrections

Virginia Department of Criminal Justice Services

Virginia Department of Forensic Science

Virginia Sheriffs' Association

Virginia State Police

The Crime Commission also wishes to thank all clerks of court, law enforcement agencies, and local and regional jail administrators who provided survey responses.

Appendix 1: New Fingerprinting Responsibilities by Entity

Effective July 1, 2019

Entity	New Responsibilities
Virginia State Police	<ol style="list-style-type: none"> 1. Submit reports to various stakeholders which identify offenses that have not been applied to criminal history records (Va. Code § 19.2-388(C)). 2. Reconcile offenses in the CCRE Hold File that cannot be applied to criminal history records (Va. Code § 19.2-388(D)). 3. Submit an annual report to the General Assembly and Governor (Va. Code § 19.2-388(E)). 4. Classify and file information received from DOC or any correctional institution as criminal history record information (Va. Code § 19.2-390(D)). 5. Develop and disseminate a model policy to law enforcement agencies on the collection of fingerprints (Va. Code § 19.2-390.03). 6. Apply offenses currently in the CCRE Hold File to criminal history records and report on progress by November 1, 2019 (2nd enactment clause). 7. Develop a form, in coordination with DCJS, to be used by local community-based probation officers when ordering fingerprinting (3rd enactment clause).
Law Enforcement Agencies	<ol style="list-style-type: none"> 1. Submit a report and fingerprints to the CCRE for each required offense when any person is arrested (Va. Code § 19.2-390(A)(1)). 2. Submit a report and fingerprints to the CCRE for any arrest on a <i>capias</i> charging that the defendant violated the terms of a suspended sentence or probation for a felony offense (Va. Code § 19.2-390(A)(1)).
Courts	<ol style="list-style-type: none"> 1. <u>Direct indictment</u>: Order fingerprints be taken at first appearance for defendants in custody at the time of indictment (Va. Code §§ 19.2-232 and 390(A)(5)). 2. <u>Deferred and dismissed offenses</u>: Order fingerprints be taken at the time of deferral, if not previously taken, and confirm that fingerprints were taken prior to dismissal of drug possession, domestic battery, and property offenses (Va. Code §§ 18.2-57.3, 18.2-251, 19.2-74, 19.2-303.2, 19.2-390(A)(2)(ii), and 19.2-392(A)(iii)). 3. <u>Sentencing</u>: Determine at sentencing (felony and misdemeanor) whether fingerprints were taken for any CCRE reportable offense and, if not taken, order fingerprinting as a condition of the suspended sentence or probation (Va. Code § 19.2-303). 4. <u>Violations of suspended sentence or probation (felonies)</u>: Order that fingerprints be taken and a report be submitted to the CCRE when a defendant is found in violation of the terms of a suspended sentence or probation for a felony offense (Va. Code § 19.2-390(A)(3)-(4)). 5. <u>Restitution review hearings</u>: Review criminal history record for accuracy at restitution review hearings, if not previously done, and order fingerprints be taken for any unapplied conviction(s) (Va. Code § 19.2-305.1(F)(7)-(8)). 6. <u>Modification of terms of suspended sentence/probation</u>: Allows for modification of the terms of a suspended sentence or probation at any time during the suspension or probation period for purposes of ordering that fingerprints be taken (Va. Code § 19.2-303.02).

Entity	New Responsibilities
Clerks of Court	<ol style="list-style-type: none"> 1. Submit case disposition reports to the CCRE for felony violations of suspended sentences or probation (Va. Code § 19.2-390(C)). 2. Allows case disposition reports to the CCRE for offenses charged via summons to be submitted at the conclusion of the case (Va. Code § 19.2-390(C)).
Commonwealth's Attorneys	<ol style="list-style-type: none"> 1. <u>Direct indictment</u>: notify the court at first appearance, if the defendant was in custody at the time of indictment, that a report and fingerprints must be submitted to the CCRE for the offense (Va. Code §§ 19.2-232 and 390(A)(5)). 2. <u>Restitution review hearings</u>: Provide criminal history records of defendants not on supervised probation, if the Commonwealth's Attorney prosecuted the offense, and notify the CCRE if fingerprints were taken and an offense was not applied to the criminal history record (Va. Code § 19.2-305.1(F)(7)-(8)).
DOC State Correctional Facilities	<ol style="list-style-type: none"> 1. Submit fingerprints to the CCRE for defendants it receives who are serving a sentence for an offense that requires a report to CCRE (Va. Code § 53.1-23(A)). 2. Verify that the offense for which a defendant is serving a sentence appears on their criminal history record at least 60 days prior to release and, if the offense does not appear, take and submit fingerprints to the CCRE and notify the CCRE that such offense does not appear (Va. Code § 53.1-23(B)).
DOC State Probation and Parole Officers	<ol style="list-style-type: none"> 1. For defendants on probation as of July 1, 2019, verify at least 60 days prior to release from probation that the offense for which the defendant is being supervised appears on his criminal history record and, if it does not appear, take and submit fingerprints to the CCRE and notify the CCRE that such offense does not appear (Va. Code § 53.1-145 (13)). 2. For defendants reporting to probation on or after July 1, 2019, take and submit fingerprints to the CCRE upon intake, verify that the offense for which the defendant is being supervised appears on his criminal history record and, if it does not appear, notify the CCRE (Va. Code § 53.1-145(14)). 3. Provide criminal history records to the court at restitution review hearings for defendants who are on probation and notify the CCRE prior to release from supervision if fingerprints were taken and an offense was not applied to the criminal history record (Va. Code § 19.2-305.1(F)(7)). 4. Take and submit fingerprints to the CCRE upon revocation of parole for a felony offense (Va. Code § 53.1-165(A)).
Local Community-Based Probation Officers	<ol style="list-style-type: none"> 1. Verify at least 60 days prior to release from probation that the offense for which the defendant is being supervised appears on his criminal history record and, if it does not appear, order that fingerprints be taken, notify the CCRE that the offense does not appear on the criminal history record, and verify that fingerprints were taken (Va. Code § 9.1-176.1(A)(12)). 2. Provide criminal history records to the court at restitution review hearings for defendants who are on probation and notify the CCRE prior to release from supervision if fingerprints were taken and an offense was not applied to the criminal history record (Va. Code § 19.2-305.1(F)(7)).

Additional offenses requiring a CCRE report, including fingerprints, as of July 1, 2019:

- Virginia Code §§ 3.2-6570, 4.1-309.1, 5.1-13, 15.2-1612, 46.2-339, 46.2-341.21, 46.2-341.24, 46.2-341.26:3, 46.2-817, 58.1-3141, 58.1-4018.1, 60.2-632, 63.2-1509, and 63.2-1727.

Endnotes

- ¹ See Virginia State Crime Commission. *2017 Annual Report*. Retrieved from <https://rga.lis.virginia.gov/Published/2018/RD207/PDF>. Discrepancies were identified in the *Decriminalization of Possession of Marijuana* and *DNA Databank: Expansion of Misdemeanor Crimes* studies.
- ² Va. Code § 19.2-387 (2018).
- ³ *Id.*
- ⁴ Va. Code §§ 19.2-387.2(Art. I) and 19.2-390(A) (2018). See also 6 Va. Admin. Code § 20-120-40(A) (2018).
- ⁵ Va. Code § 19.2-390(C) (2018).
- ⁶ There are currently two systems that maintain CCRE Hold File information. The original system is called the CCRE *Legacy System* and maintains offenses occurring from the 1970s to October 7, 2016. On October 8, 2016, the CCRE *Legacy System* was replaced with a newer system designated as the CCRE *Replacement System*.
- ⁷ The remaining 10% were due to other errors, such as a discrepancy in court record identification numbering or defendant identification information.
- ⁸ The analysis in this report does not include any offenses contained within the CCRE *Replacement System* as VSP discovered a defect where some offenses in this Hold File had been successfully applied to criminal history records, but not subsequently removed from the Hold File. Such a defect does not exist in the CCRE *Legacy System*. As such, all figures reported are from the CCRE *Legacy System* Hold File received on November 28, 2018.
- ⁹ Staff conducted a review of Virginia’s existing legal and policy framework related to fingerprinting, including an examination of relevant statutes and regulations, consultations with practitioners, and surveys to law enforcement agencies, local and regional jail administrators, and clerks of court.
- ¹⁰ See Va. Code §§ 18.2-456(5), 19.2-303, 19.2-304, 19.2-306, 19.2-390(D), and 53.1-23 (2018).
- ¹¹ See Virginia Criminal Sentencing Commission. *2018 Virginia Crime Code*. The 727 statutes encompassed 977 distinct Virginia Crime Codes (VCC).
- ¹² Policy Decision Option 1.
- ¹³ Policy Decision Option 1-B.
- ¹⁴ 2019 Va. Acts ch. 115, 782, and 783.
- ¹⁵ Va. Code § 19.2-389 (2018).
- ¹⁶ Va. Code §§ 19.2-387.2(Art. I) and 19.2-390(A) (2018). See also 6 Va. Admin. Code § 20-120-40 (2018).
- ¹⁷ See Federal Bureau of Investigation. *Fingerprint Recognition*. Retrieved from <https://www.fbi.gov/file-repository/about-us-cjis-fingerprints-biometrics-biometric-center-of-excellences-fingerprint-recognition.pdf/view>.
- ¹⁸ Va. Code §§ 19.2-390(A) and 19.2-390(C) (2018). *But see* Va. Code § 19.2-390(D) (2018). The CCRE may receive, classify, and file information for any offense for which a report is received.
- ¹⁹ Va. Code § 19.2-392(A) (2018).
- ²⁰ Va. Code § 19.2-390(C) (2018).
- ²¹ The record link is automated via a “Document Control Number” (DCN), which is assigned to the case at the time that fingerprinting is completed.

- ²² Va. Code § 19.2-387.2(Art. I) (2018).
- ²³ *Id.*
- ²⁴ Virginia State Police, personal communication, July 25, 2018. See 28 C.F.R. § 20.36(a) (2018). See also Federal Bureau of Investigation. (2018, August 16). *Criminal Justice Information Services (CJIS) Security Policy* Version 5.7, Appendix D. Retrieved from https://www.fbi.gov/file-repository/cjis-security-policy_v5-7_20180816.pdf/view.
- ²⁵ See Federal Bureau of Investigation. *National Crime Information Center (NCIC)*. Retrieved from <https://www.fbi.gov/services/cjis/ncic>.
- ²⁶ See Federal Bureau of Investigation. *Privacy Impact Assessment for the Fingerprint Identification Records System (FIRS) Integrated Automated Fingerprint Identification System (IAFIS) Outsourcing for Noncriminal Justice Purposes – Channeling, I-2.3*. Retrieved from <https://www.fbi.gov/services/information-management/foipa/privacy-impact-assessments/firs-iafis>. See also 34 U.S.C. § 40316(Art. I)(13) (2018). See also Va. Code § 19.2-387.2(Art. I) (2018).
- ²⁷ *Id.* at I-2.3 and I-2.4.
- ²⁸ See Federal Bureau of Investigation. *The CJIS Advisory Process*. Retrieved from <https://www.fbi.gov/services/cjis/the-cjis-advisory-process>. See also Federal Bureau of Investigation. *National Crime Information Center Audit*. Retrieved from <https://www.fbi.gov/file-repository/ncic-audit.pdf/view>. See also 28 C.F.R. § 20.38 (2018).
- ²⁹ Virginia State Police, email correspondence, June 4, 2019.
- ³⁰ See Va. Code § 19.2-392.2 (2018). See also 6 Va. Admin. Code §§ 20-120-70 and 20-120-80 (2018). See also Virginia State Police. *Central Criminal Records Exchange (CCRE): Challenge of a Criminal Record*. Retrieved from http://www.vsp.virginia.gov/CJIS_CCRE.shtm.
- ³¹ Va. Code §§ 19.2-392.2(B) and 19.2-392.2(E) (2018).
- ³² There are currently two systems that maintain CCRE Hold File information. The original system is called the CCRE *Legacy System* and maintains offenses occurring from the 1970s to October 7, 2016. On October 8, 2016, the CCRE *Legacy System* was replaced with a newer system designated as the CCRE *Replacement System*.
- ³³ The analysis in this report does not include any offenses contained within the CCRE *Replacement System* as VSP discovered a defect where some offenses in this Hold File had been successfully applied to criminal history records but not subsequently removed from the Hold File. Such a defect does not exist in the CCRE *Legacy System*. As such, all figures reported are from the CCRE *Legacy System* Hold File received on November 28, 2018.
- ³⁴ Approximately 90% of the offenses not applied were due to missing fingerprints. The remaining 10% were due to other errors, such as a discrepancy in court record identification numbering or defendant identification information.
- ³⁵ Staff completed a detailed analysis of a subset of misdemeanor offenses contained in the CCRE *Legacy System* Hold File that were filed between January 1, 2013, to October 7, 2016, to gain a better understanding of where gaps in misdemeanor fingerprinting may have occurred over the past five years. Staff matched this subset of 101,987 misdemeanors with court data provided by OES to determine how the offenses were charged (summons or warrant) or commenced (appeal, reinstatement, direct indictment). Most of the offenses were charged in district courts and nearly half of the misdemeanor subset, 49% (50,124 of 101,987), resulted in a conviction. Specifically, 43,750 misdemeanors had a disposition of

- guilty and 6,374 misdemeanors had a disposition of guilty *in absentia*, with the large majority of both dispositions requiring a CCRE report (i.e., fingerprints required). Of the 50,124 misdemeanor convictions in this subset analysis, 78% (39,116) required a CCRE report.
- ³⁶ 97% (129,747 of 134,258) of felony convictions resulted from arrests made between January 1, 2000, to October 7, 2016. It should be further noted that 60% (80,789 of 134,258) of felony convictions resulted from arrests made between January 1, 2010, to October 7, 2016. Electronic reporting of offense dispositions to the CCRE began around the year 2000, making it difficult to determine how widespread the problem of missing fingerprints was prior to that time.
- ³⁷ See Va. Code § 19.2-390 (2018). Virginia law was unclear whether suspended sentence revocations and/or probation violations require a CCRE report.
- ³⁸ As of November 28, 2018. The Virginia Criminal Sentencing Commission has defined categories (VCC) of criminal offenses across all statutes within the Virginia Code.
- ³⁹ The cursory estimate was based on the culmination of unique full name, date of birth, and social security number, when available, as provided within the CCRE *Legacy System Hold File*.
- ⁴⁰ As defined per the FBI, a SID number is an identifying number assigned to the subject of record by the state in which the arrest occurred: See <https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics/arrest-disposition-submission>. The SID number is important as it is designed to provide a unique identification number for each unique individual (akin to a social security number) with a criminal history record.
- ⁴¹ In 1,224 of these offenses the individual was linked to more than one unique SID number. This can occur for a number of reasons, but most frequently is due to a defendant's initial fingerprints being of such low quality that they do not "match" to any subsequent higher quality fingerprints of that same defendant. This results in more than one SID number being assigned to that individual defendant.
- ⁴² Va. Code § 19.2-303 (2018).
- ⁴³ *Id.*
- ⁴⁴ A sample of Form CC-1390 was retrieved from <http://www.courts.state.va.us/forms/circuit/cc1390inst.pdf>.
- ⁴⁵ Va. Code § 19.2-306 (2018).
- ⁴⁶ Va. Code § 18.2-456(5) (2018).
- ⁴⁷ Va. Code § 19.2-303 (2018).
- ⁴⁸ *Id.*
- ⁴⁹ Va. Code § 19.2-304 (2018).
- ⁵⁰ *Id.* See, e.g., *Cook v. Commonwealth*, 211 Va. 290, 176 S.E.2d 815 (Va. 1970).
- ⁵¹ Va. Code § 53.1-23 (2018).
- ⁵² *Id.*
- ⁵³ Va. Code § 19.2-390(D) (2018). See also National Crime Prevention and Privacy Compact Council. *National Fingerprint File Qualification Requirements*, 70 Fed. Reg. 119, 36211 at footnote 3 (June 22, 2005). Retrieved from <https://www.govinfo.gov/content/pkg/FR-2005-06-22/pdf/05-12329.pdf>.
- ⁵⁴ Va. Sup. Ct. R. 1:1(a) (2018).
- ⁵⁵ Staff conducted a review of Virginia's existing legal and policy framework related to fingerprinting, including an examination of relevant statutes and regulations, consultations with practitioners, and surveys to law enforcement agencies, local and regional jail administrators, and clerks of court.

- ⁵⁶ 2019 Va. Acts ch. 782 and 783.
- ⁵⁷ The enacted legislation takes effect on July 1, 2019. The remainder of this report addresses both amendments and additions to Virginia law as a result of this legislation, as well as Virginia law as it existed during the study.
- ⁵⁸ Recommendation 1.
- ⁵⁹ Recommendations 1, 6, 8, 14, 15, 16, and 17.
- ⁶⁰ Va. Code § 19.2-387 (2018). *See also* http://www.vsp.virginia.gov/CJIS_CCRE.shtm.
- ⁶¹ Va. Code §§ 19.2-388, 19.2-389, 19.2-389.1, and 19.2-389.2 (2018).
- ⁶² Virginia State Police, email correspondence, Nov. 30, 2018.
- ⁶³ *See* Va. Code §§ 19.2-390(A) and 19.2-390(E) (2018).
- ⁶⁴ 2019 Va. Acts ch. 854. Item 419(O) of the 2019 Appropriations Act. Retrieved from <https://budget.lis.virginia.gov/item/2019/1/HB1700/Chapter/1/419/>.
- ⁶⁵ Recommendations 2 and 3.
- ⁶⁶ Va. Code § 19.2-390(A)(1) (2018). Reports to the CCRE are required when an individual is arrested for certain offenses, including (i) treason, (ii) any felony, (iii) any offense punishable as a misdemeanor under Title 54.1 (Professions and Occupations), (iv) any misdemeanor punishable by confinement in jail under Title 18.2 (Crimes and Offenses Generally) or 19.2 (Criminal Procedure), or any similar ordinance of any county, city or town, (v) under Virginia Code § 20-61 (failure to pay spousal or child support), or (vi) under Virginia Code § 16.2-253.2 (violation of family protective order).
- ⁶⁷ Va. Code § 19.2-390(A)(1) (2018).
- ⁶⁸ Va. Code §§ 19.2-74(A)(3) and 19.2-390(A)(2) (2018). Fingerprints can only be taken after (i) a conviction is entered and no appeal is noted, (ii) if an appeal is noted, the conviction is upheld on appeal or the person withdraws his appeal, (iii) the court dismisses the proceeding pursuant to the first offender drug possession statute (Virginia Code § 18.2-251), or (iv) an acquittal by reason of insanity is entered.
- ⁶⁹ There is no associated recommendation with this portion of the legislation. This measure was included during the drafting process to clarify the responsibilities of law enforcement agencies.
- ⁷⁰ Live Scan devices allow for electronic fingerprinting and transmission of arrest reports to the CCRE. Additional information about these devices was retrieved from http://www.vsp.virginia.gov/CJIS_LiveScan.shtm. VSP provides a map of Live Scan devices across the Commonwealth, which was retrieved from http://www.vsp.virginia.gov/CJIS_LiveScan_maps.shtm.
- ⁷¹ Virginia State Police, personal communication, July 25, 2018.
- ⁷² Va. Code § 19.2-390(A)(1) (2018).
- ⁷³ Va. Code § 18.2-57.3 (2018).
- ⁷⁴ Va. Code § 18.2-251 (2018).
- ⁷⁵ Va. Code § 19.2-303.2 (2018).
- ⁷⁶ Recommendation 7.
- ⁷⁷ Va. Code § 19.2-303 (2018).
- ⁷⁸ Recommendation 2.
- ⁷⁹ Va. Code § 19.2-390(C) (2018).
- ⁸⁰ Va. Code § 19.2-390(A)(1)(b) (2018).
- ⁸¹ *See, e.g., Walker v. Forbes*, 292 Va. 417, 422-423, 790 S.E.2d 240, 243-244 (2016).
- ⁸² Va. Code § 19.2-390(A)(1) (2018).

- ⁸³ 2009 Op. Va. Att’y Gen. 09-070. Retrieved from <https://www.oag.state.va.us/files/Opinions/2009/09-070-Proffitt.pdf>.
- ⁸⁴ Recommendations 3 and 4.
- ⁸⁵ Va. Code §§ 19.2-74(A)(3) and 19.2-390(A)(2) (2018).
- ⁸⁶ Va. Code §§ 18.2-57.3(B) and 18.2-251 (2018).
- ⁸⁷ Va. Code § 18.2-57.3 (2018).
- ⁸⁸ Va. Code § 18.2-251 (2018).
- ⁸⁹ Va. Code § 19.2-303.2 (2018).
- ⁹⁰ Recommendation 5.
- ⁹¹ Va. Code § 19.2-390(A)(1) (2018).
- ⁹² Va. Code § 19.2-232 (2018).
- ⁹³ *Id.*
- ⁹⁴ *Id.*
- ⁹⁵ Recommendation 11.
- ⁹⁶ 2018 Va. Acts ch. 316 and 671.
- ⁹⁷ Recommendation 12.
- ⁹⁸ Va. Sup. Ct. R. 1:1(a) (2018). *See also* Va. Code §§ 19.2-303 and 19.2-304 (2018).
- ⁹⁹ Recommendation 13.
- ¹⁰⁰ Va. Code §§ 19.2-390(A)(2) and 19.2-390(C) (2018).
- ¹⁰¹ Recommendations 5 and 11.
- ¹⁰² Recommendation 8.
- ¹⁰³ Va. Code § 53.1-23 (2018).
- ¹⁰⁴ *Id.*
- ¹⁰⁵ Va. Code § 19.2-390(E) (2018).
- ¹⁰⁶ Recommendations 9 and 11. The original Recommendation 9 dealt solely with state probation officers; however, state parole officers were also identified as an area to address during the legislative drafting process.
- ¹⁰⁷ Va. Code § 19.2-303 (2018).
- ¹⁰⁸ Va. Code § 53.1-145 (2018).
- ¹⁰⁹ Va. Code § 53.1-145(6) (2018).
- ¹¹⁰ Va. Code §§ 53.1-145(10) and 53.1-145(11) (2018).
- ¹¹¹ Recommendations 10 and 11.
- ¹¹² Va. Code § 9.1-176.1 (2018).
- ¹¹³ Recommendation 18.
- ¹¹⁴ Office of the Executive Secretary of the Supreme Court of Virginia, personal communication, Oct. 3, 2018. *See also* Office of the Executive Secretary of the Supreme Court of Virginia. *Uniform Statute Table (UST) Data*. Retrieved from http://www.courts.state.va.us/courtadmin/aoc/djs/resources/ust/ust_table.pdf, for the 2016, 2017, and 2018 tables.
- ¹¹⁵ *Id.*
- ¹¹⁶ *Id.*
- ¹¹⁷ There is no associated recommendation relating to these regulations because VSP and DCJS had already begun examining the regulations prior to the October presentation to the Crime Commission.
- ¹¹⁸ Va. Code § 9.1-126 *et. seq.* (2018). *See also* 6 Va. Admin. Code § 20-120-20 *et. seq.* (2018).
- ¹¹⁹ 6 Va. Admin. Code § 20-120-70 (2018).
- ¹²⁰ 6 Va. Admin. Code § 20-120-90 (2018).
- ¹²¹ 6 Va. Admin. Code §§ 20-120-90 and 20-120-100 (2018).
- ¹²² Va. Code § 9.1-137 (2018).

- ¹²³ Recommendation 17.
- ¹²⁴ Va. Code § 19.2-392.01 (2018).
- ¹²⁵ Va. Code § 19.2-123(A)(3c) (2018).
- ¹²⁶ Va. Code §§ 19.2-74(A)(3) and 19.2-390(A)(2) (2018). Fingerprints can only be taken after (i) a conviction is entered and no appeal is noted, (ii) if an appeal is noted, the conviction is upheld on appeal or the person withdraws his appeal, (iii) the court dismisses the proceeding pursuant to the first offender drug possession statute (Virginia Code § 18.2-251), or (iv) an acquittal by reason of insanity is entered.
- ¹²⁷ Fingerprints may be taken electronically via a Live Scan device or manually using an inkpad and cardstock. VSP provides a map of Live Scan devices across the Commonwealth, which was retrieved from http://www.vsp.virginia.gov/CJIS_LiveScan_maps.shtm.
- ¹²⁸ Va. Code § 16.1-299 (2018).
- ¹²⁹ Va. Code § 19.2-388(B) (2018).
- ¹³⁰ Va. Code § 19.2-390(C) (2018).
- ¹³¹ Va. Code § 19.2-390(A)(1) (2018).
- ¹³² See Virginia Criminal Sentencing Commission. *2018 Virginia Crime Code*. The 727 statutes encompassed 977 distinct Virginia Crime Codes (VCC).
- ¹³³ Policy Decision Option 1.
- ¹³⁴ Policy Decision Option 1-B.
- ¹³⁵ 2019 Va. Acts ch. 115, 782, and 783.

Pre-Trial Process in Virginia

Executive Summary

Between 2016 to 2017, Crime Commission staff studied pretrial services agencies in Virginia.¹ In 2018, the Executive Committee of the Crime Commission requested that staff expand the study to examine the overall pre-trial process in Virginia. The pre-trial process encompasses the various stages of a criminal case from the time a defendant is charged with an offense until the trial and/or sentencing. As a result of the expansion of the study, staff focused their efforts on the following components: the Virginia Pre-Trial Data Project, an update on the pretrial services agencies study, and an examination of the overall pre-trial process.

VIRGINIA PRE-TRIAL DATA PROJECT

The Virginia Pre-Trial Data Project is an unprecedented, collaborative effort between numerous state and local agencies representing all three branches of government. Data was obtained from a variety of sources to develop a cohort of nearly 23,000 adult defendants charged across Virginia during a one-month period (October 2017) whose final case dispositions were tracked through December 31, 2018.² The data will allow for comparisons to be made between similarly situated defendants by type of release mechanism, offense, and locality. The data will be analyzed to answer the question posed by the Crime Commission of how effective various pre-trial release mechanisms are at ensuring public safety and appearance at court proceedings. The data will further help to inform policy-making throughout the pre-trial process.

Crime Commission members were presented with three recommendations stemming from the Virginia Pre-Trial Data Project. Recommendations 1 and 3 were endorsed by a majority vote and Recommendation 2 was unanimously endorsed. Legislation was enacted for Recommendation 1 during the Regular Session of the 2019 General Assembly.³ A letter was sent by the Crime Commission to the Office of the Executive Secretary of the Supreme Court of Virginia (OES) in relation to Recommendation 3. Staff anticipates that findings from this Project will be presented in Fall 2019.

Recommendation 1: Amend Virginia Code §§ 16.1-69.24 and 18.2-456 to create a new charge of contempt of court specifically for failure to appear.

Recommendation 2: Request that Crime Commission staff convene stakeholders to develop a plan for statewide data systems integration and case tracking across the criminal justice system and any other related systems.

Recommendation 3: Request that the Office of the Executive Secretary of the Supreme Court of Virginia (OES) be included as part of Recommendation 2 in order to determine a method for tracking the number of criminal defendants statewide who are found to be indigent pursuant to Virginia Code § 19.2-159.

PRETRIAL SERVICES AGENCIES STUDY UPDATE

During 2018, staff continued to examine pretrial services agencies and worked closely with the Virginia Department of Criminal Justice Services (DCJS) and stakeholders to address concerns that were previously identified with the administration and operation of these agencies.⁴ Staff developed and disseminated over 2,000 surveys on behalf of DCJS as part of a formal stakeholder needs assessment to identify the strengths and weaknesses of pretrial services agencies.⁵ Additionally, staff provided oversight of the Virginia Pretrial Services Stakeholder Group that was convened by DCJS to review how pretrial services agencies are administered in Virginia and to make recommendations to improve the delivery of such services.⁶

Staff found that while broad support continues to exist amongst stakeholders for the use of pretrial services agencies, many of the concerns previously identified during this ongoing study persist, including:

- Pretrial investigation reports are not being completed for all defendants who are eligible for pretrial services agency supervision;
- Recommendations provided to judges by pretrial services agencies are inconsistent at times with the facts and circumstances of an offense; and,
- Information is not being provided to all judicial officers, including magistrates, by pretrial services agencies as intended by the Pretrial Services Act due to conflicts within the Virginia Code and other resource and logistical issues.

While these areas of concern continue to exist, DCJS has developed a work plan to address a number of the issues identified relating to the administration of pretrial services agencies.⁷

Due to the ongoing Virginia Pre-Trial Data Project, staff did not make any recommendations to Crime Commission members relating to pretrial services agencies.⁸

PRE-TRIAL PROCESS

The time period encompassed during the pre-trial process includes the initial criminal charge, any appearances before a magistrate or the court, bond hearings, the determination of pre-trial release conditions, and compliance with these release conditions while awaiting trial and/or sentencing. Staff examined various aspects of the overall pre-trial process along with the role and regulation of bail bondsmen.

Staff found that first appearance and bond hearing procedures are generally uniform before magistrates across the Commonwealth; however, such procedures vary before

courts and can differ even amongst courts within the same locality. Staff further discovered that the use of GPS and similar tracking devices varies across the Commonwealth and that there are no statewide regulations for the use of such devices on a pre-trial basis.

Additionally, staff noted that bail bondsmen have a large presence throughout the pre-trial process. As of November 2018, there were 375 actively licensed bail bondsmen in Virginia.⁹ Staff found the following in relation to the role and regulation of bail bondsmen:

- Bail bondsmen guarantee a defendant's appearance at court proceedings and may impose conditions of supervision above and beyond those ordered by judicial officers;
- The criminal background licensing restrictions are less stringent for bail bondsmen than for other professions regulated by DCJS;
- A surety on a bond (bail bondsman, family member, friend, etc.) can request the issuance of a *capias* for the arrest of a defendant from a judicial officer for any reason; and,
- Challenges exist to providing oversight of bail bondsmen due to varying practices by courts and lack of communication between existing data systems.

The Crime Commission unanimously endorsed four recommendations relating to the pre-trial process and bail bondsmen. Legislation was enacted during the Regular Session of the 2019 General Assembly for Recommendations 1 and 2.¹⁰ Legislation was introduced for Recommendation 3, but was left in the Senate Committee on Finance.¹¹

Recommendation 1: Amend Virginia Code § 19.2-121 to require magistrates to complete the existing *Checklist For Bail Determinations* (Form DC-327) and transmit it to the court.¹²

Recommendation 2: Amend Virginia Code § 19.2-149 to require the basis of an arrest to be stated by a surety when requesting a *capias*.

Recommendation 3: Amend Virginia Code § 18.2-64.2 to increase the penalty for carnal knowledge of a defendant by a bail bond company owner or agent from a Class 1 misdemeanor to a Class 6 felony.

Recommendation 4: Request Crime Commission staff to continue to examine the overall pre-trial process and to convene focus groups to address issues of uniformity within that process, including:

- First appearances;
- Bond hearings;
- Timely sharing of information, such as bail condition violations;
- Conditions of supervision and fees (GPS, drug testing, etc.); and,
- Monitoring of pre-trial jail populations.

Staff plans to utilize the findings from the Virginia Pre-Trial Data Project to identify particular areas of concern and inform further examination of the overall pre-trial process in relation to Recommendation 4.

Virginia Pre-Trial Data Project

The Virginia Pre-Trial Data Project is an unprecedented, collaborative effort between numerous state and local agencies representing all three branches of government, including:

- Virginia State Crime Commission;
- Virginia Criminal Sentencing Commission;
- Alexandria Circuit Court;
- Compensation Board;
- Fairfax Circuit Court;
- Office of the Executive Secretary of the Supreme Court of Virginia;
- Virginia Department of Criminal Justice Services;
- Virginia Department of Corrections; and,
- Virginia State Police.¹³

Data was obtained from a variety of sources to develop a cohort of nearly 23,000 adult defendants charged across Virginia during a one-month period (October 2017) whose final case dispositions were tracked through December 31, 2018.¹⁴ Release mechanisms to be examined include summons, personal recognizance bond, unsecured bond, and secured bond, along with certain conditions of release such as pretrial services agency supervision. The data will allow for comparisons to be made between similarly situated defendants by type of release mechanism, offense, and locality. The data will also be analyzed to answer the question posed by the Crime Commission of how effective various pre-trial release mechanisms are at ensuring public safety and appearance at court proceedings.

The data will further help to inform policy-making throughout the pre-trial process on such topics as:

- i. the effectiveness of various pre-trial release mechanisms;
- ii. judicial officer decision-making in relation to bond and conditions of release;
- iii. role of Virginia's current pre-trial risk assessment instrument (VPRAI-R); and,
- iv. the utility of a pre-trial risk assessment instrument in relation to bond determinations.

Crime Commission members were presented with preliminary findings describing the dataset at the November meeting, including the demographics of the defendants in the cohort (gender, age, race), the types of charges included in the October 2017 contact event, the type of bond set at initial contact, and the median bond amounts for felonies and misdemeanors at initial contact.¹⁵

Crime Commission members endorsed three recommendations relating to the Virginia Pre-Trial Data Project at the December meeting. Recommendations 1 and 3 were endorsed by a majority vote and Recommendation 2 was unanimously endorsed. Staff anticipates that findings from this study will be presented in Fall 2019.

Recommendation 1: Amend Virginia Code §§ 16.1-69.24 and 18.2-456 to create a new charge of contempt of court specifically for failure to appear.

Failure to appear can be charged under numerous statutes in Virginia.¹⁶ While some of the statutes provide clarity in identifying when a charge is specifically for failure to appear, other statutes are not as clear. For example, if a defendant was charged under the general contempt of court statute,¹⁷ it is difficult to determine whether the charge was for failure to appear or for some other violation of a court order, such as failure to complete community service or pay restitution, if there was no official recordation of the reason for the contempt charge. Staff found that the ambiguity of these statutes creates a significant hurdle in attempting to determine statewide appearance rates on criminal charges in Virginia. Staff proposed this recommendation in order to provide a more uniform method of charging failure to appear and to more efficiently track statewide court appearance rates.

House Bill 2452 (Delegate Les R. Adams) was enacted during the Regular Session of the 2019 General Assembly to address this recommendation.¹⁸ This legislation:

- i. created a new charge specifically for willful failure to appear within the general contempt of court statute;¹⁹
- ii. directed that charges of contempt of court for failure to appear be issued under this new provision;
- iii. required the court to specify in writing the reason for which a person was charged with or punished for contempt; and,
- iv. specified that the new failure to appear provision within the contempt statute does not preclude prosecution under the criminal code statute for failure to appear.²⁰

Concerns were raised about this legislation in regard to the *willfulness* element of failure to appear and the *summary* nature of certain contempt proceedings. Staff conducted research in order to address both of these concerns. In regard to the *willfulness* element, Virginia case law requires a finding of willful intent in order to support a conviction for criminal contempt.²¹ The Virginia statute punishing criminal failure to appear specifically includes willfulness as an element of such offense.²² This willfulness element was ultimately included in the legislation that created the new charge of failure to appear within the general contempt of court statute.²³ It should also be noted that if a person is provided with notice of a hearing date and does not appear, the court can infer that the failure to appear was willful.²⁴

In regard to *summary* proceedings under the general contempt statute, staff noted that the statute is permissive in that courts “may” punish summarily for contempt.²⁵ While the statute allows for summary punishment, due process generally requires notice of a charge and opportunity to be heard unless the contemptuous behavior occurred in open court.²⁶ Statewide general district court data provided by OES for

October 2017 (not related to data within the Virginia Pre-Trial Data Project) showed that individuals were currently being charged with failure to appear under the general contempt statute.²⁷ Consultations with practitioners revealed that while individuals are being charged with failure to appear under the general contempt statute, the common practice was to issue a charge, appoint counsel, and conduct a hearing on the matter. Staff determined that legislation would preserve current practices while allowing for better tracking of appearance rates across the Commonwealth.

Recommendation 2: Request that Crime Commission staff convene stakeholders to develop a plan for statewide data systems integration and case tracking across the criminal justice system and any other related systems.

One of the benefits of the Virginia Pre-Trial Data Project was identifying the strengths and weaknesses of each data system used to generate the dataset. Combining the required information across multiple agencies in a precise manner was a very arduous and time-consuming task. All of the systems utilized for the Project were designed and created for different purposes based upon the needs of individual agencies. Each system had limitations, many were antiquated, and the capabilities of systems to interface with each other were limited or non-existent. Consequently, while each system may serve the needs of an individual agency, the systems do not functionally capture and share data that can be readily accessed.

Staff proposed this recommendation because integrated data systems are needed in order to efficiently assess the effectiveness of Virginia’s criminal justice system on a regular basis. Under the current data housing structure, combining the information obtained as part of the Virginia Pre-Trial Data Project on a regular basis would be nearly impossible with existing resources. The goal of statewide data system integration and case tracking is to provide evidence-based information that can be used by policy makers, practitioners, and researchers to inform decision-making and improve the overall criminal justice system.²⁸

Recommendation 3: Request that the Office of the Executive Secretary of the Supreme Court of Virginia (OES) be included as part of Recommendation 2 in order to determine a method for tracking the number of criminal defendants statewide who are found to be indigent pursuant to Virginia Code § 19.2-159.

Staff attempted to determine the number of criminal defendants in Virginia who were found to be indigent by the court; however, that figure was not readily available. The number of indigent defendants in Virginia is vital to know due to the current national debate regarding the use of monetary bail.²⁹ The premise of the debate is that low-income defendants often remain detained prior to trial because they do not have the resources to post a monetary bond. The utilization of pretrial services agency supervision has been proposed as an alternative to monetary bond.³⁰ Data from DCJS showed that 59% (16,964 of 28,711) of placements made to pretrial services agency supervision in Virginia during FY18 were in conjunction with a secured bond.³¹

If a defendant claims to be indigent and is charged with a criminal offense that is punishable by death or incarceration, the court must determine whether that defendant qualifies as indigent for purposes of appointing counsel based upon the guidelines set forth in the Virginia Code.³² The number of indigent defendants in Virginia's criminal justice system is unknown. Currently, only a proxy number of indigent defendants can be determined based on the type of attorney recorded at case closure within the OES Court Case Management Systems (CCMS).

Several challenges exist to determining an accurate or precise number of defendants found to be indigent. First, data is not specifically recorded for determinations of indigency by the court. While information is noted on a form and placed in the court file, the determination of indigency is not recorded in the CCMS.³³ Second, if the court or the Commonwealth's Attorney waive jail time, or if the defendant waives his right to be represented by an attorney, then he is not entitled to court-appointed counsel and no determination of indigency is required.³⁴ Third, friends or family of an indigent defendant may use their own resources to retain an attorney on his behalf. Fourth, the current CCMS is designed as a case-based tracking system, and therefore a formal methodology would need to be developed in order to determine the total number of individual defendants found to be indigent.

In recognition of the challenges to determining the number of indigent defendants, staff proposed including OES in the discussions relating to statewide data systems integration and case tracking. The Crime Commission sent a letter to OES which noted the significance of tracking the number of indigent defendants and requested that OES continue to participate in discussions related to statewide data systems integration and case tracking.

Pretrial Services Agencies Study Update

Due to the ongoing Virginia Pre-Trial Data Project, staff did not make any recommendations to Crime Commission members relating to pretrial services agencies;³⁵ however, staff continued to examine and monitor these agencies throughout the course of the year. Crime Commission staff worked closely with DCJS and stakeholders to address concerns that were identified with the administration and operation of pretrial services agencies during this ongoing study.³⁶ Staff developed and disseminated over 2,000 surveys on behalf of DCJS as part of a formal stakeholder needs assessment to identify the strengths and weaknesses of pretrial services agencies.³⁷

The needs assessment resulted in a large amount of positive feedback relating to (i) awareness and understanding of pretrial services agencies, (ii) value of pretrial agencies services and supervision, (iii) good working relationships among stakeholders, and (iv) adequacy of training. The large majority of responding stakeholders "agreed to strongly agreed" that:

- They understand the role and purpose of pretrial services agencies;
- Pretrial services agencies are a necessary component of the criminal justice system; and,

- Pretrial services agencies provide a valuable service to their court system or their locality.

The needs assessment also identified several areas of concern amongst stakeholders, including:

- A desire for more training opportunities;
- Pretrial services agencies not notifying prosecutors and defense counsel of bond condition violations;
- Deficiencies in the Pretrial and Community Corrections case management system (PTCC);
- The role of Virginia’s revised risk assessment instrument (VPRAI-R);
- Increased placements and failures to appear by defendants placed on pretrial services supervision, potentially due to the “monitoring” supervision level included in the new Praxis;
- The purpose and role of pretrial services agency officers being present in court and in making release/detain recommendations;
- Magistrate bail decisions;
- Resource and funding needs of pretrial services agencies;
- Lack of a funding formula for the allocation of state funds; and,
- Reduction in state funding.

Additionally, staff provided oversight of the Virginia Pretrial Services Stakeholder Group that was convened by DCJS to review how pretrial services agencies are administered in Virginia and to make recommendations to improve the delivery of such services.³⁸ Based upon the results of the needs assessment, oversight of DCJS work group, and continued communications with stakeholders, staff found that while broad support continues to exist for the use of pretrial services agencies, many of the concerns previously identified during this study persist.

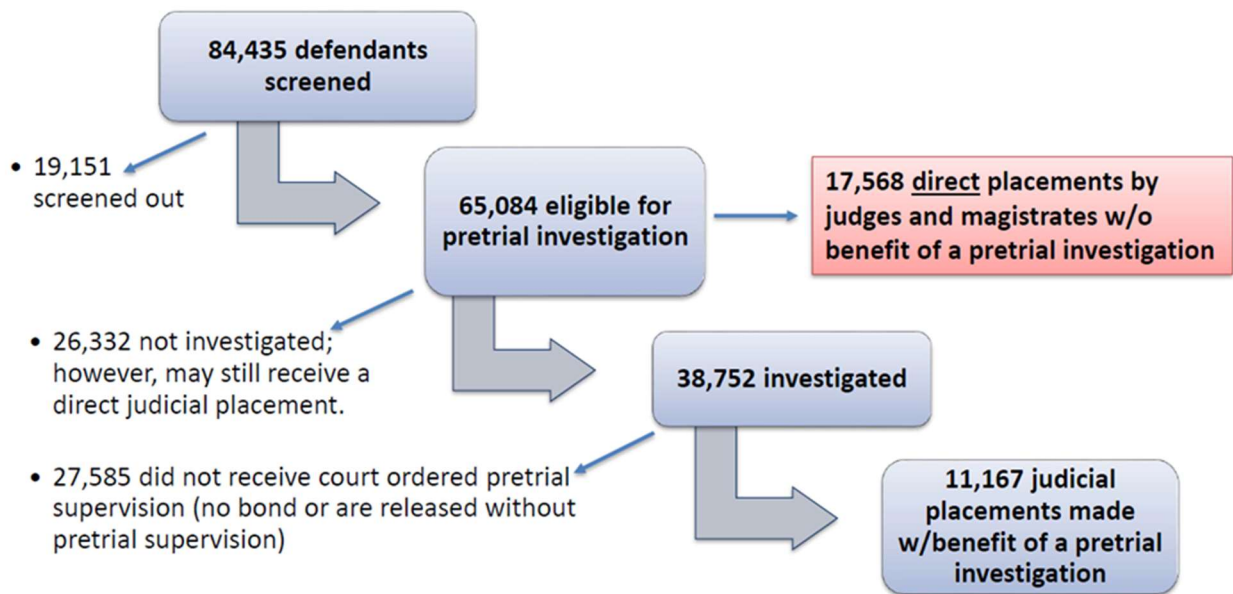
Pretrial investigation reports are not being completed for all defendants who are eligible for pretrial services agency supervision.

The Virginia Code requires pretrial services agency officers to investigate and interview defendants who are detained in jails and to complete a pretrial investigation report for the court.³⁹ In FY18, over 27,500 of the nearly 39,000 defendants who received a pretrial investigation were not ultimately placed on pretrial services agency supervision as a condition of bond. The fact that a defendant was interviewed and not placed on pretrial services agency supervision was not a concern noted by staff because the court had received information to use when making a bond determination. However, over 26,000 defendants who were eligible for a pretrial investigation did not receive one. Throughout the course of the study, staff were presented with numerous reasons as to why pretrial investigations are not completed, such as mental health issues, medical emergencies, intoxication, limited resources of pretrial services agencies, time constraints at jails, malfunctioning video interview equipment, and defendants who refuse to be interviewed. While there are many reasons why a pretrial investigation may not be completed, data is not readily

available or consistently maintained in order to determine why such a high number of eligible defendants are not receiving the required pretrial investigation.

Additionally, it should be noted that significantly more defendants were placed on pretrial services agency supervision without a pretrial investigation (direct placement) than with such an investigation.⁴⁰ Of the 28,735 placements to pretrial services supervision made in FY18, 61% (17,568) of defendants were directly placed without a pretrial investigation, while only 39% (11,167) of defendants were placed following such an investigation.⁴¹ Staff found these numbers to be significant for two reasons. First, pretrial services agencies invest significant resources in conducting pretrial investigations. Second, pretrial services agency directors and officers frequently commented on the lack of resources available to such agencies. The resources required to conduct such pretrial investigations coupled with the lack of resources that pretrial services agencies are facing is an issue that must be further examined as agencies consider how to allocate resources between their investigative and supervision responsibilities.

Pretrial Services Agency Placement Progression, FY18



Source: Graphic prepared by Virginia State Crime Commission staff based upon data provided by the Virginia Department of Criminal Justice Services, FY18 PTCC Merged Monthly Report.

Recommendations provided to judges by pretrial services agencies are inconsistent at times with the facts and circumstances of an offense.

Pretrial services agencies may provide three different recommendations to the court: release, detain, or no recommendation.⁴² Concerns have been raised over the credibility of these recommendations because they are based upon a matrix that does not include all the factors which a judicial officer is required to consider. The Virginia Code requires pretrial services agency officers to present a pretrial investigation

report with recommendations to the court in order to assist with bail determinations.⁴³ The Code also requires judicial officers to consider ten specific factors when setting the terms of bond.⁴⁴ The first factor listed that judicial officers must consider is “the nature and circumstances of the offense”,⁴⁵ which is noteworthy because this factor is not taken into account by the risk assessment tool used by pretrial services agencies to make a recommendation.⁴⁶

It should be noted that pretrial risk assessment tools, including the VPRAI, were developed as a tool to assist rather than supplant judicial decision-making. Staff consulted with several judges and were provided with numerous pretrial investigation reports in which the recommendation did not appear appropriate to the judge making the ultimate determination on bond. While judges continue to value the information obtained during the pretrial investigation, some judges have developed serious concerns about the credibility of the recommendations provided by those same agencies.⁴⁷ Credibility concerns typically arise when the particular facts and circumstances of a case would lead a reasonable person to deny bond (serious flight risk, risk to public safety or self, etc.) or when recommendations contradict current Virginia statutes that mandate a presumption against bail or require a secured bond. Such credibility concerns are not unique to Virginia or to the specific VPRAI risk assessment tool. Emerging research, including interviews of key stakeholders across multiple states, has highlighted that judges,⁴⁸ as well as prosecutors, defense counsel, and pretrial services staff,⁴⁹ value the information provided by risk assessment tools, but also share similar concerns in regard to the credibility of some recommendations.

Additionally, staff found that there was concern from both judges and pretrial services agency officers in regard to the 85% Praxis recommendation concurrence rate established by DCJS.⁵⁰ Judges expressed concern that their adherence to this rate was being tracked when making bond determinations. Pretrial services agency officers noted that adherence to this rate may be a consideration when deciding whether to override a recommendation from the Praxis matrix.

The pretrial services agency recommendation to the court auto-fills in the Virginia Pretrial Risk Assessment Report based upon information entered into the PTCC case management system and the Praxis decision-making matrix within that system.⁵¹ This recommendation is based upon the defendant’s risk level, as determined by eight risk factors, and the charge category established within the Praxis matrix.⁵² Objective risk assessment instruments are unable to account for the factual nuances of each individual criminal offense; however, as noted in the 2016 report on the VPRAI and Praxis Revised, “...the release and detention recommendation by Pretrial Services should be driven primarily by risk, yet with legitimate consideration of the seriousness of the current offense, and with responsiveness to risk tolerance which dictates more restrictive recommendations for certain types of charges.”⁵³ Pretrial services agency officers are instructed to note mitigating/aggravating considerations in the report to the court and do have authority to override the auto-generated recommendation; however, DCJS requires that “the Praxis recommendation concurrence rate for each agency must be 85% or higher.”⁵⁴

Information is not being provided to all judicial officers, including magistrates, by pretrial services agencies as intended by the pretrial services act due to conflicts within the Virginia Code and other resource and logistical issues.

The purpose of Virginia's Pretrial Service Act is to establish pretrial services agencies to assist judicial officers in discharging their duties relating to bail determinations.⁵⁵ While the intent of the Pretrial Services Act is to ensure that information is provided to judicial officers to assist with bail determinations, the Virginia Code only requires pretrial services agencies to provide a pretrial investigation report to the court.⁵⁶ Judicial officers include judges, magistrates, and clerks or deputy clerks of district and circuit courts.⁵⁷ Staff were only able to identify one pretrial services agency that routinely provides information to magistrates to assist with bail determinations.⁵⁸

Providing information to magistrates is significant because the Virginia Code requires that a person who is arrested must be taken without unnecessary delay before a judicial officer.⁵⁹ Nearly all arrested individuals are initially taken before a magistrate, where the first bond hearing is conducted and a decision to detain or set the conditions of pre-trial release is made.⁶⁰ Best practices for pretrial services agencies seem to underscore that corroborated information should be provided to judicial officers early in the criminal justice process.⁶¹ Additionally, numerous organizations have called for the use of a "validated pretrial risk assessment as a component of a fair pretrial release system..."⁶² Magistrates in Virginia have expressed a desire to receive information from pretrial services agencies.⁶³ While acknowledging that resource and logistical issues may create obstacles to providing information to magistrates, staff identified the first appearance before a magistrate as an opportune time to begin providing information to assist with bail determinations.

DCJS Administrative Actions

At the November meeting of the Crime Commission, DCJS provided an update on its efforts to address the administration of pretrial services agencies.⁶⁴ This presentation included a DCJS work plan to implement a revised VPRAI report, provide enhanced training for pretrial services agency officers and stakeholders, update and replace the PTCC system, implement an enhanced monitoring process to ensure pretrial services agencies are in compliance with DCJS standards and guidelines, develop a funding formula for pretrial services agencies, and revalidate the VPRAI with a larger data set.⁶⁵

Pre-Trial Process

The pre-trial process encompasses the various stages of a criminal case from the time a defendant is charged with an offense until the trial and/or sentencing of the matter. This time period includes the initial charge, any appearances before a magistrate or the court, bond hearings, the determination of pre-trial release conditions, and compliance with any of those release conditions while awaiting trial and/or sentencing. In order to fully understand how the pre-trial process functions across Virginia, staff reviewed relevant Virginia Code provisions, conducted field visits, and

observed court proceedings, magistrate offices, pretrial services agencies, and bail bondsmen. Through these interactions, staff found that the pre-trial process across Virginia is quite diverse.

Procedures before magistrates are generally uniform across the Commonwealth.

The Virginia Code requires that a person who is arrested must be taken without unnecessary delay before a judicial officer.⁶⁶ Nearly all arrested defendants are initially taken before a magistrate, where the first bond hearing is conducted and a decision to detain or set the conditions of pre-trial release is made.⁶⁷ When conducting a bond hearing, magistrates are required to consider ten factors set forth in the Virginia Code.⁶⁸ Magistrates commonly record information obtained during this bond hearing on a *Checklist For Bail Determinations* (Form DC-327) and then forward this form to the court with other documents of the case.⁶⁹ It is important to note that this form is not a risk assessment tool like the Virginia Pretrial Risk Assessment Instrument (VPRAI). The form was developed to assist magistrates with considering all the factors mandated by the Virginia Code while conducting the bond hearing.

Magistrates generally have broad discretion when setting the conditions of pre-trial release for a defendant;⁷⁰ however, the Virginia Code does impose three distinct restrictions on these decisions:

1. If a defendant is charged with an offense that carries a rebuttable presumption against bail, the magistrate cannot admit that defendant to bail without the agreement of the Commonwealth’s Attorney;⁷¹
2. If a defendant is arrested on a *capias* where the court has set the terms of bail, the magistrate must either impose the terms ordered by the court or set more restrictive terms;⁷² and,
3. If a defendant is arrested on a felony and has a prior felony conviction, is on bond for an unrelated arrest, or is on probation or parole, the magistrate can only release that defendant on a secured bond, unless the Commonwealth’s Attorney agrees to waive the secured bond requirement.⁷³

Procedures before the court vary widely across the Commonwealth.

Staff focused the study on two types of pre-trial proceedings before the court, including the defendant’s first appearance and any bond hearings. Procedures for both of these types of proceedings vary by court and can differ even amongst courts within the same locality.

First Appearance

The term “first appearance” refers to the time when a defendant is first brought before a judge following his arrest. Staff discovered that the terminology for this event varied across jurisdictions, with localities using terms such as first appearance, advisement, or arraignment to describe this proceeding. Staff further found that the procedures for this first appearance vary by (i) time waiting to appear before a judge, (ii) parties present, (iii) use of technology, and (iv) consideration of bond.

Several reasons exist for these variances in practices. First, not all courts are in session every day of the week in all areas of the Commonwealth. The Virginia Code requires that a person who remains detained on a criminal offense must be brought before the court on the first day that the court sits after the person has been charged.⁷⁴ In some jurisdictions, the court sits every day of the week, while in other jurisdictions the court may only sit once every week.⁷⁵

Second, the Virginia Code only requires that the defendant be brought before the court and informed of his right to counsel and the amount of his bond.⁷⁶ Some courts strictly comply with this requirement, while in other courts, the defendant, counsel for the defendant, the Commonwealth's Attorney, and a pretrial services agency officer are all present at the first appearance. Third, while the Virginia Code allows for personal appearance by two-way electronic video and audio,⁷⁷ not all courts possess the resources or broadband capability to utilize this equipment.

Finally, a great deal of confusion exists in the field regarding whether the terms of bail can be modified at the first appearance. The Virginia Code only requires that the court "inform" the defendant of the amount of his bond at the first appearance.⁷⁸ That same Code provision also requires the court to hear bond motions from either the defendant or the attorney for the Commonwealth as soon as practicable; however, the statute does not specify whether such motions must be heard at the first appearance.⁷⁹ Separate Virginia Code provisions address the procedures for appealing bail conditions⁸⁰ and for increasing the amount of bond or revoking bail.⁸¹ These various statutes created numerous questions amongst practitioners, such as whether (i) the court may review bond conditions at the first appearance, (ii) the court is required to review bond conditions at the first appearance, (iii) the court is limited only to decreasing bond amounts at the first appearance, and (iv) a review of bond conditions at the first appearance constitutes a bond hearing and thereby prohibits future consideration of the bond by that same court. Staff observed that courts in some jurisdictions consider bond at first appearance while other jurisdictions require that a formal bond hearing be scheduled prior to making any such determinations.

Bond Hearings

As with first appearance procedures, staff found that practices relating to bond hearings before courts vary by such factors as frequency of dockets, limits on the number of bond hearings per day, and local rules and procedures. The Virginia Code requires that absent good cause, a bond hearing must be held within three days from the time a motion is made for such a hearing.⁸² During 2018, staff assisted the *Pretrial Release Study Group* of the Virginia Criminal Justice Conference with the development of a survey for Commonwealth's Attorneys, Public Defenders, and court-appointed counsel to assess compliance with this statute.⁸³ The survey responses identified several reasons that contribute to difficulties in complying with this statute, such as the length of time between days when court is in session, limits on the number of bond hearings that will be conducted per day, and local rules that require advance notice or coordination amongst various parties in order to have the matter placed on the docket. Furthermore, because decisions relating to bond may be appealed,⁸⁴ the

practices for scheduling a bond hearing in the district court may vary from the procedures for docketing such a hearing in the circuit court.

When setting the conditions of pre-trial release for a defendant, a judge is only limited by one of the three distinct restrictions imposed on magistrates by the Virginia Code. If a defendant is arrested on a felony and has a prior felony conviction, is on bond for an unrelated arrest, or is on probation or parole, a judge can only release that defendant on a secured bond, unless the Commonwealth's Attorney agrees to waive that secured bond requirement.⁸⁵ However, a judge may set bond conditions, without the agreement of the Commonwealth's Attorney, for a defendant who is charged with an offense that carries a rebuttable presumption against bond.⁸⁶ Furthermore, judges are not prohibited from modifying the terms of bond that were set by a court when issuing a *capias* for a defendant.⁸⁷

Variances exist across the Commonwealth in relation to the use of GPS and similar tracking devices on a pre-trial basis.

Staff found that the use of GPS and similar tracking devices varies across the Commonwealth. The Virginia Code allows judicial officers to place defendants on monitoring by a GPS or similar tracking device as a condition of pre-trial release.⁸⁸ The Code further permits the court to order that the defendant pay the costs associated with monitoring by such a device.⁸⁹ During last year's study, staff conducted an informal survey which revealed that the availability, vendors, and costs (\$3-\$15 per day) varied greatly across the Commonwealth.⁹⁰

Staff further discovered that no statewide regulations exist for the use of GPS or similar tracking devices on a pre-trial basis. Language in the 2010 state budget required the Secretary of Public Safety to coordinate the development of a system for using GPS or other forms of electronic monitoring as an alternative to incarceration.⁹¹ That budget language further required DCJS to develop guidelines and the Department of Corrections to negotiate statewide contracts for the use of such devices by sheriffs and regional jails.⁹² The guidelines were finalized and published by DCJS.⁹³

Staff noted that numerous regulations exist in Virginia for ignition interlock systems which are installed on a defendant's vehicle following a conviction for driving under the influence.⁹⁴ Those regulations address such matters as approval of such devices, fees, device specifications, calibration, and records and reporting.⁹⁵ It is important to note that the Virginia Alcohol Safety Action Program (VASAP) is primarily funded by fees from offenders ordered to participate in the program along with periodic federal highway grant monies.⁹⁶ While extensive regulations exist for the use of these ignition interlock systems on convicted defendants, no such regulations exist for the use of GPS or similar electronic devices to monitor pre-trial defendants who are presumed innocent of any offense.

Staff considered multiple options to address the varying practices and lack of regulations for GPS and similar tracking devices on a pre-trial basis; however, challenges exist for each of these options. Staff determined that (i) DCJS does not

currently possess the technical expertise to develop regulations for these devices, (ii) funding would be required for such regulations, (iii) electronic monitoring programs could not be self-funded in the same manner as VASAP, (iv) creating additional requirements governing the use of such devices could result in less people being released from custody, and (v) in some instances, these electronic devices are utilized based upon a civil contract as opposed to an order from a judicial officer. Staff concluded that further research is necessary to develop potential solutions to the variances in use and lack of regulations for these electronic devices on a pre-trial basis.

ROLE AND REGULATION OF BAIL BONDSMEN

Staff were asked to examine the role and regulation of bail bondsmen in the pre-trial process. In undertaking this directive, staff conducted field visits, consulted with numerous bail bondsmen, developed and disseminated a survey to all licensed bail bondsmen, and reviewed pertinent Virginia Code provisions and regulations.

Bail bondsmen have a large presence throughout the pre-trial process in Virginia. As previously noted, data from DCJS showed that 59% (16,964 of 28,711) of placements made to pretrial services agency supervision in Virginia during FY18 were in conjunction with a secured bond.⁹⁷ This figure does not account for the numerous defendants who were ordered to post a secured bond without being placed on pretrial agency services supervision.⁹⁸

There are three types of licenses for bail bondsmen in Virginia. An individual may hold one or a combination of these licenses, including:

Surety bail bondsmen: These bondsmen serve as agents on behalf of insurance companies that guarantee the bond for a defendant.⁹⁹ In addition to being licensed by DCJS as bail bondsmen, these individuals are also licensed as property and casualty insurance agents by the State Corporation Commission (SCC).¹⁰⁰ Because of this dual licensing, oversight of these individuals is provided by both DCJS and the SCC.¹⁰¹ Both DCJS and the SCC are required to share information with each other concerning the licensure of these individuals.¹⁰²

Property bail bondsmen: These bondsmen, or their agents, pledge real property, cash, or certificates of deposit as security for guaranteeing the bond for a defendant.¹⁰³ Each property bail bondsman must provide proof of collateral of at least \$200,000 for himself plus an additional \$200,000 for each of his agents.¹⁰⁴ The aggregate value of the bonds posted by these bondsmen cannot exceed four times the value of the collateral.¹⁰⁵ Oversight of these bondsmen is only performed by DCJS.¹⁰⁶

Agent: These bondsmen have been given power of attorney to write bonds on behalf of a property bail bondsman.¹⁰⁷ Oversight of these individuals is only performed by DCJS.¹⁰⁸

As of November 2018, there were 375 actively licensed bail bondsmen in Virginia.¹⁰⁹ This included 238 surety bail bondsmen, 51 property bail bondsmen, 56 agents, and an additional 30 bondsmen who had a combination of these licenses.¹¹⁰

It is important to note that bail bondsmen are regulated as individuals. Furthermore, while the SCC regulates various financial services, business entities, and public utilities,¹¹¹ neither the SCC nor DCJS are expressly authorized to investigate and regulate businesses that engage in property bail bonding.¹¹²

Bail bondsmen guarantee a defendant's appearance at court proceedings and may impose conditions of supervision above and beyond those ordered by judicial officers.

Bail bondsmen guarantee a bond that has been posted to "...assure performance of terms and conditions specified by order of an appropriate judicial officer as a condition of bail."¹¹³ The Virginia Code does not specifically require bail bondsmen to supervise the conditions of bond that were ordered by a judicial officer.¹¹⁴ Staff found that bail bondsmen view their primary role as ensuring that the defendant appears at court proceedings as required.¹¹⁵ These bail bondsmen further advised that they do not routinely supervise the conditions of release imposed by judicial officers. Staff observations of the practices of bail bondsmen revealed that they rely heavily on the family, friends, and/or acquaintances of the defendant when deciding whether to post the bond and in seeking to ensure that the defendant appears at court proceedings. It is not uncommon for a bail bondsman to post a bond without ever speaking to the defendant since much of their interaction is with the family, friends, and/or acquaintances of the defendant who will be the co-signers on the bond. These practices allow bail bondsmen to guarantee the appearance of not only Virginia residents, but of residents of other states who live near Virginia's borders and are charged with committing crimes in the Commonwealth.

While bail bondsmen do not routinely supervise the conditions of release imposed by judicial officers, they may at times place conditions on the defendant that are above and beyond what was ordered by a judicial officer. For example, staff learned from discussions with bail bondsmen that they may require defendants to agree to such provisions as GPS monitoring, drug testing, drug treatment, or a curfew, as a condition of posting or maintaining the bond. These conditions are more commonly imposed when family, friends, and/or acquaintances of the defendant advise the bail bondsman of behavior by the defendant that creates a risk to himself, the community, or to the likelihood that he will not appear at court proceedings.

The criminal background licensing restrictions are less stringent for bail bondsmen than for other professions regulated by DCJS.

A person who has been convicted of a felony cannot be licensed as a bail bondsman unless they have been pardoned or their civil rights have been restored.¹¹⁶ However, because bail bondsmen are licensed as individuals, a person who is disqualified from licensure due to a felony conviction could still own and operate a property bail

bonding company by retaining other licensed bail bondsmen to write bonds on behalf of that company.¹¹⁷

Additionally, there are no misdemeanor convictions that will disqualify a person from becoming licensed as a bail bondsman.¹¹⁸ The lack of disqualifying misdemeanor convictions stands in contrast to several other professions regulated by DCJS that including certain disqualifying misdemeanor convictions, such as private security services,¹¹⁹ bail enforcement agents,¹²⁰ special conservators of the peace,¹²¹ and tow truck drivers.¹²²

A surety on a bond (bail bondsman, family member, friend, etc.) Can request the issuance of a *capias* for the arrest of a defendant from a judicial officer for any reason.

The Virginia Code allows the surety on a bond to request a *capias* for the arrest of a defendant and mandates that judicial officers issue the *capias* when such a request is made.¹²³ The statute contains no provision requiring that the surety provide a reason for why the *capias* is being requested.¹²⁴ It is important to note that the surety on the bond can be any number of individuals, including a bail bondsman, family member, friend, employer, or other acquaintance of the defendant.

Challenges exist to providing oversight of bail bondsmen due to varying practices by courts and communication between existing data systems.

The Virginia Code allows the court to order that a bond be forfeited to the Commonwealth if a defendant fails to appear as required.¹²⁵ In consulting with bail bondsmen, staff found that the practice of issuing process against bail bondsmen varies by court. In some localities, the court will issue a show cause against the bail bondsman as soon as the defendant fails to appear, while in other localities the court never issues a show cause to forfeit the bond. Additionally, staff discovered that DCJS is not frequently notified by the court when a bail bondsman fails to forfeit a bond as ordered.¹²⁶ Furthermore, the Virginia Code does not require DCJS to suspend a bail bondsman's license for failing to pay a forfeiture ordered by the court.¹²⁷ Therefore, a bail bondsman may continue posting bonds even if that bondsman has failed to comply with an order of the court to forfeit a bond.¹²⁸

Staff further found that data systems relating to bonds and bail bondsmen do not interface.¹²⁹ The number and amount of bond forfeitures statewide is unknown. Each licensed property bail bondsman is required to submit a monthly list of all outstanding bonds to DCJS;¹³⁰ however, there is no way to readily verify if this report is complete and accurate.¹³¹ Staff proposed that these concerns be considered as part of the plan for statewide data integration and case tracking across the criminal justice system and any other related systems.¹³²

Recommendations

In addition to the Virginia Pre-Trial Data Project, Crime Commission members were also presented with study findings relating to the pre-trial process and bail bondsmen at the November meeting and unanimously endorsed four recommendations at the December meeting.

Recommendation 1: Amend Virginia Code § 19.2-121 to require magistrates to complete the existing *Checklist For Bail Determinations* (Form DC-327) and transmit it to the court.¹³³

Staff found that judges, magistrates, Commonwealth’s Attorneys, and criminal defense attorneys all agreed that information on the defendant’s background and the facts and circumstances of the offense were incredibly useful when making bond determinations. This recommendation seeks to ensure that the information received by magistrates at the first bond hearing is available to other stakeholders for use during pre-trial proceedings relating to bond.

Bond determinations are made on a case-by-case basis by magistrates and judges using statutory requirements and discretion. A defendant may have multiple bond hearings before different judicial officers as his case progresses through the pre-trial process. Nearly all arrested defendants are initially taken before a magistrate, where the first bond hearing is conducted and a decision to detain or set the conditions of pre-trial release is made. Magistrates commonly record information on this form during that first bond hearing.

House Bill 2453 (Delegate Les R. Adams) was enacted during the Regular Session of the 2019 General Assembly to address this recommendation.¹³⁴ The legislation requires magistrates to complete this form and transmit it to the court whenever conducting a bond hearing for a person arrested on a warrant or *capias* for a jailable offense.

Recommendation 2: Amend Virginia Code § 19.2-149 to require the basis of an arrest to be stated by a surety when requesting a *capias*.

This recommendation seeks to ensure that the basis for a surety’s *capias* is recorded and to deter the use of such a *capias* by bail bondsmen as a means of enforcing a civil contract.¹³⁵ Currently the Virginia Code does not require that a surety provide a reason when they are requesting that a *capias* be issued by a judicial officer for the arrest of a defendant.¹³⁶ Because no such reason is required, the basis for issuance of the *capias* is not recorded. This frequently leads to confusion amongst the court, Commonwealth’s Attorney, defendant, and counsel for the defendant when he is returned to custody on this *capias*. Additionally, staff were advised that certain bail bondsmen will request a surety’s *capias* in instances where the defendant failed to comply with the terms of a payment plan for the bond.¹³⁷

House Bill 2453 (Delegate Les R. Adams) was enacted during the Regular Session of the 2019 General Assembly to address this recommendation.¹³⁸ Additionally, staff

were advised by OES that as a result of the enactment of this statute, the *Surety's Capias and Bailpiece Release* (Forms DC-331 and CC-1305) will be amended to include a required section for the basis of arrest.

Recommendation 3: Amend Virginia Code § 18.2-64.2 to increase the penalty for carnal knowledge of a defendant by a bail bond company owner or agent from a Class 1 misdemeanor to a Class 6 felony.

Increasing the penalty for carnal knowledge of a defendant by a bail bond company owner or agent serves two primary purposes. First, any bail bondsman convicted of such a felony offense could no longer be licensed by DCJS, unless he was pardoned or his civil rights were restored.¹³⁹ Currently there are no misdemeanor convictions, including carnal knowledge pursuant to this statute, that prohibit an individual from being licensed as a bail bondsman.¹⁴⁰ Second, this statute currently punishes carnal knowledge of a defendant by other individuals (correctional officers, probation/parole officers, court service unit employees, volunteers with such entities, etc.) as a Class 6 felony.¹⁴¹ Increasing the penalty for a violation of this statute by a bail bond company owner or agent provides consistent punishment amongst stakeholders in the criminal justice system.

Staff requested data from the Virginia Criminal Sentencing Commission in regard to misdemeanor violations of Virginia Code § 18.2-64.2. The data revealed that between FY16 to FY18 there were three misdemeanor convictions under this statute.¹⁴² All three convictions were entered in the circuit court against the same licensed bail bondsman.¹⁴³

Legislation was introduced by Sen. A. Benton Chafin (Senate Bill 1649) during the Regular Session of the 2019 General Assembly to address this recommendation. That bill was left in the Senate Committee on Finance.¹⁴⁴

Recommendation 4: Request Crime Commission staff to continue to examine the overall pre-trial process and to convene focus groups to address issues of uniformity within that process, including:

- First appearances;
- Bond hearings;
- Timely sharing of information, such as bail condition violations;
- Conditions of supervision and fees (GPS, drug testing, etc.); and
- Monitoring of pre-trial jail populations.

Staff found that significant variances exist across the Commonwealth in relation to practices and procedures during the pre-trial process. These variances are commonly due to factors such as frequency of court dockets, availability of stakeholders, resources and technology, and local practices. Staff plans to utilize the findings of the Virginia Pre-Trial Data Project to identify particular areas of concern and inform further examination of the overall pre-trial process. Additionally, staff will need to consult with stakeholders across the Commonwealth in order to determine the most effective means of promoting uniformity within the pre-trial process while avoiding any potential unintended consequences of such reforms.

Acknowledgements

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Indigent Defense Commission

Office of the Executive Secretary of the Supreme Court of Virginia

Virginia Association of Commonwealth's Attorneys

Virginia Community Criminal Justice Association

Virginia Criminal Justice Conference

Virginia Criminal Sentencing Commission

Virginia Department of Corrections

Virginia Department of Criminal Justice Services

Virginia Sheriffs' Association

Virginia State Police

The Crime Commission also wishes to thank all judges, magistrates, Commonwealth's Attorneys, Public Defenders, court-appointed counsel, Sheriffs, local and regional jail administrators, city and county administrators, pretrial services agency directors, managers, and officers, and bail bondsmen who provided survey responses.

Appendix 1: Overview of Virginia Pre-Trial Data Project

Primary Purpose: Evaluate the effectiveness of various pre-trial release mechanisms at ensuring public safety and appearance at court proceedings.

Pre-trial release mechanisms at initial contact and at time of release:

- Summons
- Personal recognizance
- Unsecured bond
- Secured bond (cash, property, surety)
- Held without bond

The Project contains 2 phases:

1. Development of the October 2017 Cohort [Complete]

- A cohort of nearly 23,000 defendants charged via summons, warrant, or direct indictment in October 2017 tracked through December 31, 2018.

2. Tracking Outcomes for the October 2017 Cohort [Nearly Complete]

- **Final Disposition of Charge(s):** disposition status of October 2017 contact event charge(s)
 - Guilty, *nolle prosequi*, dismissed, deferred, not guilty, NGRI, etc.
- **Public Safety:** new in-state arrest for jailable offense prior to final disposition of case.
- **Failure to appear:** any instance where the defendant was charged with FTA pursuant to Virginia Code §§ 19.2-128, 18.2-456, 16.1-69.24, 29.1-210, 46.2-936, 46.2-938, and 19.2-152.4:1 prior to the final disposition of case.

Data Sources to Identify and Track Cohort:

- OES E-magistrate System (E-mag)
- OES Court Case Management Systems (CMS)
- Fairfax and Alexandria Circuit Court data
- Virginia State Police Criminal History Records
- Compensation Board Local Inmate Data System- Correctional Information System (LIDS-CORIS)
- DCJS Pretrial and Community Corrections Case Management System (PTCC)- Pretrial Services Agency and Community Corrections Data
- Department of Corrections State Probation Data

Domains of Additional Variables Captured:

- Contact Event Charge(s)
- Defendant Demographics
- Attorney Type
- Conditions of Pre-Trial Release
 - Pretrial services agency supervision
 - Other conditions (GPS, HEM, etc.)
- Length of Stay and Detention Status (time detained prior to trial/final disposition)
- Prior Criminal History Record
 - Overall prior criminal arrests and convictions
 - Prior felony arrests and convictions
 - Prior violent arrests and convictions
 - Prior misdemeanor arrests and convictions
 - Prior FTA charges and convictions
- Pending Criminal Charges at Time of Contact Event
- Active Probation at Time of Contact Event (state or local)
- Prior Substance Use History
- Prior Active Term(s) of Incarceration
- Risk Assessment Instrument Scores
 - Modified VPRAI
 - Public Safety Assessment (PSA)
- Locality-Specific Variables (population, population density, demographics, poverty level, household income, etc.)

Endnotes

- ¹ Virginia State Crime Commission. (2017). *Annual Report: Pretrial Services Agencies*, pp. 111-144. Retrieved from <https://rga.lis.virginia.gov/Published/2018/RD207/PDF>.
- ² It was determined with the highest degree of confidence that the October 2017 cohort was not unique in terms of the number and types of defendants charged. The breakdown of the cohort was exceptionally similar to a pilot cohort representing July 2015, as well as a 6-month time frame cohort representing November 2017 thru April 2018. As such, it is assumed that findings from the October 2017 cohort are generalizable to any other given month.
- ³ 2019 Va. Acts ch. 708.
- ⁴ Virginia State Crime Commission. *2017 Annual Report*, pp. 111-144. Retrieved from <https://rga.lis.virginia.gov/Published/2018/RD207/PDF>.
- ⁵ Virginia State Crime Commission. (2018, March 27). *Pretrial Services Directors' Meeting - Preliminary Needs Assessment Findings*. Retrieved from <https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/training-events/4498/vsccpretrialworkgrouppresentationmarch272018final1.pdf>.
- ⁶ See Virginia Department of Criminal Justice Services. *Virginia State Crime Commission Study on Pretrial Services in Virginia: DCJS Action Plan*. Retrieved from <https://www.dcjs.virginia.gov/news/virginia-state-crime-commission-study-pretrial-services-virginia-dcjs-action-plan>.
- ⁷ Virginia Department of Criminal Justice Services. (2018, November 8). *Enhancing Pretrial Services Agencies in Virginia*. Retrieved from <https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/announcements/vscc10292018fc.pdf>.
- ⁸ The findings of the Virginia Pre-Trial Data Project can be used to inform policy-making in relation to both pretrial services agencies and the overall pre-trial process in Virginia.
- ⁹ Virginia Department of Criminal Justices Services, email communication, November 2, 2018.
- ¹⁰ 2019 Va. Acts ch. 176. Both Recommendations 1 and 2 were addressed by this legislation.
- ¹¹ Senate Bill 1649. Legislation left in the Senate Committee on Finance is not enacted into law by the General Assembly. See Va. Code § 30-19.1:4 (2018). Fiscal impact statements are prepared by the Virginia Criminal Sentencing Commission for any bill that will result in a net increase in periods of imprisonment in state adult correctional facilities.
- ¹² Office of the Executive Secretary of the Supreme Court of Virginia. *Court Case Forms—Criminal, DC-300 Series, District Court Manual Forms Volume*. Retrieved from <http://www.courts.state.va.us/courtadmin/aoc/legalresearch/resources/manuals/dcforms/dc300scriminal.pdf>.
- ¹³ See Appendix 1 for an overview of the Virginia Pre-Trial Data Project.
- ¹⁴ It was determined with the highest degree of confidence that the October 2017 cohort was not unique in terms of the number and types of defendants charged. The breakdown of the cohort was exceptionally similar to a pilot cohort

representing July 2015, as well as a 6-month time frame cohort representing November 2017 thru April 2018. As such, it is assumed that findings from the October 2017 cohort are generalizable to any other given month.

- ¹⁵ Virginia State Crime Commission. (2018, November 8). *Virginia Pre-Trial Data Project: Comparison of Pre-Trial Release Mechanism Outcomes*. Retrieved from <http://vscc.virginia.gov/VSCC%20FINAL%20Pretrial%20Data%20Project%20Presentation.pdf>.
- ¹⁶ See Va. Code §§ 16.1-69.24, 18.2-456, 19.2-128, 29.1-210, 46.2-936, 46.2-938, and 19.2-152.4:1 (2018).
- ¹⁷ Va. Code § 18.2-456(5) (2018).
- ¹⁸ 2019 Va. Acts ch. 708.
- ¹⁹ Va. Code § 18.2-456 (2018).
- ²⁰ Va. Code § 19.2-128 (2018).
- ²¹ See *Abdo v. Commonwealth*, 64 Va. App. 468, 477, 769 S.E.2d 677, 681 (2015), citing *Carter v. Commonwealth*, 2 Va. App. 392, 397, 345 S.E. 2d 5, 8 (1986). (“...[A] contempt conviction must be supported by evidence that ‘the contempt was committed willfully.’”)
- ²² Va. Code § 19.2-128 (2018).
- ²³ 2019 Va. Acts ch. 708.
- ²⁴ See *Hunter v. Commonwealth*, 15 Va. App. 717, 721, 427 S.E.2d 197, 200 (1993), quoting *Trice v. United States*, 525 A.2d 176, 179 (D.C. 1987). (“Any failure to appear after notice of the appearance date [is] *prima facie* evidence that such failure to appear [was] willful.”).
- ²⁵ Va. Code § 18.2-456 (2018).
- ²⁶ See *Scialdone v. Commonwealth*, 279 Va. 422, 444, 689 S.E.2d 716, 728 (2010), citing *Cooke v. United States*, 267 U.S. 517 (1925). (“...[U]nless the contempt is ‘committed in open court’, due process ‘requires that the accused should be advised of the charges and have a reasonable opportunity to meet them by way of defense or explanation.’ This opportunity includes ‘the assistance of counsel, if requested, and the right to call witnesses.’”).
- ²⁷ 56% (1,289 of 2,307) of the total charges in general district courts under Va. Code § 18.2-456 in the October 2017 dataset (data is unrelated to the Virginia Pretrial Data Project) were clearly for failure to appear based on the charge description; whereas, the remainder were not clear.
- ²⁸ See 2018 Va. Acts ch. 679. Legislation was enacted during the Regular Session of the 2018 General Assembly to facilitate the sharing of data among agencies of the Commonwealth and between the Commonwealth and political subdivisions. This led to the appointment of a Chief Data Officer for Virginia by the Governor within the Secretariat of Administration. Office of the Governor. (2018, July 27). Governor Northam Announces Administration Appointments. Retrieved from <https://www.governor.virginia.gov/newsroom/all-releases/2018/july/headline-827973-en.html>.
- ²⁹ See, e.g., ACLU. (2017, December 11). Initiative to Push Back Against For-Profit Bail Companies That Amass Wealth on Backs of Poor People and Fight Reform to Protect Their Profits. Retrieved from <https://www.aclu.org/news/aclu-announces-nationwide-campaign-support-movement-end-money-bail>. See also Stanford Social Innovation Review. (Spring 2019). The Fight to End Cash Bail. Retrieved from https://ssir.org/articles/entry/the_fight_to_end_cash_bail.

- ³⁰ See, e.g., Harvard Law School. (Oct. 2016). *Moving Beyond Money: A Primer on Bail Reform*, pp. 14-29. Retrieved from <http://cjpp.law.harvard.edu/assets/FINAL-Primer-on-Bail-Reform.pdf>.
- ³¹ Virginia Department of Criminal Justice Services, FY18 PTCC Merged Monthly Report.
- ³² Va. Code § 19.2-159 (2018). A defendant is entitled to appointment of counsel if his available funds are equal to or below 125% of the federal poverty guidelines as set by the federal Department of Health and Human Services. See Office of the Executive Secretary of the Supreme Court of Virginia. (2019, January 11). *Eligibility for Court-Appointed Counsel Indigency Guidelines*. Retrieved from http://www.courts.state.va.us/courtadmin/aoc/djs/resources/indigency_guidelines.pdf.
- ³³ See Office of the Executive Secretary of the Supreme Court of Virginia. (Oct. 2011). *Financial Statement – Eligibility Determination for Indigent Defense Services* (Form DC-333). Retrieved from <http://www.courts.state.va.us/forms/district/dc333.pdf>.
- ³⁴ See *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972), holding “that absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial.”
- ³⁵ The findings of this Project can be used to inform policy-making in relation to both pretrial services agencies and the overall pre-trial process in Virginia.
- ³⁶ Virginia State Crime Commission. *2017 Annual Report*, pp. 111-144. Retrieved from <https://rga.lis.virginia.gov/Published/2018/RD207/PDF>.
- ³⁷ Virginia State Crime Commission. (2018, March 27). *Pretrial Services Directors’ Meeting - Preliminary Needs Assessment Findings*. Retrieved from <https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/training-events/4498/vscpretrialworkgrouppresentationmarch272018final1.pdf>. Formal needs assessment surveys were provided to and completed by numerous stakeholders, including circuit court judges (94 of 159; 59%), general district court judges (76 of 117; 65%), juvenile and domestic relations district court judges (65 of 117; 56%), magistrates (226 of 413; 55%), Commonwealth’s Attorneys (94 of 120; 78%), public defenders (24 of 25; 96%), court-appointed counsel (372 of ~1,608; 23%), local and regional jail administrators (56 of 67; 84%), city and county administrators (30 of 138; 22%), pretrial services agency directors (33 of 33; 100%), and pretrial services agency managers and officers (147 of ~207; 71%).
- ³⁸ See Virginia Department of Criminal Justice Services. (2018). *Virginia State Crime Commission Study on Pretrial Services in Virginia: DCJS Action Plan*. Retrieved from <https://www.dcjs.virginia.gov/news/virginia-state-crime-commission-study-pretrial-services-virginia-dcjs-action-plan>.
- ³⁹ Va. Code §§ 19.2-152.4:3(A)(1) and 19.2-152.4:3(A)(2) (2018).
- ⁴⁰ See Va. Code § 19.2-123(A)(1) (2018). Judicial officers may impose pretrial services agency supervision as a condition of bond.
- ⁴¹ Virginia Department of Criminal Justice Services, FY18 PTCC Merged Monthly Report.
- ⁴² Virginia Department of Criminal Justice Services (2018, April 2). *Virginia Pretrial Risk Assessment Instrument (VPRAI) Instruction Manual Version 4.3*, pp. 15.

Retrieved from

https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/corrections/virginia-pretrial-risk-assessment-instrument-vprai_0.pdf. The Virginia Pretrial Risk Assessment Instrument-Revised (VPRAI-R) and a newly created supervision tool (Praxis) were implemented statewide.

⁴³ Va. Code § 19.2-152.4:3(A)(2) (2018).

⁴⁴ Va. Code § 19.2-121 (2018).

⁴⁵ *Id.*

⁴⁶ Virginia Department of Criminal Justice Services (2018, April 2). *Virginia Pretrial Risk Assessment Instrument (VPRAI) Instruction Manual Version 4.3*, pp. 9-16.

Retrieved from

https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/corrections/virginia-pretrial-risk-assessment-instrument-vprai_0.pdf.

⁴⁷ These findings were supported by personal communications, formal needs assessment survey responses, follow-up survey responses from district court judges, and discussions during the Virginia Pretrial Services Stakeholder Group.

⁴⁸ DeMichelle, M., Comfort, M., Misra, S., Barrick, K., & Baumgartner, P. (2018). The Intuitive-Override Model: Nudging judges toward pretrial risk assessment instruments. Retrieved from SSRN <http://dx.doi.org/10.2139/ssrn.3168500>

⁴⁹ DeMichelle, M., Baumgartner, P., Barrick, K., Comfort, M., Scaggs, S., & Misra, S. (2018). What do criminal justice professionals think about risk assessment at pretrial? Retrieved from SSRN <http://dx.doi.org/10.2139/ssrn.3168490>

⁵⁰ *Id.*

⁵¹ *Id.* at 15.

⁵² Virginia Department of Criminal Justice Services (2018, April 2). *Virginia Pretrial Risk Assessment Instrument (VPRAI) Instruction Manual Version 4.3*, pp. 13, 18.

Retrieved from

https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/corrections/virginia-pretrial-risk-assessment-instrument-vprai_0.pdf.

⁵³ Danner, M.J.E., VanNostrand, M., & Spruance, L.M. (2016). Race and gender neutral pretrial risk assessment, release recommendations, and supervision: VPRAI and Praxis Revised, pp. 30. Retrieved from

<https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/corrections/race-and-gender-neutral-pretrial-risk-assessment-release-recommendations-and-supervision.pdf>.

⁵⁴ *Id.* at pp. 15, 17.

⁵⁵ Va. Code § 19.2-152.2 (2018).

⁵⁶ Va. Code § 19.2-152.4:3(A)(2) (2018).

⁵⁷ Va. Code § 19.2-119 (2018).

⁵⁸ While this pretrial services agency communicates and shares information with their magistrate's office, the agency does not complete a pretrial investigation report for use when the magistrate is making an initial bond determination.

⁵⁹ Va. Code §§ 19.2-80, 19.2-82(A), and 19.2-234 (2018). If a person was arrested without a warrant, the judicial officer must first determine whether there is probable cause that a criminal offense has been committed prior to issuing a warrant or summons.

⁶⁰ Virginia State Crime Commission. (2018, November 8). *Virginia Pre-Trial Data Project - Comparison of Pre-Trial Release Mechanism Outcomes*, slide 8. Retrieved

from

<http://vscc.virginia.gov/VSCC%20FINAL%20Pretrial%20Data%20Project%20Presentation.pdf>.

- ⁶¹ See National Association of Pretrial Services Agencies. (2004). *Standards on pretrial release*, third edition, Standard 2.2, pp. 26-32. Retrieved from <https://napsa.org/eweb/DynamicPage.aspx?Site=napsa&WebCode=standards>.
- ⁶² American Council of Chief Defenders, Gideon’s Promise, National Association for Public Defense, National Association of Criminal Defense Lawyers, and National Legal Aid and Defenders Association. (March 2019). *Joint Statement: Pretrial Risk Assessment Instruments*. Retrieved from <https://www.nacdl.org/criminaldefense.aspx?id=54074>. The original statement issued in May 2017 was retrieved from https://www.publicdefenders.us/blog_home.asp?display=563.
- ⁶³ Personal communications with magistrates and responses to the magistrate formal needs assessment survey.
- ⁶⁴ Virginia Department of Criminal Justice Services. (2018, November 8). *Enhancing Pretrial Services Agencies in Virginia*. Retrieved from https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/announcements/vscc_10292018fc.pdf.
- ⁶⁵ *Id.* at slides 10-15.
- ⁶⁶ Va. Code §§ 19.2-80, 19.2-82(A), and 19.2-234 (2018). If a person was arrested without a warrant, the judicial officer must first determine whether there is probable cause that a criminal offense has been committed prior to issuing a warrant or summons.
- ⁶⁷ Virginia State Crime Commission. (2018, November 8). *Virginia Pre-Trial Data Project - Comparison of Pre-Trial Release Mechanism Outcomes*, slide 8. Retrieved from <http://vscc.virginia.gov/VSCC%20FINAL%20Pretrial%20Data%20Project%20Presentation.pdf>.
- ⁶⁸ Va. Code § 19.2-121 (2018).
- ⁶⁹ See Office of the Executive Secretary of the Supreme Court of Virginia. *Court Case Forms—Criminal, DC-300 Series, District Court Manual Forms Volume*. Retrieved from <http://www.courts.state.va.us/courtadmin/aoc/legalresearch/resources/manuals/dcforms/dc300scriminal.pdf>.
- ⁷⁰ Va. Code § 19.2-123 (2018).
- ⁷¹ Va. Code § 19.2-120(D) (2018).
- ⁷² Va. Code § 19.2-130.1 (2018).
- ⁷³ Va. Code § 19.2-123(A) (2018).
- ⁷⁴ Va. Code § 19.2-158 (2018).
- ⁷⁵ See Office of the Executive Secretary of the Supreme Court of Virginia. Virginia’s Judicial System. Retrieved from <http://www.courts.state.va.us/courts/home.html>. Court schedules are available through this system for individual circuit courts (<http://www.courts.state.va.us/courts/circuit.html>), general district courts (<http://www.courts.state.va.us/courts/gd.html>), and juvenile and domestic relations district courts (<http://www.courts.state.va.us/courts/jdr.html>).
- ⁷⁶ Va. Code § 19.2-158 (2018).

- 77 Va. Code § 19.2-3.1 (2018).
- 78 Va. Code § 19.2-158 (2018).
- 79 *Id.*
- 80 Va. Code § 19.2-124 (2018).
- 81 Va. Code § 19.2-132 (2018).
- 82 Va. Code § 19.2-158 (2018).
- 83 Further information on the Virginia Criminal Justice Conference was retrieved from <https://www.vtla.com/index.cfm?pg=VCJC>.
- 84 Va. Code § 19.2-124 (2018).
- 85 Va. Code § 19.2-123(A) (2018).
- 86 Va. Code § 19.2-120(D) (2018).
- 87 Va. Code § 19.2-130.1 (2018).
- 88 Va. Code § 19.2-123(A)(4) (2018).
- 89 *Id.*
- 90 Virginia State Crime Commission. *2017 Annual Report*, pp. 123. Retrieved from <https://rga.lis.virginia.gov/Published/2018/RD207/PDF>.
- 91 2010 Va. Acts ch. 874. Item 370 of the 2010 Appropriations Act. Retrieved from <https://budget.lis.virginia.gov/item/2010/1/hb30/chapter/1/370/>.
- 92 *Id.*
- 93 Virginia Department of Criminal Justice Services. (n.d.). *Guidelines for Local Electronic/GPS Monitoring Programs*. Retrieved from <https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/corrections/guidelines-local-electronic-gps-monitoring-programs.pdf>.
- 94 24 Va. Admin. Code § 35-60-20 (2018). *See also* Va. Code §§ 18.2-270.1 and 18.2-270.2 (2018).
- 95 *Id.*
- 96 Commission on Virginia Alcohol Safety Action Program. *About the Commission*. Retrieved from <http://www.vasap.state.va.us/aboutthecommission/aboutthecommission.html>.
- 97 Virginia Department of Criminal Justice Services, FY18 PTCC Merged Monthly Report.
- 98 This information will be collected as part of the Virginia Pre-Trial Data Project.
- 99 Va. Code § 9.1-185 (2018).
- 100 Va. Code §§ 9.1-185, 9.1-185.5, 38.2-1800, and 38.2-1814 (2018).
- 101 Va. Code §§ 9.1-185.8 and 38.2-1809 (2018).
- 102 Va. Code §§ 9.1-185.16, 38.2-2412.1, and 38.2-2412.2 (2018).
- 103 Va. Code § 9.1-185 (2018).
- 104 Va. Code § 9.1-185.5(C) (2018).
- 105 Va. Code § 9.1-185.8(E) (2018).
- 106 Va. Code § 9.1-185.8 (2018).
- 107 Va. Code § 9.1-185 (2018).
- 108 Va. Code § 9.1-185.8 (2018).
- 109 Virginia Department of Criminal Justices Services, email communication, November 2, 2018.
- 110 *Id.*
- 111 *See* Commonwealth of Virginia State Corporation Commission. *Overview of the Commission*. Retrieved from <https://www.scc.virginia.gov/comm/overview.aspx>.

- ¹¹² Virginia Department of Criminal Justice Services, personal communication, May 22, 2018. Commonwealth of Virginia State Corporation Commission, email communication, November 2, 2018.
- ¹¹³ Va. Code § 9.1-185 (2018).
- ¹¹⁴ *But see* Va. Code § 19.2-152.4:3(A)(3) (2018). The Code requires pretrial services agency officers to supervise defendants in order to ensure compliance with the terms and conditions of bail.
- ¹¹⁵ This finding was supported by personal communications, field observations, and survey responses from licensed bail bondsmen.
- ¹¹⁶ Va. Code § 9.1-185.4(B)(1) (2018). Per Virginia Department of Criminal Justice Services, email communication, November 6, 2018, DCJS has identified at least 5 such licensed bail bondsmen who have a felony conviction.
- ¹¹⁷ Virginia Department of Criminal Justice Services, personal communication, May 22, 2018.
- ¹¹⁸ *Id.*
- ¹¹⁹ Va. Code § 9.1-139(K) (2018).
- ¹²⁰ Va. Code § 9.1-186.4(B)(2)-(3) (2018).
- ¹²¹ Va. Code § 19.2-13(C) (2018).
- ¹²² Va. Code § 46.2-116(C) (2018).
- ¹²³ Va. Code § 19.2-149 (2018).
- ¹²⁴ *Id.*
- ¹²⁵ Va. Code § 19.2-143 (2018).
- ¹²⁶ Virginia Department of Criminal Justice Services, personal communication, May 22, 2018.
- ¹²⁷ *See* Va. Code § 9.1-185.8 (2018).
- ¹²⁸ *See* 2019 Va. Acts. ch. 200. This legislation was introduced (Del. Richard P. Bell) on behalf of the Virginia Bail Association and enacted during the Regular Session of the 2019 General Assembly to address this issue.
- ¹²⁹ These data systems are operated by the Virginia Department of Criminal Justice Services, the Office of the Executive Secretary of the Supreme Court of Virginia, and the State Corporation Commission. Per Virginia Department of Criminal Justice Services, email communication, November 2, 2018, DCJS was in the process of developing an online application and report submission system for use by bail bondsmen; however, DCJS was unaware whether this system would be able to interface with other data systems.
- ¹³⁰ Va. Code § 9.1-185.14 (D) (2018).
- ¹³¹ Office of the Executive Secretary of the Supreme Court of Virginia, Magistrate Services, personal communication, November 7, 2018. The E-magistrate system can be used to generate a list of bonds posted by individual bail bondsmen; however, bail bondsmen can work for multiple companies and the list cannot identify which company that bail bondsmen was working for when the bond was posted.
- ¹³² Recommendation 2 as part of the Virginia Pre-Trial Data Project.
- ¹³³ Office of the Executive Secretary of the Supreme Court of Virginia. *Court Case Forms—Criminal, DC-300 Series, District Court Manual Forms Volume*. Retrieved from <http://www.courts.state.va.us/courtadmin/aoc/legalresearch/resources/manuals/dcforms/dc300scriminal.pdf>.

- ¹³⁴ 2019 Va. Acts ch. 176.
- ¹³⁵ *See* 2019 Va. Acts ch. 205. This legislation was introduced (Del. Christopher E. Collins) on behalf of the Virginia Bail Association and enacted during the Regular Session of the 2019 General Assembly to address this issue.
- ¹³⁶ Va. Code § 19.2-149 (2018).
- ¹³⁷ Personal communications with and survey responses from licensed bail bondsmen.
- ¹³⁸ 2019 Va. Acts ch. 176.
- ¹³⁹ Va. Code § 9.1-185.4(B)(1) (2018)
- ¹⁴⁰ *See* Va. Code § 9.1-185.4(B) (2018)
- ¹⁴¹ Va. Code § 18.2-64.2 (2018).
- ¹⁴² Source: Supreme Court of Virginia- Court Case Management Systems. Data provided by Virginia Criminal Sentencing Commission.
- ¹⁴³ One conviction was entered in Henrico County Circuit Court and the other two convictions were entered in the Prince George County Circuit Court. *See* Rockett, A. (2017, May 10). Richmond-area bondsman who traded bail for sexual favors sentenced to 2 ½ years. *Richmond Times-Dispatch*. Retrieved from https://www.richmond.com/news/local/crime/richmond-area-bondsman-who-traded-bail-for-sexual-favors-sentenced/article_cd9bcf96-7aad-50f7-88a2-112c280fe6ea.html.
- ¹⁴⁴ Legislation left in the Senate Committee on Finance is not enacted into law by the General Assembly.

Sex Trafficking in Virginia

Executive Summary

During the Regular Session of the 2018 General Assembly, the House Courts of Justice Committee referred House Bills 962 (expungement of prostitution convictions) and 984 (prostitution by minors) for study by the Crime Commission.¹ The Executive Committee of the Crime Commission requested that staff conduct a broad review of commercial sex trafficking in Virginia. Staff performed the following activities in order to accomplish this directive:

- Reviewed existing Virginia and federal law;
- Examined relevant literature and reports;
- Requested and analyzed arrest, charge, and conviction data from a variety of sources;
- Conducted an informal survey of directors of Court Service Unit directors;
- Attended various conferences and trainings; and,
- Consulted with practitioners, subject-matter experts, advocates, and victims.

For purposes of this study, staff used the definitions relating to commercial sex trafficking contained in the federal Victims of Trafficking and Violence Protection Act of 2000.² Sex trafficking is defined as “the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.”³ A commercial sex act is “any sex act on account of which anything of value is given to or received by any person.”⁴ Commercial sex trafficking does not involve consenting victims or consensual sexual acts.

The commercial sex industry involves the following key components: trafficked persons (victims, traffickers, and sex buyers). There is no one single profile of a victim, trafficker, or sex buyer in the commercial sex industry. While victims come from varying backgrounds and span all demographics, certain circumstances and conditions can make an individual more at risk for exploitation by a trafficker.

In conducting a broad review of commercial sex trafficking in Virginia, staff found that:

- Efforts are being made to address commercial sex trafficking;
- Commercial sex trafficking is a serious problem, but the full scope of the problem is difficult to determine;
- Data on the extent of commercial sex trafficking is not readily available;
- Commercial sex is a lucrative industry;
- Commercial sex trafficking intersects with numerous other problems facing Virginia;
- The traditional criminal justice response to commercial sex trafficking is not apprehending traffickers or serving the needs of victims;
- Identifying victims of commercial sex trafficking is difficult and measures must be implemented to enhance such identifications;
- Resources for victims of commercial sex trafficking are limited;

- Confusion exists in regard to the role and duties of local social services departments when a child is identified as a victim of sex trafficking;
- Measures have not consistently been taken to address the demand side of the commercial sex industry;
- Few juveniles are charged with or adjudicated delinquent of prostitution; and,
- Combating commercial sex trafficking requires a proactive, collaborative, and multi-disciplinary approach.

Crime Commission members reviewed study findings at the October meeting and unanimously endorsed all eleven recommendations from staff at the December meeting. Crime Commission members were also presented with three policy decision options. No motions were made on Policy Decision Options 1 or 3. Policy Decision Option 2 was defeated by a majority vote of the Commission.

Recommendation 1: Amend Virginia Code §§ 63.2-1506, 63.2-1508, and 63.2-1517 to:

- i. clarify that sex traffickers do not need to be a victim's parent or other caretaker in order to initiate Department of Social Services (DSS) involvement;
- ii. allow DSS to take emergency custody of children who are victims of sex trafficking;
- iii. require DSS to conduct a family assessment when a juvenile sex trafficking victim is identified; and,
- iv. clarify the jurisdiction of local DSS agencies.

A new sex trafficking assessment to be conducted by local social services departments was enacted as a result of this recommendation (Va. Code § 1506.1).

Recommendation 2: Amend Virginia Code § 18.2-357.1 to authorize charging sex traffickers for each individual act of commercial sex trafficking.

Recommendation 3: Amend Virginia Code §§ 18.2-348 and 18.2-349 to increase penalties for aiding in prostitution or using a vehicle to promote prostitution when the victim is a minor. Additionally, amend Virginia Code §§ 9.1-902, 17.1-805, 18.2-46.1, 18.2-513, 19.2-215.1, and 19.2-392.02 to provide consistency amongst felony commercial sex trafficking offenses in the sex offender registration, violent felony offense definition, gang offenses, racketeering offenses, multi-jurisdictional grand jury, and barrier crimes statutes.

Recommendation 4: Amend Virginia Code §§ 18.2-346, 18.2-348, and 18.2-356 to prohibit manual stimulation of another's genitals (e.g., acts of prostitution involving sexual touching but not penetration).

Recommendation 5: Enact Virginia Code § 9.1-116.5 to create a statewide Sex Trafficking Response Coordinator position at the Virginia Department of Criminal Justice Services (DCJS) with statutorily defined duties and responsibilities.

Recommendation 6: Amend Virginia Code § 19.2-368.3 to require the Criminal Injuries Compensation Fund (Virginia Victims Fund) to develop policies for the

investigation and consideration of claims by sex trafficking victims for reimbursement of medical care and other expenses. This recommendation was addressed by sending a letter request.

Recommendation 7: Enact Virginia Code §§ 9.1-116.4, 16.1-69.48:6 and 17.1-275.13 to create a Virginia Prevention of Sex Trafficking Fund administered by DCJS to promote training, education, and awareness related to sex trafficking.

Recommendation 8: Amend Virginia Code § 18.2-67.9 to allow certain juvenile sex trafficking victims and witnesses to testify via two-way closed-circuit television under existing rules.

Recommendation 9: Request that DCJS Committee on Training establish compulsory minimum entry-level, in-service, and advanced training standards for law enforcement officers on the awareness and identification of sex trafficking.

Recommendation 10: Request that DCJS continue to allocate a portion of the Victims of Crime Act (VOCA) funding for treatment and services for victims of sex trafficking.

Recommendation 11: Direct Crime Commission staff to continue work on this study for an additional year to consult with stakeholders, examine further areas of concern, and identify potential solutions.

Policy Decision Option 1: Endorse House Bill 984 (Del. David E. Yancey) to amend Virginia Code § 18.2-346 to allow a petition for a child in need of services to be substituted for a delinquency petition for a minor arrested for prostitution, if the minor is willing to participate in specialized services for those engaged in commercial sexual conduct.

Policy Decision Option 2: Endorse House Bill 962 (Del. David E. Yancey) to amend Virginia Code § 19.2-392.2 to allow a person to petition for expungement of convictions for prostitution when the person was induced to engage in prostitution through the use of force, intimidation, or deception by another.

Policy Decision Option 3: Amend Virginia Code §§ 19.2-305.1 and 19.2-368.15 to require mandatory restitution for juvenile victims of sex trafficking.

Numerous bills were introduced during the Regular Session of the 2019 General Assembly in relation to Recommendations 1, 2, 3, 4, 5, 7, and 8, which were acted upon as follows:

- Senate Bill 1661 (Sen. Mark J. Peake) and House Bill 2597 (Del. Charniele L. Herring) were enacted for Recommendation 1.⁵
- Senate Bill 1603 (Sen. Mark D. Obenshain), which addressed Recommendations 2, 3, 4, 7, and 8, was left in the Senate Committee on Finance.⁶
- House Bill 2586 (Del. Robert B. Bell) was enacted for Recommendations 2 and 3.⁷
- Senate Bill 1669 (Sen. Jill Holtzman Vogel) and House Bill 2576 (Del. Paul E. Krizek) were enacted for Recommendation 5.⁸ In addition to funding for this new

position, DCJS was also appropriated \$30,000 from the general fund for the costs of developing a curriculum for persons convicted of solicitation of prostitution.⁹

- House Bill 2651 (Del. David E. Yancey) was enacted for Recommendation 7.¹⁰
- House Bill 2464 (Del. Christopher E. Collins) was enacted for Recommendation 8.¹¹

Additionally, the Crime Commission sent letters to the following agencies and entities requesting that administrative action be taken in relation to Recommendations 6, 9, and 10:

- Criminal Injuries Compensation Fund (Recommendation 6);¹² and,
- Virginia Department of Criminal Justice Services (Recommendations 9 and 10).

Finally, as part of Recommendation 11, the Crime Commission sent letters to the following agencies and entities requesting that training be provided in regard to sex trafficking and the demand for commercial sex:

- Commonwealth’s Attorneys’ Services Council;
- Indigent Defense Commission;
- Office of the Executive Secretary of the Supreme Court of Virginia;
- Virginia Association of Chiefs of Police & Foundation, Inc.;
- Virginia Department of Education;
- Virginia Department of Juvenile Justice;
- Virginia Department of Social Services; and,
- Virginia Sheriffs’ Association.

Overview of Commercial Sex Trafficking

DEFINING COMMERCIAL SEX TRAFFICKING

While the Virginia Code contains a provision relating to commercial sex trafficking and prostitution, the Code does not specifically define “commercial sex trafficking.”¹³ For purposes of this study, staff used the definitions relating to commercial sex trafficking that are contained in the federal Victims of Trafficking and Violence Protection Act of 2000.¹⁴ The following key terms are defined in that Act as follows:

- Commercial sex act: “any sex act on account of which anything of value is given to or received by any person”;¹⁵
- Severe forms of trafficking in persons: “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age”;¹⁶ and,
- Sex trafficking: “the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.”¹⁷

Commercial sex trafficking does not involve consenting victims or consensual sexual acts. It is important to note that not every person who engages in a commercial sex act is forced, coerced, or enticed to participate in such an act against their will. Some individuals voluntarily choose to engage in these activities. Various entities and organizations exist which advocate for these sex workers’ rights.¹⁸ Due to the dynamics of the commercial

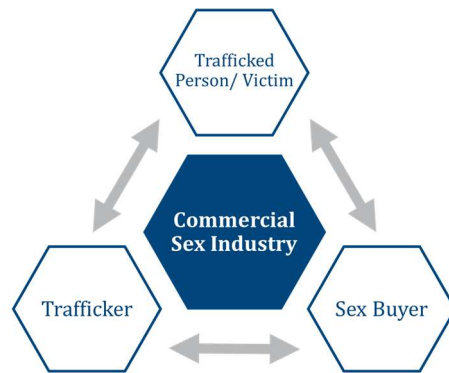
sex industry, individuals may fluctuate between involuntary and deliberate participation in the industry at different times.¹⁹

COMMERCIAL SEX TRAFFICKING TRENDS

The commercial sex industry involves the following key components:

- Trafficked Person/Victim:²⁰ engages in sex acts in exchange for some item of value;²¹
- Trafficker: exhibits some form of control over the victim and receives at least some portion of the item of value provided in exchange for the sex acts performed by that victim; and,
- Sex Buyer: provides some item of value in exchange for a sex act.

Commercial Sex Industry



Credit: Benjamin Gauen, King County, WA - Prosecuting Attorney's Office

It is important to note that there is no one single profile of a victim, trafficker, or sex buyer in the commercial sex industry; however, there are some general trends that can be observed. Before discussing the overall trends related to commercial sex trafficking, it should be emphasized that the discussion within this report is only a summary of the overall trends and patterns of the industry, rather than an exhaustive discussion. Although commercial sex trafficking can be difficult to define and measure, a great deal of research and collateral subject matter exists.

Victims

There is no stereotypical profile for a victim of sex trafficking.²² Victims come from varying backgrounds and may be targeted “regardless of race, color, national origin, disability, religion, age, gender, sexual orientation, gender identity, socioeconomic status, education level, or citizenship status.”²³ Traffickers will frequently prey on a victim’s desire for love, hope, and a sense of belonging.²⁴

While victimization spans all demographics, certain circumstances and conditions can make individuals more susceptible to exploitation. Traffickers frequently target vulnerable populations, such as runaway and homeless youth, foreign nationals, individuals with a history of domestic, sexual, or emotional abuse, persons with dysfunctional families, low self-esteem, or drug dependence, and people of lower socioeconomic status.²⁵ Runaway and homeless youth, along with foreign nationals, are particularly vulnerable to becoming victims because they lack a strong support system and often find themselves in unfamiliar environments.²⁶

Victims often do not identify themselves as victims or realize that they are being trafficked.²⁷ Victims may form an emotional and/or psychological bond (“trauma bond”) with their trafficker due to the manipulative or coercive tactics used by that trafficker.²⁸ Furthermore, victims may exhibit other indicators (e.g., running away from home, delinquent behavior, truancy, mental health issues, drug addiction) that are not immediately linked to sex trafficking.²⁹ These factors pose significant challenges when attempting to determine whether a person is a victim of sex trafficking. As a result, victims are not easily identified and the criminal justice system often treats the victims as criminals.³⁰

It typically takes a victim numerous attempts to successfully leave the commercial sex industry due to a multitude of challenges, such as lack of support structure, limited basic life skills, lack of an education, a criminal record, difficulty securing housing or employment, mental health conditions, and health issues.³¹

Victims typically require various resources and services in order to successfully leave the commercial sex industry.³² Victims may suffer from mental health conditions such as post-traumatic stress disorder, depression, disassociation, bi-polar disorder, suicidal ideation, and personality disorders.³³ Furthermore, medical conditions that a victim may suffer include, but are not limited to, back or pelvic pain, gynecological problems (e.g., sexually transmitted infections, complications from unplanned pregnancies, unsafe abortions), broken bones, head trauma, dental problems, and substance abuse or dependency.³⁴ Victims often need a wide variety of resources and services, such as shelter, clothing, an assessment of needs, medical care, rehabilitative counseling, and advocates to help them navigate the court system.³⁵ Each sex trafficking case is unique; therefore, resources and services should be tailored to fit the individual needs of the particular victim.³⁶

Traffickers

Staff identified three general categories of traffickers that exist in the commercial sex industry: pimps,³⁷ gangs,³⁸ and family members.³⁹ The means by which a victim is recruited into the commercial sex industry often varies based upon the type of trafficker; however, similarities exist in terms of how these traffickers exploit and control their victims.

Recruitment techniques vary depending on the potential victim’s age, the method of manipulation, and the trafficker’s recruiting style. The recruitment technique utilized by

a trafficker will often be based on a variety of factors, such as the trafficker's level of social intelligence and criminal sophistication.⁴⁰

Recruitment of victims occurs in urban, suburban, rural, and online settings.⁴¹ Traffickers will target a variety of locations, such as schools (middle or high), courthouses, foster care and group homes, bus stations, shelters, bars, restaurants, shopping malls, and social media sites, in their efforts to locate and recruit potential victims.⁴² A common recruiting technique utilized by traffickers involves using observations of or communications with the victim to determine that victim's vulnerabilities, and then exploiting those vulnerabilities to induce that victim into the commercial sex industry. For example, a trafficker may promise to provide money, stable housing, travel to exciting locations, clothes, or other items that the victim may need or want.⁴³

Once a victim has been recruited into the commercial sex industry, traffickers will use tactics that exert the most effective control over that victim; in some instances, the manipulation may not need to be any more than providing a solution to a victim's problem (e.g., affection, housing, food, etc.).⁴⁴ Mechanisms of control used by traffickers include, but are not limited to, social isolation, emotional needs (e.g., love, family), restriction of movement, substance dependency, threats and verbal manipulation, physical abuse, controlling of money and/or creation of debt, withholding of important documentation (e.g., passport, driver's license, other identification documents), other means of violence, and tattooing or branding.⁴⁵ Staff also determined through anecdotal evidence that traffickers may use children that they have in common with the victim as another means of leveraging control over that victim.

Sex Buyers

The level of demand for commercial sex is difficult to quantify due to the characteristics of the industry and the variances in preferences amongst sex buyers.⁴⁶ Research has identified numerous motivations for sex buyers.⁴⁷ For instance, a national overview of prostitution and sex trafficking demand reduction efforts five primary motivations for men who purchase sex from existing literature, including:

"(1) seeking intimacy (i.e., a way to approximate intimate relationships they are unable or unwilling to develop); (2) seeking sex without intimacy (a way to get sex without the investment and compromises needed for intimate relationships); (3) seeking variety (fulfilling a desire for sex with women of various "types," based on ethnicity, size, age, hair color, etc.), (4) thrill-seeking (being drawn by the "thrill of the hunt" and the illicit nature of prostitution); and (5) pathology (drawn by compulsion, addiction, or by forms of sociopathy, psychology, or misogyny where the intent is to control and harm)."⁴⁸

Other research has focused on sex buyers who specifically purchase sex with minors.⁴⁹ One literature review identified three categories of such sex buyers, including (1) situational buyers who purchase sex due to availability, (2) preferential buyers who specifically seek out sex with minors, and (3) opportunistic buyers who purchase sex indiscriminately without regard to age."⁵⁰

While research on sex buyers has been limited over the years, recent studies have begun to focus on the buyer population. The majority of this research has focused on heterosexual interactions (men buying women) and therefore much of the data reported is in relation to male buyers.⁵¹ These male buyers are commonly between the ages of 30 to 40.⁵² While household incomes of buyers tends to vary, the “high-frequency” buyers often report incomes between the middle and high income tax brackets.⁵³ Locations where sex buyers commonly purchase sex include, but are not limited to, hotels, massage parlors, adult establishments, or other places where the buyers know that sex can be purchased.⁵⁴

Numerous strategies have been implemented across the country with the intent of deterring buyers, including sting operations targeting buyers, shaming, and educational programs (John schools).⁵⁵ Research on demand is limited because attempts at addressing the commercial sex industry have primarily focused on victims already in the industry and the resources and services needed for those victims.⁵⁶ Some evidence has shown that primary prevention strategies which focus on demand reduction yield better results than focusing solely on identifying victims (secondary prevention) and providing the necessary resources for victims (tertiary prevention).⁵⁷ While identifying and treating victims remains important, the purpose of primary prevention is to provide resources and education so that potential victims and sex buyers never enter the commercial sex industry. Primary prevention involves educating the general public, sex buyers, and potential sex buyers on the dynamics of sex trafficking, creating community awareness, and deterring potential buyers from purchasing sex.⁵⁸

Impact of the Internet and Technology

The internet and various online platforms allow for the near limitless recruitment of victims and the sale of sex.⁵⁹ Advances in technology have enabled the commercial sex industry to exist in urban, suburban, and rural regions amongst all socioeconomic classes.⁶⁰ Technology is utilized to facilitate recruitment, supply, and demand within the commercial sex industry. Specifically, social media platforms (e.g., Facebook, Instagram, Snapchat) allow traffickers to identify vulnerabilities and recruit potential victims, numerous websites advertise the sale of sex,⁶¹ and several message boards exist where sex buyers (who refer to themselves as “hobbyists”) anonymously discuss and share information on various aspects of the commercial sex industry.⁶²

In April 2018, federal legislation was enacted to address the use of the internet in the commercial sex industry. This legislation was a combination of the Allow States and Victims to Fight Online Sex Trafficking Act of 2017 and the Stop Enabling Sex Traffickers Act of 2017, commonly referred to as FOSTA-SESTA.⁶³ Days before this law was enacted, federal authorities seized the website Backpage.com for allegedly enabling prostitution.⁶⁴ Prior to its seizure, Backpage.com was identified as the most well-known website for the advertisement of commercial sex.⁶⁵ The effectiveness of these federal actions remains uncertain, as advertisements for sex became dispersed across various domestic and international websites and social media platforms after the passage of FOSTA-SESTA and the seizure of Backpage.com.⁶⁶

STUDY FINDINGS

As part of this comprehensive review of commercial sex trafficking in Virginia, staff performed the following activities:

- Reviewed existing Virginia and federal law;
- Examined relevant literature and reports;
- Requested and analyzed arrest, charge, and conviction data from a variety of sources;
- Conducted an informal survey of Court Service Unit directors;⁶⁷
- Attended various conferences and trainings; and,
- Consulted with practitioners, subject-matter experts, advocates, and victims.

The following sections detail staff's findings in relation to the commercial sex industry in Virginia, current efforts being made to address sex trafficking, and further actions that are necessary in order to combat the problem.

Efforts are being made to address commercial sex trafficking in Virginia.

The Virginia Code contains provisions that specifically address commercial sex trafficking and prostitution (Va. Code § 18.2-344 *et. seq.*). A new section was added to the Code in 2015 (Va. Code § 18.2-357.1) to specifically punish commercial sex traffickers.⁶⁸ Further legislation was enacted in 2018 to add certain commercial sex trafficking offenses to the list of charges for which there is a presumption against bail.⁶⁹ Separate legislation was also enacted in 2018 to require that notice of a human trafficking hotline be posted at local departments of health, rest areas along the interstates, and certain health care facilities in the Commonwealth.⁷⁰

Staff found that numerous entities across the Commonwealth are collaborating in an effort to address commercial sex trafficking; however, there is not coordination at a statewide level to bring all of these efforts together. Some of the ongoing collaborations identified by staff include:⁷¹

- Hampton Roads Human Trafficking Task Force;⁷²
- I-81 Corridor Human Trafficking Work Group;⁷³
- Northern Virginia Human Trafficking Task Force;⁷⁴
- Richmond Regional Human Trafficking Collaborative;⁷⁵ and,
- Virginia Anti-Human Trafficking Coordinating Committee;⁷⁶

Additionally, staff found that Virginia has implemented various other measures to address commercial sex trafficking, such as the:

- Virginia Board of Education approved *Guidelines for Training on the Prevention of Trafficking of Children*;⁷⁷
- Virginia Department of Social Services designed a training course for local departments of social services staff and community partners relating to human trafficking and commercial sex trafficking;⁷⁸ and,
- Linking Systems of Care for Children and Youth is developing a brief screening tool to be used across various systems to identify children who have been

victimized or exposed to violence which includes two questions related to trafficking.⁷⁹

Commercial sex trafficking is a serious problem in Virginia, but the full scope of the problem is difficult to determine.

Over the course of this study, staff consulted with numerous individuals from across Virginia who have spent years working to combat commercial sex trafficking, including law enforcement officers, prosecutors, victim assistance professionals, medical and treatment providers, advocates, social services professionals, educators and school administrators, and representatives of various other agencies and entities. Additionally, staff spoke with former victims who had become survivors of the commercial sex industry. While staff found that commercial sex trafficking is a serious problem across Virginia, it was particularly challenging to identify the full scope of the problem due to the complex dynamics of the industry, a lack of data, underreporting of the offense, difficulties in identifying victims, and a general lack of awareness of the signs of commercial sex trafficking.

Data on the extent of commercial sex trafficking in Virginia is not readily available.

One significant reason that the full scope of the commercial sex trafficking problem in Virginia cannot be identified is due to a lack of available and consistent data across the Commonwealth. Commercial sex trafficking, similar to all types of sexually-based offenses, is a highly underreported crime.⁸⁰ Due to this underreporting and the clandestine nature of sex trafficking, accurate incidence and prevalence rates are difficult to estimate.⁸¹

Data that does exist is limited by the definitions of the agency or entity maintaining such information and by the capabilities of those agencies or entities to identify victims of commercial sex trafficking.⁸² As such, staff was unable to effectively utilize the available data to assess the full extent of the commercial sex industry across Virginia.

Staff requested data on charges and convictions for commercial sex trafficking offenses from the Virginia State Police, Virginia Criminal Sentencing Commission, and Department of Juvenile Justice for FY14-FY18.⁸³ A detailed analysis of this data is contained in *Appendix 1* of this report.

Staff also received information from the Department of Social Services on the number of sex trafficking victims identified in the child welfare system.⁸⁴ The data showed that between CY15-CY17, a total of 54 victims were identified, with a breakdown by year as follows:

- 2015: 10 victims;
- 2016: 23 victims; and,
- 2017: 21 victims.⁸⁵

Commercial sex is a lucrative industry.

While the exact amount of money in the commercial sex industry is difficult to determine, a 2014 study examining eight major U.S. cities estimated that the commercial sex economy was a multi-million dollar industry in each of those cities.⁸⁶ Furthermore, traffickers often perceive involvement in commercial sex to be less risky than other criminal enterprises.⁸⁷ The large profits generated by sex trafficking, combined with the perceived low risks of arrest and prosecution of the traffickers, help to fuel the commercial sex industry.⁸⁸

Staff found that it is not uncommon for a trafficker to impose a nightly earnings quota on their victim.⁸⁹ Once a trafficker has brought a victim into the commercial sex industry, that victim may earn hundreds of dollars per night for their trafficker by engaging in sex acts. For example, a victim working six nights per week with a \$500 nightly quota would earn \$156,000 annually for their trafficker. It is important to note that victims rarely are allowed to keep their earnings; all or the majority of the money that they receive for performing sex acts must be turned over to their trafficker. Due to these high profit margins, organized crime and street gangs have turned to commercial sex trafficking as a means of generating revenue to fund their illegal activities.⁹⁰

Commercial sex trafficking intersects with numerous other problems facing Virginia.

Commercial sex trafficking does not exist in a vacuum. As described earlier in this report, a variety of concerning factors intersect within the commercial sex industry, such as:

- Child physical and sexual abuse;
- Missing or runaway youth;
- Drug addiction and the opioid crisis;
- Behavioral issues in schools;
- Juvenile delinquency and status offenses;
- Social services and foster care placement;
- Suicide;
- Mental health;
- Health care (e.g., pregnancy, sexually transmitted infections);
- Gangs; and,
- Domestic violence.⁹¹

The multitude of problems listed above can impact victims before, during, and after leaving the commercial sex industry. As noted previously in this report, risk factors such as a history of physical or sexual abuse, homelessness, running away, drug addiction, mental health issues, or time within the foster care system are common issues that individuals face before entering the commercial sex industry.⁹² Gangs and domestic violence are also significant risk factors for entry into commercial sex trafficking due to the control that gang members and domestic abusers can exert over potential victims.⁹³ Victims may engage in criminal activity or develop physical or psychological health issues while being sex trafficked. Furthermore, victims can become dependent on drugs supplied by their trafficker, or may turn to drugs as a coping mechanism to deal with being victimized.⁹⁴ The physical, mental, and behavioral issues that a victim develops while

being sex trafficked, coupled with any pre-existing conditions, is a significant reason why so many resources and services are required in order for victims to successfully leave the commercial sex industry.

The traditional criminal justice response to commercial sex trafficking is not apprehending traffickers or serving the needs of victims.

As previously noted, Virginia’s commercial sex trafficking statute (Va. Code § 18.2-357.1) was enacted in 2015.⁹⁵ Data revealed that this statute, meant to punish commercial sex traffickers, is not being utilized across the Commonwealth. Arrests were made under the new Code provision in only thirteen localities between FY16-FY18.⁹⁶ An analysis of disposition data provided by the Virginia State Police, along with charge and conviction data provided by the Virginia Criminal Sentencing Commission, showed that most arrests do not result in a conviction. For instance, 56% (224 of 397) of the arrests made between FY16-FY18 resulted in a *nolle prosequi* (i.e., withdrawal) of the charge.⁹⁷ During this time period, one locality accounted for the large majority of arrests under the commercial sex trafficking statute each fiscal year, and consequently brought forth charges most frequently in its circuit and district courts.⁹⁸

Staff further found that while intervention from the criminal justice system may temporarily remove a victim from the commercial sex industry, such intervention alone does not prevent that victim from re-entering the industry, nor does it provide that victim with the resources or services needed to leave the industry.⁹⁹ Without any other forms of intervention, the traditional criminal justice response often leads to victims being charged with prostitution, which is a Class 1 misdemeanor,¹⁰⁰ and treated as criminals by the justice system.

Identifying victims of commercial sex trafficking is difficult and measures must be implemented to enhance such identifications.

As noted earlier in this report, victims of commercial sex trafficking often do not self-identify as being a victim or realize that they are being trafficked. Additionally, such victims may exhibit indicators or behaviors (e.g, running away from home, delinquent behavior, truancy, mental health issues, drug addiction) that are not immediately associated with sex trafficking. Identifying victims of commercial sex trafficking can be difficult because of these factors.

Staff found that agencies and entities in various localities and regions across the Commonwealth have focused on promoting the awareness and identification of commercial sex trafficking; however, those efforts were scattered and no plan existed to promote awareness and identification statewide. In order to effectively combat sex trafficking, education and training must be provided to numerous individuals (i.e., law enforcement officers, prosecutors, judges, criminal defense attorneys, guardians *ad litem*, probation and correctional officers, educators and school administrators, social services professionals, medical and treatment providers, mental health counselors, members of the general public) so that they understand the dynamics of the commercial sex industry and are better able to recognize signs of trafficking, such as:

- Disconnection from family, friends, and community or religious organizations;

- Absence from school;
- Sudden or dramatic change in behavior;
- Appearance of being denied food, water, sleep, or medical care;
- Lack of freedom of movement;
- Limited personal possessions; and/or,
- Unstable living situation.¹⁰¹

In addition to training efforts, screening tools can be utilized across various systems (e.g., courts, education, social services, medical, and private entities) to assist with identifying victims. Numerous screening tools have already been developed for the purpose of identifying victims of commercial sex trafficking.¹⁰² While some of these tools are being used in various systems in Virginia, no standardized tool has been developed for use across the Commonwealth.¹⁰³ There is currently a project underway in Virginia (Linking Systems of Care for Children and Youth) to identify child victims of crime and to address the consequences of that exposure to criminal activity.¹⁰⁴ This project includes the development of a brief screening tool to be used across various systems to identify children who have been victimized or exposed to violence.¹⁰⁵ The screening tool will include two questions relating to trafficking that will trigger a further assessment if trafficking is indicated.¹⁰⁶

Resources for victims of commercial sex trafficking are limited in Virginia.

Victims often suffer from multiple forms of trauma and require significant resources and services in order to successfully leave the commercial sex industry. Staff determined that few programs exist in Virginia to provide services (e.g., shelter, an assessment of needs, medical care, rehabilitative counseling, and advocacy services) specifically for adult victims of commercial sex trafficking.¹⁰⁷ Furthermore, staff identified only one residential program in Virginia that provides such services to juvenile victims.¹⁰⁸ This lack of resources can contribute to victims of commercial sex trafficking being directed into the criminal justice system as a means to provide some form of services.

Confusion exists in regard to the role and duties of local social services departments when a child is identified as a victim of sex trafficking.

Staff found that two primary areas of confusion existed in the field in regard to the role and duties of local social services departments in addressing commercial sex trafficking. First, interpretations varied as to whether the Virginia Code allowed such agencies to intervene when the child was a victim of sex trafficking, but the trafficker was not the child's parent or other caretaker. Second, even if such agencies chose to intervene, existing law did not specifically identify what type of response was permitted or required.

During the Regular Session of the 2016 General Assembly, legislation was enacted to include victims of sex trafficking or severe forms of sex trafficking in the definition of an "abused or neglected child."¹⁰⁹ While this legislation amended that definition, no corresponding changes were made to the Code provision that sets forth the criteria for a valid report or complaint to initiate social services involvement in the matter.¹¹⁰ In order for a report or complaint to be valid, the alleged abuser must be the "child's parent or other caretaker."¹¹¹ Staff found that the Virginia Code was unclear as to whether a non-

parental sex trafficker constituted an “other caretaker” for purposes of establishing such a valid report or complaint.

Staff further determined that even if a local social services department found the report or complaint relating to a non-parental sex trafficker to be valid, the Virginia Code was still unclear as to what type of response was permitted or required. Under existing law prior to July 1, 2019, there were two types of actions that a local social services department could take if a complaint or report was found to be valid: an investigation¹¹² or a family assessment.¹¹³ The investigation option posed challenges because investigating the non-parental sex trafficker seemed to be a more appropriate function for law enforcement than for social services. Furthermore, the family assessment option could be an intrusive process in instances where the family had no knowledge of or involvement in the sex trafficking.

Measures have not consistently been taken to address the demand side of the commercial sex industry across Virginia.

As part of a multi-disciplinary collaborative approach to combatting commercial sex trafficking in Virginia, the demand side of the industry must be targeted in order to deter the purchase of sex, hold sex buyers accountable, and educate sex buyers on the impact of the industry on its victims. While efforts to address commercial sex trafficking frequently focus on victims and traffickers, minimal attention has been centered on the demand side of the commercial sex industry. Staff found that some law enforcement agencies in Virginia will occasionally conduct operations targeting sex buyers.¹¹⁴ Staff further discovered that some localities currently have, or previously had, programs meant to educate sex buyers on the dynamics of the commercial sex industry and the impacts to its victims (John schools).¹¹⁵ These programs are meant to serve as a deterrent by educating sex buyers on the dynamics of the commercial sex industry. Particular emphasis is placed on explaining to sex buyers that the person from whom they are buying sex may be a victim of trafficking as opposed to a consenting participant in the sex act.

Few juveniles are charged with or adjudicated delinquent of prostitution in Virginia.

During this study, concerns were raised about juveniles being charged with prostitution in Virginia. Staff requested data from the Department of Juvenile Justice and ultimately discovered that few juveniles are charged with prostitution and even fewer are adjudicated delinquent of that offense.

Between FY14-FY18, there were a total of 17 juvenile intakes for the charge of prostitution (Virginia Code § 18.2-346).¹¹⁶ During that timeframe, only two of the juvenile intakes resulted in an adjudication of delinquency and another three had a deferred/withheld finding.¹¹⁷

It is important to note that while few juveniles are charged with prostitution in Virginia, this does not mean that juveniles are not being victimized in the commercial sex industry. While criminal charges are rarely pursued against a juveniles engaged in prostitution in Virginia, both law enforcement officers and prosecutors noted that such criminal charges

can be a valuable tool in certain circumstances to safely remove a juvenile from immediate danger and to utilize resources within the court system to provide treatment and services to that juvenile. Additionally, research indicates that juvenile victims of commercial sex trafficking can enter the court system on other types of criminal charges (e.g., drug possession or larceny) or status offenses (e.g., truancy or curfew violations) that may not appear to be related to sex trafficking.¹¹⁸ Furthermore, staff heard from a victim of sex trafficking that it is not uncommon for traffickers to provide juvenile victims with false identifying information (names and dates of birth) in the hopes that those victims will be released, instead of processed into the juvenile court system, if they come into contact with law enforcement.¹¹⁹

Combating commercial sex trafficking requires a proactive, collaborative, and multi-disciplinary approach.

In order to effectively combat commercial sex trafficking in Virginia, various systems (e.g., courts, education, social services, medical, and private entities) across the Commonwealth must share information and resources to:

- Identify and intervene with at-risk youth;
- Increase awareness, education, and training;
- Identify, recover, and treat victims; and,
- Reduce recruitment and demand.

Several other states, such as Colorado,¹²⁰ Florida,¹²¹ Minnesota,¹²² Ohio,¹²³ and Texas,¹²⁴ have adopted a multi-disciplinary approach. Furthermore, staff identified Maryland,¹²⁵ Minnesota,¹²⁶ Ohio,¹²⁷ and Texas,¹²⁸ as states that have designated an individual to facilitate the coordination of this multi-system response. These states involve a variety of entities in order to combat commercial sex trafficking including, but not limited to, law enforcement agencies, prosecutors, legal aid, social services, advocates, departments of agriculture, health, juvenile justice, and education, and faith-based organizations.

Virginia must adopt a proactive, collaborative, and multi-disciplinary approach in order to promote awareness and share resources across systems so that the root causes of commercial sex trafficking can be addressed. This approach must focus on all three aspects of the commercial sex industry: victims, traffickers, and sex buyers. At-risk youth need to be identified before they are recruited into the industry. Numerous individuals must receive training, and screening tools need to be developed and implemented, in order to identify victims and provide them with the resources and services necessary to leave the industry. The criminal justice system must punish traffickers and sex buyers for their illicit activities while simultaneously being cognizant of why victims may engage in criminal activity. Furthermore, sex buyers must be deterred from purchasing commercial sex both through criminal sanctions and educational programming on the dynamics of the commercial sex industry and its impact on victims.

Recommendations

Crime Commission members unanimously endorsed all eleven recommendations provided by staff to combat commercial sex trafficking in Virginia. Crime Commission

members were also presented with three policy decision options. No motions were made on Policy Decision Options 1 or 3. Policy Decision Option 2 was defeated by a majority vote of the Commission.

Recommendation 1: Amend Virginia Code §§ 63.2-1506, 63.2-1508, and 63.2-1517 to:

- clarify that sex traffickers do not need to be a victim’s parent or other caretaker in order to initiate Department of Social Services (DSS) involvement;
- allow DSS to take emergency custody of children who are victims of sex trafficking;
- require DSS to conduct a family assessment when a juvenile sex trafficking victim is identified; and,
- clarify the jurisdiction of local DSS agencies.

Staff found that confusion existed in regard to the role and duties of local social services departments when a child was identified as a victim of sex trafficking. This recommendation was meant to clarify that confusion and provide guidance to local social services departments on how to respond when a child is identified as a victim of sex trafficking, but the trafficker is not that child’s parent or other caretaker.

Senate Bill 1661 (Sen. Mark J. Peake) and House Bill 2597 (Del. Charniele L. Herring) were enacted during the Regular Session of the 2019 General Assembly to address this recommendation.¹²⁹ These bills accomplish the following key measures:

- Clarify that a sex trafficker does not need to be the trafficked child’s parent or other caretaker in order for there to be a valid report or complaint that initiates social services involvement in the matter (Va. Code § 63.2-1508);
- Create a sex trafficking assessment which local social services departments must conduct if a child is identified as a victim of sex trafficking (Va. Code § 63.2-1506.1);
- Mandate that local social services departments work jointly to complete the sex trafficking assessment if the trafficked child resides in a jurisdiction other than the location in which the valid report or complaint was received (Va. Code § 63.2-1506.1);
- Allow local social services departments to take emergency custody of children recovered from sex trafficking for up to 72 hours (Va. Code § 63.2-1517); and,
- Require local social services departments to notify the Child Protective Services Unit within DSS whenever a child is taken into custody as a result of sex trafficking and whenever a sex trafficking assessment is conducted (Va. Code §§ 63.2-1506.1 and 63.2-1517).

Recommendation 2: Amend Virginia Code § 18.2-357.1 to authorize charging sex traffickers for each individual act of commercial sex trafficking.

Staff noted that some ambiguity existed in relation to Virginia’s commercial sex trafficking statute.¹³⁰ Some stakeholders interpreted the statute as allowing for a trafficker to be charged with each individual act of commercial sex trafficking. Other stakeholders viewed the statute as similar to the “single larceny doctrine”,¹³¹ with multiple acts of commercial sex trafficking constituting one common scheme. This

recommendation clarifies that a trafficker can be charged with each individual act of commercial sex trafficking.

The punishment for commercial sex trafficking varies based upon multiple factors. If the trafficker recruits or encourages a person to engage in prostitution with the intent of receiving money or some other item of value as a result of that prostitution, he is guilty of a Class 5 felony.¹³² If the trafficker uses force, threats, or deception in order to accomplish these acts, he is guilty of a Class 4 felony.¹³³ If the trafficker is an adult and the person engaging in prostitution is a minor, the trafficker is guilty of a Class 3 felony regardless of whether or not force, threats, or deception were used.¹³⁴

House Bill 2586 (Del. Robert B. Bell) was enacted during the Regular Session of the 2019 General Assembly to address this recommendation.¹³⁵

Recommendation 3: Amend Virginia Code §§ 18.2-348 and 18.2-349 to increase penalties for aiding in prostitution and using a vehicle to promote prostitution when the victim is a minor. Additionally, amend Virginia Code §§ 9.1-902, 17.1-805, 18.2-46.1, 18.2-513, 19.2-215.1, and 19.2-392.02 to provide consistency amongst felony commercial sex trafficking offenses in the sex offender registration, violent felony offense definition, gang offenses, racketeering offenses, multi-jurisdictional grand jury, and barrier crimes statutes.

Staff observed that while several criminal statutes relating to commercial sex trafficking contained enhanced penalties if the victim was a minor (Va. Code §§ 18.2-346(B), 18.2-355, 18.2-356, 18.2-357, 18.2-357.1), certain other criminal statutes did not contain such provisions (Va. Code §§ 18.2-347, 18.2-348, and 18.2-349). This recommendation codifies a policy decision that penalties for commercial sex trafficking should be more severe if the victim is a minor and the offender is an adult.

House Bill 2586 (Del. Robert B. Bell) was enacted during the Regular Session of the 2019 General Assembly to address this recommendation by:¹³⁶

- Increasing the penalty for aiding in prostitution (Va. Code § 18.2-348) and using a vehicle to promote prostitution (Va. Code § 18.2-349) from a Class 1 misdemeanor to a Class 6 felony when the victim is a minor and the offender is an adult; and,
- Amending several other Code sections to provide consistency amongst sex trafficking offenses, including the sex offender registry, violent felony offense classification, criminal street gang definition, racketeering activity definition, multi-jurisdictional grand jury, and barrier crimes.¹³⁷

It is important to note that the criminal penalty for keeping, residing in, or frequenting a bawdy place (Va. Code § 18.2-347) was not amended by this legislation. Staff intentionally did not include that Code section in this recommendation due to concerns that victims of commercial sex trafficking may be inadvertently impacted by such increased penalties.

Recommendation 4: Amend Virginia Code §§ 18.2-346, 18.2-348, and 18.2-356 to prohibit manual stimulation of another’s genitals (e.g., acts of prostitution involving sexual touching but not penetration).

The current Virginia Code provision which punishes prostitution and solicitation of prostitution (Va. Code § 18.2-346) prohibits sexual acts involving penetration but not acts involving touching. Numerous stakeholders communicated to staff that this distinction inhibits law enforcement investigations into establishments where sexual acts that only involve touching are performed. Furthermore, because sex acts involving touching are not criminalized, the individuals operating these establishments cannot be charged with commercial sex trafficking.

Legislation was introduced as part an omnibus bill (Senate Bill 1603 – Sen. Mark D. Obenshain) during the Regular Session of the 2019 General Assembly to address this recommendation. That bill was left in the Senate Committee on Finance.¹³⁸

Recommendation 5: Enact Virginia Code § 9.1-116.5 to create a statewide Sex Trafficking Response Coordinator position at DCJS with statutorily defined duties and responsibilities.

Staff found that various localities and agencies in Virginia are engaging in collaborative efforts to combat commercial sex trafficking; however, there is not a centralized point-of-contact at the state level or a statewide response plan. As noted earlier in the report, various states have adopted a multi-collaborative approach to address commercial sex trafficking and have designated an individual to facilitate the coordination of this response. Staff proposed the creation of a statewide coordinator position in Virginia that will serve as a centralized point-of-contact to develop and facilitate connections between various stakeholders, such as law enforcement agencies, prosecutors, courts, victim-witness advocates, schools, social services, treatment providers, and other stakeholders to address commercial sex trafficking.

Senate Bill 1669 (Sen. Jill Holtzman Vogel) and House Bill 2576 (Del. Paul E. Krizek) were enacted during the Regular Session of the 2019 General Assembly to address this recommendation.¹³⁹ These bills require the Coordinator to perform the following duties:

- Create a statewide response plan for when a victim of sex trafficking is identified;
- Coordinate the development of guidelines and standards for treatment programs for victims of sex trafficking;
- Maintain a list of treatment programs for victims of sex trafficking;
- Oversee the development of a curriculum for persons convicted of solicitation of prostitution;
- Promote education, training, and awareness of sex trafficking and demand-reduction strategies; and,
- File an annual report with the Governor and General Assembly including the year’s activities and any additional recommendations to address sex trafficking.

In addition to funding for this new position, DCJS was also appropriated \$30,000 from the general fund for the costs of developing a curriculum for persons convicted of solicitation of prostitution.¹⁴⁰

Recommendation 6: Amend Virginia Code § 19.2-368.3 to require the Criminal Injuries Compensation Fund (Virginia Victims Fund) to develop policies for the investigation and consideration of claims by sex trafficking victims for reimbursement of medical care and other expenses.

Staff noted that the Virginia Code prohibits persons from being awarded claims by the Virginia Victims Fund if they were criminally responsible for the crime upon which the claim was based.¹⁴¹ This was of particular concern because victims of commercial sex trafficking are frequently charged with the criminal offense of prostitution or related offenses. This recommendation would have required the Virginia Victims Fund to develop specific policies and procedures for claims filed by victims of commercial sex trafficking.

Upon further discussion with representatives of the Virginia Victims Fund, staff found that the Fund was already working on internal measures to assist with claims filed by victims of commercial sex trafficking.¹⁴² These representatives and staff agreed that it would be important for the Fund to notify stakeholders that such victims are eligible to be awarded claims.¹⁴³ As a result, no legislation was introduced in regard to this recommendation. Instead, the Crime Commission sent a letter requesting that the Virginia Victims Fund collaborate with stakeholders to develop informational materials, increase outreach, and support training efforts relating to claims filed by victims of commercial sex trafficking.

Recommendation 7: Enact Virginia Code §§ 9.1-116.4, 16.1-69.48:6 and 17.1-275.13 to create a Virginia Prevention of Sex Trafficking Fund administered by DCJS to promote training, education, and awareness related to sex trafficking.

While funding sources exist to provide treatment and services to victims of commercial sex trafficking,¹⁴⁴ staff was unable to identify any funding sources specifically for the prevention and awareness of such trafficking. Staff proposed this fund as a means of generating revenue from convicted traffickers and sex buyers that could be used to promote prevention and awareness related to commercial sex trafficking. The fund would also impose an additional punitive measure on convicted traffickers and sex buyers in the form of a court fee.

House Bill 2651 (Del. David E. Yancey) was enacted during the Regular Session of the 2019 General Assembly to address this recommendation.¹⁴⁵ The bill established this fund that will generate its revenues from court fees assessed to traffickers and sex buyers who are convicted of commercial sex trafficking offenses (\$100 for each misdemeanor and \$500 for each felony).

It is important to note that no fees are assessed on convictions for prostitution (Va. Code § 18.2-346(A)) or for keeping, residing in, or frequenting a bawdy place (Va. Code § 18.2-347). These Code sections were specifically excluded from the legislation so that victims of commercial sex trafficking will not be assessed this fee.

Recommendation 8: Amend Virginia Code § 18.2-67.9 to allow certain juvenile sex trafficking victims and witnesses to testify via two-way closed-circuit television under the following existing rules:

- Victim: Age 14 or under at the time of offense and age 16 or under at the time of trial; or,
- Witness: Age 14 or under at the time of trial.

Existing Virginia law allowed juvenile victims and witnesses within the above listed age parameters to testify via two-way closed-circuit television for specific categories of offenses, including: kidnapping (Va. Code § 18.2-47 *et. seq.*), criminal sexual assault (Va. Code § 18.2-61 *et. seq.*), and family offenses (Va. Code § 18.2-362 *et. seq.*).¹⁴⁶ This recommendation adds commercial sex trafficking and prostitution offenses (Va. Code § 18.2-344 *et seq.*) to the categories of offenses for which two-way closed-circuit television may be utilized. Staff proposed this recommendation due to the fact that both adults and juveniles can be victims of commercial sex trafficking.

House Bill 2464 (Del. Christopher E. Collins) was enacted during the Regular Session of the 2019 General Assembly to address this recommendation.¹⁴⁷

Recommendation 9: Request that DCJS Committee on Training establish compulsory minimum entry-level, in-service, and advanced training standards for law enforcement officers on the awareness and identification of sex trafficking.

Staff proposed this recommendation as a means to educate law enforcement officers on the dynamics and indicators of the commercial sex industry throughout various stages in their careers. At the time of this study, DCJS was in the process of reviewing and updating its training standards. That analysis identified human trafficking as a need to be included in the updated minimum entry-level law enforcement officer training standards.¹⁴⁸

The Crime Commission sent a letter to DCJS requesting that the agency establish compulsory minimum entry-level, in-service, and advanced training standards for law enforcement officers on the awareness and identification of sex trafficking.

Recommendation 10: Request that DCJS continue to allocate a portion of the Victims of Crime Act (VOCA) funding for treatment and services for victims of sex trafficking.

Staff found that resources for victims of commercial sex trafficking are limited in Virginia. Additionally, as more stakeholders receive training on the indicators of commercial sex trafficking, it is likely that more victims will be identified. This recommendation was proposed to ensure that victims of commercial sex trafficking continue to receive consideration when VOCA grant funding is awarded.

At the time of this study, DCJS had awarded various VOCA grants to address human trafficking, including:

- nearly \$1.1 million to three programs that specifically focus on human trafficking;
- nearly \$1.1 million to six programs that provide services to various victims, including those of human trafficking; and,
- over \$1.7 million to the Department of Social Services for the treatment of juvenile victims of physical and sexual abuse, which includes human trafficking.¹⁴⁹

The Crime Commission sent a letter to DCJS requesting that the agency continue to allocate a portion of VOCA grant funding for the treatment of commercial sex trafficking victims.

Recommendation 11: Direct Crime Commission staff to continue work on this study for an additional year to consult with stakeholders, examine further areas of concern, and identify potential solutions to:

- Identify strategies to enhance data collection and case tracking across multiple agencies;
- Examine the roles of existing multi-disciplinary teams and their response to sex trafficking;
- Work with stakeholders to include sex trafficking training at various conferences over the next year;
- Work with the Department of Education and school divisions to examine prevention strategies for at-risk youth;
- Assess options for assisting sex trafficking victims with obtaining personal identification documents;
- Determine screening tools that exist to identify at-risk youth and develop a plan for how a uniform statewide tool can be adopted; and,
- Identify any other strategies to address sex trafficking in Virginia.

While staff was able to gather and analyze a vast amount of information on the commercial sex industry prior to the October meeting, the complexity of the industry and its impact on the Commonwealth require further examination. Continuing the study will provide staff an opportunity to more closely scrutinize various areas of concern that were identified.

Policy Decision Option 1: Endorse House Bill 984 (Del. David E. Yancey) of the Regular Session of the 2018 General Assembly to amend Virginia Code § 18.2-346 to allow a petition for a child in need of services to be substituted for a delinquency petition for a minor arrested for prostitution, if the minor is willing to participate in specialized services for those engaged in commercial sexual conduct.

This legislation would have allowed a petition for a child in need of services to be substituted for a delinquency petition in cases where a juvenile was charged with prostitution. In order for such a substitution to occur, the juvenile would have to agree to participate in specialized services for persons engaged in commercial sexual conduct. This legislation would only be applicable in a limited number of cases because few juveniles are charged with prostitution in Virginia.

Staff identified several potential unintended consequences from this legislation. First, the legislation was limited only to charges of prostitution and therefore a juvenile victim of commercial sex trafficking who came before the court on any other offense would not have access to this remedy. Second, the Virginia Code currently provides juvenile court intake officers the authority to proceed informally on a criminal offense so that the charge does not have to enter the court system.¹⁵⁰ Third, juvenile court judges have broad authority when fashioning the disposition on a case, including the authority to defer and

dismiss the offense.¹⁵¹ Fourth, the creation of a special process for prostitution charges could potentially impact how juvenile court intake officers and judges exercise their statutory discretion to divert or defer and dismiss prostitution charges. Fifth, the legislation required the juvenile to agree to participate in specialized services for persons engaged in commercial sexual conduct; however, the legislation did not include a remedy for instances when the juvenile then failed or refused to participate in those specialized services.

No motion was made by the Crime Commission in regard to this option.

Policy Decision Option 2: Endorse House Bill 962 (Del. David E. Yancey) of the Regular Session of the 2018 General Assembly to amend Virginia Code § 19.2-392.2 to allow a person to petition for expungement of convictions for prostitution when the person was induced to engage in prostitution through the use of force, intimidation, or deception by another.

Staff noted that this legislation would aid in removing certain barriers that victims of commercial sex trafficking may face when attempting to leave or after they have left the industry. A criminal conviction can adversely impact an individual's ability to obtain employment, housing, education, and other services.¹⁵²

While this legislation may provide a benefit to victims of commercial sex trafficking, various concerns were identified in regard to how the legislation would be applied in practice. First, current Virginia law does not allow for expungement of any offense that resulted in a conviction.¹⁵³ This legislation would expand the availability of expungements to victims of commercial sex trafficking, but not to victims of any other type of criminal activity. Second, the legislation only applied to convictions for prostitution and not to convictions for other types of offenses (e.g., drug possession or larceny) that may have resulted from the victim's involvement in the commercial sex industry. Third, expungement would only be authorized if the conviction was as a result of force, intimidation, or deception, and thus individuals who were victimized through some other means of control by their trafficker would not be eligible for expungement. Fourth, due to the passage of time since a conviction was entered, records may no longer exist in order for the parties (both the victim and the Commonwealth) to litigate whether an expungement should be granted. Fifth, the legislation contained no waiting period between the conviction and the expungement, and thus a victim could be convicted in the district court and immediately file for expungement of that conviction in the circuit court. This lack of a waiting period led to the concern that a trafficker could use this process as a way to further manipulate the victim by assisting with an expungement.

This option was defeated by a majority vote of the Crime Commission.

Policy Decision Option 3: Amend Virginia Code §§ 19.2-305.1 and 19.2-368.15 to require mandatory restitution for juvenile victims of sex trafficking.

The concept of mandatory restitution for juvenile victims of sex trafficking was raised following the October meeting. A similar provision exists in the Virginia Code for juvenile victims of child pornography offenses.¹⁵⁴ Staff did not identify any instances where a

victim of sex trafficking was not awarded restitution when it was requested from the court. Additionally, staff was advised by a prior victim of sex trafficking that the trafficker would likely obtain the money to pay this restitution by recruiting more victims into the commercial sex industry.¹⁵⁵

No motion was made by the Crime Commission in regard to this option.

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Amara Legal Center

Bon Secours Richmond Health System

Criminal Defense & Advocacy Clinic – Brooklyn Law School

Criminal Injuries Compensation Fund (Virginia Victims Fund)

Commonwealth’s Attorneys’ Services Council

Federal Bureau of Investigation – Behavioral Analysis Unit

Greater Richmond Stop Child Abuse Now (SCAN)

Hallmark Youthcare – Richmond

Henrico County Commonwealth’s Attorney’s Office

Henrico County Police Division

ImPACT Virginia

Linking Systems of Care for Children and Youth – Virginia (Vision 21)

National Association to Protect Children (Protect.org)

National Center for Missing & Exploited Children

National District Attorneys Association

Northern Virginia Human Trafficking Task Force

Office of the Attorney General

Prince William County Public Schools

Richmond Justice Initiative

Rights 4 Girls

Safe Harbor

Seattle Against Slavery

Shared Hope International

Trauma and Hope

United States Attorney's Office for the Western District of Virginia

United States Immigration and Customs Enforcement

VCU Health System

Virginia Association of Commonwealth's Attorneys

Virginia Beach Justice Initiative

Virginia Criminal Sentencing Commission

Virginia Department of Criminal Justice Services

Virginia Department of Education

Virginia Department of Emergency Management

Virginia Department of Juvenile Justice & Directors of Court Service Units

Virginia Department of Social Services

Virginia State Police - Virginia Fusion Center

Virginia Victim Assistance Network

youthSpark

Youth For Tomorrow

Appendix 1: Commercial Sex Trafficking Data

Arrests, Charges, and Convictions, FY14-FY18 Va. Code § 18.2-48(iii) and (iv) Abduction with intent to extort money or for immoral purpose

§ 18.2-48(iii)	Abduct child under 16 years of age for concubinage or prostitution	2014	2015	2016	2017	2018	TOTAL
ADULTS:	Arrests	1	1	1	0	0	3
	Circuit Court Charges	0	8	3	0	0	11
	Circuit Court Convictions	0	0	0	0	0	0
	General District Court Charges	0	0	0	0	0	0
	General District Court Convictions	0	0	0	0	0	0
	J&DR Court Charges (Adult Only)	0	0	0	0	0	0
	J&DR Court Convictions (Adult Only)	0	0	0	0	0	0
JUVENILES:	Juvenile Petitioned Intakes by Court Service Units	1	3	1	2	0	7

§ 18.2-48(iv)	Abduct for the purpose of prostitution	2014	2015	2016	2017	2018	TOTAL
ADULTS:	Arrests	3	5	3	2	0	13
	Circuit Court Charges	0	5	1	2	0	8
	Circuit Court Convictions	0	0	0	0	0	0
	General District Court Charges	3	8	0	1	1	13
	General District Court Convictions	0	0	0	0	0	0
	J&DR Court Charges (Adult Only)	0	2	0	0	2	4
	J&DR Court Convictions (Adult Only)	0	0	0	0	0	0
JUVENILES:	Juvenile Petitioned Intakes by Court Service Units	0	0	0	0	0	0

The figures above represent RAW DATA ONLY. No attempts should be made to directly compare arrests, petitions, charges, or convictions as the data sources and temporal definitions vary.

Data sources include the following:

Arrests: Virginia State Police, CCH System, Fiscal Year of Arrest

Juvenile Petitioned Intakes: Virginia Department of Juvenile Justice, Fiscal Year of Intake

Circuit Court Charges and Convictions: Supreme Court of Virginia - Circuit Court Case Management System (CMS); The Circuit Court Automated Information System does not include cases from Fairfax or Alexandria.

General District Court Charges and Convictions: Supreme Court of Virginia – General District Court CMS

Juvenile & Domestic Relations District Court Charges and Convictions: Supreme Court of Virginia – Juvenile & Domestic Relations Court CMS

Note: Charges represent Fiscal Year Filed; Convictions represent Fiscal Year Concluded. To avoid duplication, appeals from General District and Juvenile & Domestic Relations Courts were excluded. To avoid duplication, cases transferred to another jurisdiction prior to conclusion of the case were excluded. Charge/conviction data for each offense include attempted, conspired, and completed crimes. Data are based on the offense at charge/conviction and exclude subsequent probation violations or other violations stemming from that offense. Cases were selected for inclusion in the analysis based on information entered by the clerks in the CMS data system. Analysis of Juvenile & Domestic Relations (JDR) Court data includes only adult offenders processed in JDR Court. The Sentencing Commission does not have access to data for juveniles adjudicated in JDR Court.

Arrests, Charges, and Convictions, FY14-FY18
Va. Code § 18.2-346
Prostitution; commercial sexual conduct

§ 18.2-346(A)	Prostitution, adultery, or fornication for money	2014	2015	2016	2017	2018	TOTAL
ADULTS:	Arrests	349	316	258	240	115	1,278
	Circuit Court Charges	8	6	17	21	13	65
	Circuit Court Convictions	8	6	12	20	13	59
	General District Court Charges	438	547	413	366	207	1,971
	General District Court Convictions	281	316	278	216	138	1,229
	J&DR Court Charges (Adult Only)	1	1	1	1	2	6
	J&DR Court Convictions (Adult Only)	0	3	0	0	0	3
JUVENILES:	Juvenile Petitioned Intakes by Court Service Units	4	3	5	0	4	16

§ 18.2-346(B)	Solicitation of prostitution (offering money, etc. for sexual act)	2014	2015	2016	2017	2018	TOTAL
ADULTS:	Arrests	239	318	216	135	80	988
	Circuit Court Charges	4	7	12	9	3	35
	Circuit Court Convictions	2	7	5	10	8	32
	General District Court Charges	190	351	102	111	72	826
	General District Court Convictions	106	166	83	55	45	455
	J&DR Court Charges (Adult Only)	1	1	1	1	2	6
	J&DR Court Convictions (Adult Only)	0	0	1	0	1	2
JUVENILES:	Juvenile Petitioned Intakes by Court Service Units	2	3	1	1	1	8

Note: There were an additional 924 charges and 465 convictions in General District Courts across FY14-FY18 where the type of prostitution offense (A or B) under Va. Code § 18.2-346 was not clear.

The figures above represent RAW DATA ONLY. No attempts should be made to directly compare arrests, petitions, charges, or convictions as the data sources and temporal definitions vary.

Data sources include the following:

Arrests: Virginia State Police, CCH System, Fiscal Year of Arrest

Juvenile Petitioned Intakes: Virginia Department of Juvenile Justice, Fiscal Year of Intake

Circuit Court Charges and Convictions: Supreme Court of Virginia - Circuit Court Case Management System (CMS); The Circuit Court Automated Information System does not include cases from Fairfax or Alexandria.

General District Court Charges and Convictions: Supreme Court of Virginia – General District Court CMS

Juvenile & Domestic Relations District Court Charges and Convictions: Supreme Court of Virginia – Juvenile & Domestic Relations Court CMS

Note: Charges represent Fiscal Year Filed; Convictions represent Fiscal Year Concluded. To avoid duplication, appeals from General District and Juvenile & Domestic Relations Courts were excluded. To avoid duplication, cases transferred to another jurisdiction prior to conclusion of the case were excluded. Charge/conviction data for each offense include attempted, conspired, and completed crimes. Data are based on the offense at charge/conviction and exclude subsequent probation violations or other violations stemming from that offense. Cases were selected for inclusion in the analysis based on information entered by the clerks in the CMS data system. Analysis of Juvenile & Domestic Relations (JDR) Court data includes only adult offenders processed in JDR Court. The Sentencing Commission does not have access to data for juveniles adjudicated in JDR Court.

Arrests, Charges, and Convictions, FY14-FY18
Va. Code § 18.2-346(B,i) and (B,ii)
Prostitution; commercial exploitation of a minor

§ 18.2-346(B,i)	Solicitation of prostitution from minor age 16 or older	2014	2015	2016	2017	2018	TOTAL
ADULTS:	Arrests	3	11	2	5	1	22
	Circuit Court Charges	0	7	1	0	1	9
	Circuit Court Convictions	0	0	2	1	1	4
	General District Court Charges	0	0	0	2	1	3
	General District Court Convictions	0	0	0	0	0	0
	J&DR Court Charges (Adult Only)	3	12	1	3	4	23
	J&DR Court Convictions (Adult Only)	0	0	0	0	0	0
JUVENILES:	Juvenile Petitioned Intakes by Court Service Units	0	0	0	0	0	0

§ 18.2-346(B,ii)	Solicitation of prostitution from minor less than age 16	2014	2015	2016	2017	2018	TOTAL
ADULTS:	Arrests	8	9	2	6	4	29
	Circuit Court Charges	3	8	1	7	2	21
	Circuit Court Convictions	0	2	0	2	2	6
	General District Court Charges	3	1	1	4	0	9
	General District Court Convictions	0	0	0	0	0	0
	J&DR Court Charges (Adult Only)	6	8	2	7	3	26
	J&DR Court Convictions (Adult Only)	0	0	0	0	0	0
JUVENILES:	Juvenile Petitioned Intakes by Court Service Units	0		0	0	0	1

*The figures above represent **RAW DATA ONLY**. No attempts should be made to directly compare arrests, petitions, charges, or convictions as the data sources and temporal definitions vary.*

Data sources include the following:

Arrests: Virginia State Police, CCH System, Fiscal Year of Arrest

Juvenile Petitioned Intakes: Virginia Department of Juvenile Justice, Fiscal Year of Intake

Circuit Court Charges and Convictions: Supreme Court of Virginia - Circuit Court Case Management System (CMS); The Circuit Court Automated Information System does not include cases from Fairfax or Alexandria.

General District Court Charges and Convictions: Supreme Court of Virginia – General District Court CMS

Juvenile & Domestic Relations District Court Charges and Convictions: Supreme Court of Virginia – Juvenile & Domestic Relations Court CMS

Note: Charges represent Fiscal Year Filed; Convictions represent Fiscal Year Concluded. To avoid duplication, appeals from General District and Juvenile & Domestic Relations Courts were excluded. To avoid duplication, cases transferred to another jurisdiction prior to conclusion of the case were excluded. Charge/conviction data for each offense include attempted, conspired, and completed crimes. Data are based on the offense at charge/conviction and exclude subsequent probation violations or other violations stemming from that offense. Cases were selected for inclusion in the analysis based on information entered by the clerks in the CMS data system. Analysis of Juvenile & Domestic Relations (JDR) Court data includes only adult offenders processed in JDR Court. The Sentencing Commission does not have access to data for juveniles adjudicated in JDR Court.

Arrests, Charges, and Convictions, FY14-FY18
Va. Code § 18.2-347
Keeping, residing in or frequenting a bawdy place

§ 18.2-347	Maintain or frequent a bawdy place	2014	2015	2016	2017	2018	TOTAL
ADULTS:	Arrests	365	463	430	409	312	1,979
	Circuit Court Charges	0	5	28	23	32	88
	Circuit Court Convictions	1	3	15	15	25	59
	General District Court Charges	522	593	540	491	353	2,499
	General District Court Convictions	227	317	252	219	167	1,182
	J&DR Court Charges (Adult Only)	1	5	10	4	0	20
	J&DR Court Convictions (Adult Only)	0	1	1	0	0	2
JUVENILES:	Juvenile Petitioned Intakes by Court Service Units	1	0	2	5	2	10

*The figures above represent **RAW DATA ONLY**. No attempts should be made to directly compare arrests, petitions, charges, or convictions as the data sources and temporal definitions vary.*

Data sources include the following:

Arrests: Virginia State Police, CCH System, Fiscal Year of Arrest

Juvenile Petitioned Intakes: Virginia Department of Juvenile Justice, Fiscal Year of Intake

Circuit Court Charges and Convictions: Supreme Court of Virginia - Circuit Court Case Management System (CMS); The Circuit Court Automated Information System does not include cases from Fairfax or Alexandria.

General District Court Charges and Convictions: Supreme Court of Virginia – General District Court CMS

Juvenile & Domestic Relations District Court Charges and Convictions: Supreme Court of Virginia – Juvenile & Domestic Relations Court CMS

Note: Charges represent Fiscal Year Filed; Convictions represent Fiscal Year Concluded. To avoid duplication, appeals from General District and Juvenile & Domestic Relations Courts were excluded. To avoid duplication, cases transferred to another jurisdiction prior to conclusion of the case were excluded. Charge/conviction data for each offense include attempted, conspired, and completed crimes. Data are based on the offense at charge/conviction and exclude subsequent probation violations or other violations stemming from that offense. Cases were selected for inclusion in the analysis based on information entered by the clerks in the CMS data system. Analysis of Juvenile & Domestic Relations (JDR) Court data includes only adult offenders processed in JDR Court. The Sentencing Commission does not have access to data for juveniles adjudicated in JDR Court.

Arrests, Charges, and Convictions, FY14-FY18
Va. Code § 18.2-348
Aiding prostitution or illicit sexual intercourse

§ 18.2-348	Aiding prostitution or illicit sexual intercourse	2014	2015	2016	2017	2018	TOTAL
ADULTS:	Arrests	54	49	33	24	34	194
	Circuit Court Charges	1	5	6	3	2	17
	Circuit Court Convictions	7	3	7	6	9	32
	General District Court Charges	71	51	23	27	38	210
	General District Court Convictions	18	18	18	12	13	79
	J&DR Court Charges (Adult Only)	4	4	9	2	2	21
	J&DR Court Convictions (Adult Only)	0	1	1	0	0	2
JUVENILES:	Juvenile Petitioned Intakes by Court Service	0	0	0	0	0	0

*The figures above represent **RAW DATA ONLY**. No attempts should be made to directly compare arrests, petitions, charges, or convictions as the data sources and temporal definitions vary.*

Data sources include the following:

Arrests: Virginia State Police, CCH System, Fiscal Year of Arrest

Juvenile Petitioned Intakes: Virginia Department of Juvenile Justice, Fiscal Year of Intake

Circuit Court Charges and Convictions: Supreme Court of Virginia - Circuit Court Case Management System (CMS); The Circuit Court Automated Information System does not include cases from Fairfax or Alexandria.

General District Court Charges and Convictions: Supreme Court of Virginia – General District Court CMS

Juvenile & Domestic Relations District Court Charges and Convictions: Supreme Court of Virginia – Juvenile & Domestic Relations Court CMS

Note: Charges represent Fiscal Year Filed; Convictions represent Fiscal Year Concluded. To avoid duplication, appeals from General District and Juvenile & Domestic Relations Courts were excluded. To avoid duplication, cases transferred to another jurisdiction prior to conclusion of the case were excluded. Charge/conviction data for each offense include attempted, conspired, and completed crimes. Data are based on the offense at charge/conviction and exclude subsequent probation violations or other violations stemming from that offense. Cases were selected for inclusion in the analysis based on information entered by the clerks in the CMS data system. Analysis of Juvenile & Domestic Relations (JDR) Court data includes only adult offenders processed in JDR Court. The Sentencing Commission does not have access to data for juveniles adjudicated in JDR Court.

**Arrests, Charges, and Convictions, FY14-FY18
Va. Code § 18.2-349**

Using vehicles to promote prostitution or unlawful sexual intercourse

§ 18.2-349	Using vehicles to promote prostitution or unlawful sexual intercourse	2014	2015	2016	2017	2018	TOTAL
ADULTS:	Arrests	20	41	39	39	33	172
	Circuit Court Charges	3	5	8	4	4	24
	Circuit Court Convictions	2	0	7	2	3	14
	General District Court Charges	44	89	58	63	35	289
	General District Court Convictions	5	9	16	11	9	50
	J&DR Court Charges (Adult Only)	1	6	3	2	1	13
	J&DR Court Convictions (Adult Only)	0	0	1	0	0	1
JUVENILES:	Juvenile Petitioned Intakes by Court Service Units	0	0	0	0	0	0

*The figures above represent **RAW DATA ONLY**. No attempts should be made to directly compare arrests, petitions, charges, or convictions as the data sources and temporal definitions vary.*

Data sources include the following:

Arrests: Virginia State Police, CCH System, Fiscal Year of Arrest

Juvenile Petitioned Intakes: Virginia Department of Juvenile Justice, Fiscal Year of Intake

Circuit Court Charges and Convictions: Supreme Court of Virginia - Circuit Court Case Management System (CMS); The Circuit Court Automated Information System does not include cases from Fairfax or Alexandria.

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Juvenile & Domestic Relations District Court Charges and Convictions: Supreme Court of Virginia – Juvenile & Domestic Relations Court CMS

Note: Charges represent Fiscal Year Filed; Convictions represent Fiscal Year Concluded. To avoid duplication, appeals from General District and Juvenile & Domestic Relations Courts were excluded. To avoid duplication, cases transferred to another jurisdiction prior to conclusion of the case were excluded. Charge/conviction data for each offense include attempted, conspired, and completed crimes. Data are based on the offense at charge/conviction and exclude subsequent probation violations or other violations stemming from that offense. Cases were selected for inclusion in the analysis based on information entered by the clerks in the CMS data system. Analysis of Juvenile & Domestic Relations (JDR) Court data includes only adult offenders processed in JDR Court. The Sentencing Commission does not have access to data for juveniles adjudicated in JDR Court.

**Arrests, Charges, and Convictions, FY14-FY18
Va. Code § 18.2-355(1) and (3)**

Taking, detaining, etc., person for prostitution, etc., or consenting thereto; human trafficking

§ 18.2-355(1)	Enticement, procurement	2014	2015	2016	2017	2018	TOTAL
ADULTS:	Arrests	29	52	35	23	9	148
	Circuit Court Charges	8	26	28	14	10	86
	Circuit Court Convictions	3	8	3	7	4	25
	General District Court Charges	21	41	15	20	5	102
	General District Court Convictions	0	0	0	0	0	0
	J&DR Court Charges (Adult Only)	3	9	2	0	0	14
	J&DR Court Convictions (Adult Only)	0	0	0	0	0	0
JUVENILES:	Juvenile Petitioned Intakes by Court Service Units	0	1	0	0	1	2

§ 18.2-355(3)	Parent permitting child	2014	2015	2016	2017	2018	TOTAL
ADULTS:	Arrests	0	2	3	0	1	6
	Circuit Court Charges	0	1	4	0	2	7
	Circuit Court Convictions	0	0	0	1	0	1
	General District Court Charges	0	0	0	0	0	0
	General District Court Convictions	0	0	0	0	0	0
	J&DR Court Charges (Adult Only)	0	1	1	0	0	2
	J&DR Court Convictions (Adult Only)	0	0	0	0	0	0
JUVENILES:	Juvenile Petitioned Intakes by Court Service Units	0	0	0	0	0	0

*The figures above represent **RAW DATA ONLY**. No attempts should be made to directly compare arrests, petitions, charges, or convictions as the data sources and temporal definitions vary.*

Data sources include the following:

Arrests: Virginia State Police, CCH System, Fiscal Year of Arrest

Juvenile Petitioned Intakes: Virginia Department of Juvenile Justice, Fiscal Year of Intake

Circuit Court Charges and Convictions: Supreme Court of Virginia - Circuit Court Case Management System (CMS); The Circuit Court Automated Information System does not include cases from Fairfax or Alexandria.

General District Court Charges and Convictions: Supreme Court of Virginia – General District Court CMS

Juvenile & Domestic Relations District Court Charges and Convictions: Supreme Court of Virginia – Juvenile & Domestic Relations Court CMS

Note: Charges represent Fiscal Year Filed; Convictions represent Fiscal Year Concluded. To avoid duplication, appeals from General District and Juvenile & Domestic Relations Courts were excluded. To avoid duplication, cases transferred to another jurisdiction prior to conclusion of the case were excluded. Charge/conviction data for each offense include attempted, conspired, and completed crimes. Data are based on the offense at charge/conviction and exclude subsequent probation violations or other violations stemming from that offense. Cases were selected for inclusion in the analysis based on information entered by the clerks in the CMS data system. Analysis of Juvenile & Domestic Relations (JDR) Court data includes only adult offenders processed in JDR Court. The Sentencing Commission does not have access to data for juveniles adjudicated in JDR Court.

Arrests, Charges, and Convictions, FY14-FY18
Va. Code § 18.2-355(4)

Taking, detaining, etc., person for prostitution, etc., or consenting thereto; human trafficking

§ 18.2-355(4)	Enticement, procurement	2014	2015	2016	2017	2018	TOTAL
ADULTS:	Arrests	0	0	11	8	3	22
	Circuit Court Charges	0	1	17	7	4	29
	Circuit Court Convictions	0	0	2	1	1	4
	General District Court Charges	0	0	0	3	1	4
	General District Court Convictions	0	0	0	0	0	0
	J&DR Court Charges (Adult Only)	0	4	13	9	3	29
	J&DR Court Convictions (Adult Only)	0	0	0	0	0	0
JUVENILES:	Juvenile Petitioned Intakes by Court Service Units	0	0	0	1	0	1

*The figures above represent **RAW DATA ONLY**. No attempts should be made to directly compare arrests, petitions, charges, or convictions as the data sources and temporal definitions vary.*

Data sources include the following:

Arrests: Virginia State Police, CCH System, Fiscal Year of Arrest

Juvenile Petitioned Intakes: Virginia Department of Juvenile Justice, Fiscal Year of Intake

Circuit Court Charges and Convictions: Supreme Court of Virginia - Circuit Court Case Management System (CMS); The Circuit Court Automated Information System does not include cases from Fairfax or Alexandria.

General District Court Charges and Convictions: Supreme Court of Virginia – General District Court CMS

Juvenile & Domestic Relations District Court Charges and Convictions: Supreme Court of Virginia – Juvenile & Domestic Relations Court CMS

Note: Charges represent Fiscal Year Filed; Convictions represent Fiscal Year Concluded. To avoid duplication, appeals from General District and Juvenile & Domestic Relations Courts were excluded. To avoid duplication, cases transferred to another jurisdiction prior to conclusion of the case were excluded. Charge/conviction data for each offense include attempted, conspired, and completed crimes. Data are based on the offense at charge/conviction and exclude subsequent probation violations or other violations stemming from that offense. Cases were selected for inclusion in the analysis based on information entered by the clerks in the CMS data system. Analysis of Juvenile & Domestic Relations (JDR) Court data includes only adult offenders processed in JDR Court. The Sentencing Commission does not have access to data for juveniles adjudicated in JDR Court.

Arrests, Charges, and Convictions, FY14-FY18
Va. Code §§ 18.2-356(i)
Receiving money for procuring person to engage in sex

§ 18.2-356(i)	Receive money for procurement of person to engage in sex	2014	2015	2016	2017	2018	TOTAL
ADULTS:	Arrests	12	6	2	0	5	25
	Circuit Court Charges	5	0	4	0	0	9
	Circuit Court Convictions	3	0	0	1	0	4
	General District Court Charges	10	4	0	1	0	15
	General District Court Convictions	0	0	0	0	0	0
	J&DR Court Charges (Adult Only)	0	0	0	0	0	0
	J&DR Court Convictions (Adult Only)	0	0	0	0	0	0
JUVENILES:	Juvenile Petitioned Intakes by Court Service Units	0	0	0	0	0	0

§ 18.2-356(i)	Receive money for procurement of person less than 18 years of age to engage in sex	2014	2015	2016	2017	2018	TOTAL
ADULTS:	Arrests	0	0	1	1	1	3
	Circuit Court Charges	0	0	0	0	3	3
	Circuit Court Convictions	0	0	0	0	0	0
	General District Court Charges	0	0	0	1	0	1
	General District Court Convictions	0	0	0	0	0	0
	J&DR Court Charges (Adult Only)	0	0	1	1	0	2
	J&DR Court Convictions (Adult Only)	0	0	0	0	0	0
JUVENILES:	Juvenile Petitioned Intakes by Court Service Units	0	0	0	0	0	0

*The figures above represent **RAW DATA ONLY**. No attempts should be made to directly compare arrests, petitions, charges, or convictions as the data sources and temporal definitions vary.*

Data sources include the following:

Arrests: Virginia State Police, CCH System, Fiscal Year of Arrest

Juvenile Petitioned Intakes: Virginia Department of Juvenile Justice, Fiscal Year of Intake

Circuit Court Charges and Convictions: Supreme Court of Virginia - Circuit Court Case Management System (CMS); The Circuit Court Automated Information System does not include cases from Fairfax or Alexandria.

General District Court Charges and Convictions: Supreme Court of Virginia – General District Court CMS

Juvenile & Domestic Relations District Court Charges and Convictions: Supreme Court of Virginia – Juvenile & Domestic Relations Court CMS

Note: Charges represent Fiscal Year Filed; Convictions represent Fiscal Year Concluded. To avoid duplication, appeals from General District and Juvenile & Domestic Relations Courts were excluded. To avoid duplication, cases transferred to another jurisdiction prior to conclusion of the case were excluded. Charge/conviction data for each offense include attempted, conspired, and completed crimes. Data are based on the offense at charge/conviction and exclude subsequent probation violations or other violations stemming from that offense. Cases were selected for inclusion in the analysis based on information entered by the clerks in the CMS data system. Analysis of Juvenile & Domestic Relations (JDR) Court data includes only adult offenders processed in JDR Court. The Sentencing Commission does not have access to data for juveniles adjudicated in JDR Court.

Arrests, Charges, and Convictions, FY14-FY18
Va. Code §§ 18.2-356(ii)
Receiving money for procuring person to engage in prostitution

§ 18.2-356(ii)	Receive money for procurement of person to engage in prostitution	2014	2015	2016	2017	2018	TOTAL
ADULTS:	Arrests	6	31	4	3	4	48
	Circuit Court Charges	3	7	3	0	1	14
	Circuit Court Convictions	1	3	0	3	0	7
	General District Court Charges	5	33	9	3	8	58
	General District Court Convictions	0	0	0	0	0	0
	J&DR Court Charges (Adult Only)	1	2	1	1	0	5
	J&DR Court Convictions (Adult Only)	0	0	0	0	0	0
JUVENILES:	Juvenile Petitioned Intakes by Court Service Units	0	0	0	0	0	0

§ 18.2-356(ii)	Receive money for procurement of person less than 18 years of age to engage in prostitution	2014	2015	2016	2017	2018	TOTAL
ADULTS:	Arrests	0	0	0	0	0	0
	Circuit Court Charges	0	0	0	0	0	0
	Circuit Court Convictions	0	0	0	0	0	0
	General District Court Charges	0	0	0	0	0	0
	General District Court Convictions	0	0	0	0	0	0
	J&DR Court Charges (Adult Only)	0	0	0	0	0	0
	J&DR Court Convictions (Adult Only)	0	0	0	0	0	0
JUVENILES:	Juvenile Petitioned Intakes by Court Service Units	0	0	0	0	0	0

*The figures above represent **RAW DATA ONLY**. No attempts should be made to directly compare arrests, petitions, charges, or convictions as the data sources and temporal definitions vary.*

Data sources include the following:

Arrests: Virginia State Police, CCH System, Fiscal Year of Arrest

Juvenile Petitioned Intakes: Virginia Department of Juvenile Justice, Fiscal Year of Intake

Circuit Court Charges and Convictions: Supreme Court of Virginia - Circuit Court Case Management System (CMS); The Circuit Court Automated Information System does not include cases from Fairfax or Alexandria.

General District Court Charges and Convictions: Supreme Court of Virginia – General District Court CMS

Juvenile & Domestic Relations District Court Charges and Convictions: Supreme Court of Virginia – Juvenile & Domestic Relations Court CMS

Note: Charges represent Fiscal Year Filed; Convictions represent Fiscal Year Concluded. To avoid duplication, appeals from General District and Juvenile & Domestic Relations Courts were excluded. To avoid duplication, cases transferred to another jurisdiction prior to conclusion of the case were excluded. Charge/conviction data for each offense include attempted, conspired, and completed crimes. Data are based on the offense at charge/conviction and exclude subsequent probation violations or other violations stemming from that offense. Cases were selected for inclusion in the analysis based on information entered by the clerks in the CMS data system. Analysis of Juvenile & Domestic Relations (JDR) Court data includes only adult offenders processed in JDR Court. The Sentencing Commission does not have access to data for juveniles adjudicated in JDR Court.

Arrests, Charges, and Convictions, FY14-FY18
Va. Code § 18.2-357
Receiving money from earnings of male or female prostitute

§ 18.2-357	Pander, pimp or receive money from prostitute	2014	2015	2016	2017	2018	TOTAL
ADULTS:	Arrests	108	83	68	57	42	358
	Circuit Court Charges	52	54	43	16	30	195
	Circuit Court Convictions	20	26	28	5	13	92
	General District Court Charges	95	82	45	51	20	293
	General District Court Convictions	0	0	0	0	0	0
	J&DR Court Charges (Adult Only)	4	4	8	1	0	17
	J&DR Court Convictions (Adult Only)	0	0	0	0	0	0
JUVENILES:	Juvenile Petitioned Intakes by Court Service Units	0	0	1	1	0	2

§ 18.2-357	Pander, pimp or receive money from prostitute < age 18	2014	2015	2016	2017	2018	TOTAL
ADULTS:	Arrests	0	0	14	1	4	19
	Circuit Court Charges	0	0	7	0	3	10
	Circuit Court Convictions	0	0	0	0	0	0
	General District Court Charges	0	0	0	1	4	5
	General District Court Convictions	0	0	0	0	0	0
	J&DR Court Charges (Adult Only)	0	0	14	2	3	19
	J&DR Court Convictions (Adult Only)	0	0	0	0	0	0
JUVENILES:	Juvenile Petitioned Intakes by Court Service Units	0	0	0	0	0	0

*The figures above represent **RAW DATA ONLY**. No attempts should be made to directly compare arrests, petitions, charges, or convictions as the data sources and temporal definitions vary.*

Data sources include the following:

Arrests: Virginia State Police, CCH System, Fiscal Year of Arrest

Juvenile Petitioned Intakes: Virginia Department of Juvenile Justice, Fiscal Year of Intake

Circuit Court Charges and Convictions: Supreme Court of Virginia - Circuit Court Case Management System (CMS); The Circuit Court Automated Information System does not include cases from Fairfax or Alexandria.

General District Court Charges and Convictions: Supreme Court of Virginia – General District Court CMS

Juvenile & Domestic Relations District Court Charges and Convictions: Supreme Court of Virginia – Juvenile & Domestic Relations Court CMS

Note: Charges represent Fiscal Year Filed; Convictions represent Fiscal Year Concluded. To avoid duplication, appeals from General District and Juvenile & Domestic Relations Courts were excluded. To avoid duplication, cases transferred to another jurisdiction prior to conclusion of the case were excluded. Charge/conviction data for each offense include attempted, conspired, and completed crimes. Data are based on the offense at charge/conviction and exclude subsequent probation violations or other violations stemming from that offense. Cases were selected for inclusion in the analysis based on information entered by the clerks in the CMS data system. Analysis of Juvenile & Domestic Relations (JDR) Court data includes only adult offenders processed in JDR Court. The Sentencing Commission does not have access to data for juveniles adjudicated in JDR Court.

Arrests, Charges, and Convictions, FY14-FY18
Va. Code § 18.2-357.1(A) and (B)
Commercial sex trafficking

§ 18.2-357.1(A)	Sex trafficking	2014	2015	2016	2017	2018	TOTAL
ADULTS:	Arrests	---	---	79	89	129	297
	Circuit Court Charges	---	---	32	64	114	210
	Circuit Court Convictions	---	---	1	20	17	38
	General District Court Charges	---	---	72	65	62	199
	General District Court Convictions	---	---	0	0	0	0
	J&DR Court Charges (Adult Only)	---	---	3	2	0	5
	J&DR Court Convictions (Adult Only)	---	---	0	0	0	0
JUVENILES:	Juvenile Petitioned Intakes by Court Service Units	---	---	0	2	1	3

§ 18.2-357.1(B)	Sex trafficking by force	2014	2015	2016	2017	2018	TOTAL
ADULTS:	Arrests	---	---	16	31	5	52
	Circuit Court Charges	---	---	22	24	4	50
	Circuit Court Convictions	---	---	1	5	9	15
	General District Court Charges	---	---	3	11	7	21
	General District Court Convictions	---	---	0	0	0	0
	J&DR Court Charges (Adult Only)	---	---	0	2	0	2
	J&DR Court Convictions (Adult Only)	---	---	0	0	0	0
JUVENILES:	Juvenile Petitioned Intakes by Court Service Units	---	---	0	0	0	0

The figures above represent RAW DATA ONLY. No attempts should be made to directly compare arrests, petitions, charges, or convictions as the data sources and temporal definitions vary.

Data sources include the following:

Arrests: Virginia State Police, CCH System, Fiscal Year of Arrest

Juvenile Petitioned Intakes: Virginia Department of Juvenile Justice, Fiscal Year of Intake

Circuit Court Charges and Convictions: Supreme Court of Virginia - Circuit Court Case Management System (CMS); The Circuit Court Automated Information System does not include cases from Fairfax or Alexandria.

General District Court Charges and Convictions: Supreme Court of Virginia – General District Court CMS

Juvenile & Domestic Relations District Court Charges and Convictions: Supreme Court of Virginia – Juvenile & Domestic Relations Court CMS

Note: Charges represent Fiscal Year Filed; Convictions represent Fiscal Year Concluded. To avoid duplication, appeals from General District and Juvenile & Domestic Relations Courts were excluded. To avoid duplication, cases transferred to another jurisdiction prior to conclusion of the case were excluded. Charge/conviction data for each offense include attempted, conspired, and completed crimes. Data are based on the offense at charge/conviction and exclude subsequent probation violations or other violations stemming from that offense. Cases were selected for inclusion in the analysis based on information entered by the clerks in the CMS data system. Analysis of Juvenile & Domestic Relations (JDR) Court data includes only adult offenders processed in JDR Court. The Sentencing Commission does not have access to data for juveniles adjudicated in JDR Court.

Arrests, Charges, and Convictions, FY14-FY18
Va. Code § 18.2-357.1(C)
Commercial sex trafficking

§ 18.2-357.1(C)	Sex trafficking	2014	2015	2016	2017	2018	TOTAL
ADULTS:	Arrests	---	---	23	13	12	48
	Circuit Court Charges	---	---	10	2	22	34
	Circuit Court Convictions	---	---	3	3	6	12
	General District Court Charges	---	---	1	3	5	9
	General District Court Convictions	---	---	0	0	0	0
	J&DR Court Charges (Adult Only)	---	---	17	10	10	37
	J&DR Court Convictions (Adult Only)	---	---	0	0	0	0
JUVENILES:	Juvenile Petitioned Intakes by Court Service Units	---	---	0	1	0	1

The figures above represent RAW DATA ONLY. No attempts should be made to directly compare arrests, petitions, charges, or convictions as the data sources and temporal definitions vary.

Data sources include the following:

Arrests: Virginia State Police, CCH System, Fiscal Year of Arrest

Juvenile Petitioned Intakes: Virginia Department of Juvenile Justice, Fiscal Year of Intake

Circuit Court Charges and Convictions: Supreme Court of Virginia - Circuit Court Case Management System (CMS); The Circuit Court Automated Information System does not include cases from Fairfax or Alexandria.

General District Court Charges and Convictions: Supreme Court of Virginia – General District Court CMS

Juvenile & Domestic Relations District Court Charges and Convictions: Supreme Court of Virginia – Juvenile & Domestic Relations Court CMS

Note: Charges represent Fiscal Year Filed; Convictions represent Fiscal Year Concluded. To avoid duplication, appeals from General District and Juvenile & Domestic Relations Courts were excluded. To avoid duplication, cases transferred to another jurisdiction prior to conclusion of the case were excluded. Charge/conviction data for each offense include attempted, conspired, and completed crimes. Data are based on the offense at charge/conviction and exclude subsequent probation violations or other violations stemming from that offense. Cases were selected for inclusion in the analysis based on information entered by the clerks in the CMS data system. Analysis of Juvenile & Domestic Relations (JDR) Court data includes only adult offenders processed in JDR Court. The Sentencing Commission does not have access to data for juveniles adjudicated in JDR Court.

**Arrests, Charges, and Convictions, FY14-FY18
Va. Code § 18.2-374.3**

Use of communications system to facilitate certain offenses involving children

§ 18.2-374.3	Procure minor for prostitution, sodomy, porn by communications system	2014	2015	2016	2017	2018	TOTAL
ADULTS:	Arrests	8	6	13	10	6	43
	Circuit Court Charges	14	5	4	11	10	44
	Circuit Court Convictions	4	11	3	2	8	28
	General District Court Charges	0	1	3	2	1	7
	General District Court Convictions	0	0	0	0	0	0
	J&DR Court Charges (Adult Only)	3	6	7	5	7	28
	J&DR Court Convictions (Adult Only)	0	0	0	0	0	0
JUVENILES:	Juvenile Petitioned Intakes by Court Service Units	0	0	0	0	0	0

The figures above represent RAW DATA ONLY. No attempts should be made to directly compare arrests, petitions, charges, or convictions as the data sources and temporal definitions vary.

Data sources include the following:

Arrests: Virginia State Police, CCH System, Fiscal Year of Arrest

Juvenile Petitioned Intakes: Virginia Department of Juvenile Justice, Fiscal Year of Intake

Circuit Court Charges and Convictions: Supreme Court of Virginia - Circuit Court Case Management System (CMS); The Circuit Court Automated Information System does not include cases from Fairfax or Alexandria.

General District Court Charges and Convictions: Supreme Court of Virginia – General District Court CMS

Juvenile & Domestic Relations District Court Charges and Convictions: Supreme Court of Virginia – Juvenile & Domestic Relations Court CMS

Note: Charges represent Fiscal Year Filed; Convictions represent Fiscal Year Concluded. To avoid duplication, appeals from General District and Juvenile & Domestic Relations Courts were excluded. To avoid duplication, cases transferred to another jurisdiction prior to conclusion of the case were excluded. Charge/conviction data for each offense include attempted, conspired, and completed crimes. Data are based on the offense at charge/conviction and exclude subsequent probation violations or other violations stemming from that offense. Cases were selected for inclusion in the analysis based on information entered by the clerks in the CMS data system. Analysis of Juvenile & Domestic Relations (JDR) Court data includes only adult offenders processed in JDR Court. The Sentencing Commission does not have access to data for juveniles adjudicated in JDR Court.

Endnotes

- ¹ House Bills 962 and 984 were both patroned by Delegate David E. Yancey.
- ² 22 U.S.C. § 7102 (2018). Staff used the U.S. Code definitions for this study; however, it should be noted that the elements of and penalties for commercial sex trafficking vary between the U.S. Code and the Virginia Code.
- ³ 22 U.S.C. § 7102(12) (2018).
- ⁴ 22 U.S.C. § 7102(4) (2018).
- ⁵ 2019 Va. Acts ch. 381, 687.
- ⁶ Legislation left in the Senate Committee on Finance is not enacted into law by the General Assembly. *See* Va. Code § 30-19.1:4 (2018). Fiscal impact statements are prepared by the Virginia Criminal Sentencing Commission for any bill that will result in a net increase in periods of imprisonment in state adult correctional facilities.
- ⁷ 2019 Va. Acts ch. 617.
- ⁸ 2019 Va. Acts ch. 486, 514.
- ⁹ 2019 Va. Acts ch. 854. Item 393(B) of the 2019 Appropriations Act. Retrieved from <https://budget.lis.virginia.gov/item/2019/1/HB1700/Chapter/1/393/>. *See also* the fiscal impact statements for Senate Bill 1669 (<http://lis.virginia.gov/cgi-bin/legp604.exe?191+oth+SB1669FER122+PDF>) and House Bill 2576 (<https://lis.virginia.gov/cgi-bin/legp604.exe?191+oth+HB2576FER122+PDF>).
- ¹⁰ 2019 Va. Acts ch. 728.
- ¹¹ 2019 Va. Acts ch. 146.
- ¹² As of January 1, 2017, this fund is referred to as the Virginia Victims Fund (officially Criminal Injuries Compensation Fund).
- ¹³ *See* Va. Code § 18.2-344 *et. seq.* (2018).
- ¹⁴ 22 U.S.C. § 7102 (2018). Staff used the U.S. Code definitions for this study; however, it should be noted that the elements of and penalties for commercial sex trafficking vary between the U.S. Code and the Virginia Code.
- ¹⁵ 22 U.S.C. § 7102(4) (2018).
- ¹⁶ 22 U.S.C. § 7102(11)(A) (2018). This provision also contains a subsection (B) which relates to labor trafficking.
- ¹⁷ 22 U.S.C. § 7102(12) (2018).
- ¹⁸ *See, e.g.,* Murphy, C. (2015, August 14). *Sex workers' rights are human rights*. Amnesty International, retrieved from <https://www.amnesty.org/en/latest/news/2015/08/sex-workers-rights-are-human-rights/>.
- ¹⁹ For example, staff heard anecdotally that when a trafficker is arrested and incarcerated, victims of that trafficker may continue to engage in prostitution and may seek out a new trafficker for assistance.
- ²⁰ The term “victim” will be used throughout the remainder of the report when referring to a trafficked person/victim.
- ²¹ The item of value is frequently money; however, the sex act may be in exchange for any legal or illegal item which has some value, such as narcotics.
- ²² Office of Justice Programs, Office for Victims of Crime. *About human trafficking: What is human trafficking?* Retrieved from <https://ovc.ncjrs.gov/humantrafficking/about.html>.
- ²³ *Id.*

- ²⁴ See, e.g., Greenbaum, J., & Crawford-Jakubiak, J. (2015). Child sex trafficking and commercial sexual exploitation: Health care needs of victims. *American Academy of Pediatrics*, 135(3), 566-574; Hardy, V.L., Compton, K.D., & McPhatter, V.S. (2013). Domestic minor sex trafficking: Practice implications for mental health professionals. *Journal of Women and Social Work*, 28(1), 8-18; Jordan, J., Patel, B., & Rapp, L. (2013). Domestic minor sex trafficking: A social work perspective on misidentification, victims, buyers, traffickers, treatment, and reform of current practice. *Journal of Human Behavior in the Social Environment*, 23, 356-369; Miller-Perrin, C., & Wurtele, S.K. (2017). Sex trafficking and the commercial sexual exploitation of children. *Women & Therapy*, 40(1-2), 123-151; Rafferty, Y. (2013). Child trafficking and commercial sexual exploitation: A review of promising prevention policies and programs. *American Journal of Orthopsychiatry*, 83(4), 559-575; U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. (2009). *Human trafficking into and within the United States: A review of the literature*, Retrieved from <https://aspe.hhs.gov/report/human-trafficking-and-within-united-states-review-literature>.
- ²⁵ See, e.g., Felner, J.K., & DuBois, D.L. (2017). Addressing the commercial sexual exploitation of children and youth: A systematic review of program and policy evaluations. *Journal of Child & Adolescent Trauma* 10, 187-201; Hardy, V.L., Compton, K.D., & McPhatter, V.S. (2013). Domestic minor sex trafficking: Practice implications for mental health professionals. *Journal of Women and Social Work*, 28(1), 8-18; Miller-Perrin, C., & Wurtele, S.K. (2017). Sex trafficking and the commercial sexual exploitation of children. *Women & Therapy*, 40(1-2), 123-151; Rafferty, Y. (2013). Child trafficking and commercial sexual exploitation: A review of promising prevention policies and programs. *American Journal of Orthopsychiatry*, 83(4), 559-575; U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. (2009). *Human trafficking into and within the United States: A review of the literature*, Retrieved from <https://aspe.hhs.gov/report/human-trafficking-and-within-united-states-review-literature>.
- ²⁶ See, e.g., Deshpande, N.A., & Nour, N.M. (2013). Sex trafficking of women and girls. *Reviews in Obstetrics & Gynecology*, 6(1), 22-27; National Human Trafficking Hotline. *The Victims*. Retrieved from <https://humantraffickinghotline.org/what-human-trafficking/human-trafficking/victims>; U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. (2009). *Human trafficking into and within the United States: A review of the literature*, Retrieved from <https://aspe.hhs.gov/report/human-trafficking-and-within-united-states-review-literature>; U.S. Department of Health & Human Services, Administration for Children & Families, Office of Planning, Research and Evaluation. (2017). *Evaluation of domestic victims of human trafficking demonstration projects, 2014-2018*. Retrieved from; <https://www.acf.hhs.gov/opre/resource/evaluation-domestic-victims-human-trafficking-demonstration-projects-final-report-first-cohort-projects>.
- ²⁷ See, e.g., Dank, M., Khan, B., Downey, P., Kotonias, C., Mayer, D., Owens, C., Pacifici, L., & Yu, L. (2014). Estimating the size and structure of the underground commercial sex economy in eight major US cities. *The Urban Institute*. Retrieved from <https://www.urban.org/sites/default/files/publication/22376/413047-estimating-the-size-and-structure-of-the-underground-commercial-sex-economy-in-eight>

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- ²⁸ See, e.g., Greenbaum, J., & Crawford-Jakubiak, J. (2015). Child sex trafficking and commercial sexual exploitation: Health care needs of victims. *American Academy of Pediatrics*, 135(3), 566-574; Hardy, V.L., Compton, K.D., & McPhatter, V.S. (2013). Domestic minor sex trafficking: Practice implications for mental health professionals. *Journal of Women and Social Work*, 28(1), 8-18; Hargreaves-Cormany, H.A., & Patterson, T.D. (2016). Characteristics of survivors of juvenile sex trafficking: Implications for treatment and intervention initiatives. *Aggression and Violent Behavior*, 30, 32-39.
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- ⁵⁴ See, e.g., Shively, M., Kliorys, K., Wheeler, K., & Hunt, D. (2012). *A national overview of prostitution and sex trafficking demand reduction efforts*. Prepared for the National Institute of Justice, Office of Justice Programs by Abt Associates Inc. Retrieved from <https://www.ncjrs.gov/pdffiles1/nij/grants/238796.pdf>; Demand Abolition (2018). *Who buys sex: Understanding and disrupting illicit market demand*. Retrieved from <https://www.demandabolition.org/who-buys-sex/>; Smith, L., & Vardaman, S.H. (2011). A legislative framework for combating domestic minor sex trafficking. *Regent University Law Review*, 23(2), 265-296. Retrieved from <https://sharedhope.org/wp-content/uploads/2012/09/LegislativeFramework.pdf>; Trouteaud, A.R. (2015). *Adolescent males in the metro Atlanta's sex trade and their buyers*. Retrieved from <http://youth-spark.org/wp-content/uploads/2016/07/CSEC-Boys-Study.pdf>; The Schapiro Group. (2010). *Men who buy sex with adolescent girls: A scientific research*

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- ⁵⁵ See, e.g., Shively, M., Kliorys, K., Wheeler, K., & Hunt, D. (2012). *A national overview of prostitution and sex trafficking demand reduction efforts*. Prepared for the National Institute of Justice, Office of Justice Programs by Abt Associates Inc. Retrieved from <https://www.ncjrs.gov/pdffiles1/nij/grants/238796.pdf>; Smith, L., & Vardaman, S.H. (2011). A legislative framework for combating domestic minor sex trafficking. *Regent University Law Review*, 23(2), 265-296. Retrieved from <https://sharedhope.org/wp-content/uploads/2012/09/LegislativeFramework.pdf>
- ⁵⁶ *Id.*
- ⁵⁷ *Id.*
- ⁵⁸ *Id.*
- ⁵⁹ See, e.g., Dank, M., Khan, B., Downey, P., Kotonias, C., Mayer, D., Owens, C., Pacifici, L., & Yu, L. (2014). Estimating the size and structure of the underground commercial sex economy in eight major US cities. *The Urban Institute*. Retrieved from https://www.urban.org/sites/default/files/publication/22376/413047-estimating-the-size-and-structure-of-the-underground-commercial-sex-economy-in-eight-major-us-cities_0.pdf; Rafferty, Y. (2013). Child trafficking and commercial sexual exploitation: A review of promising prevention policies and programs. *American Journal of Orthopsychiatry*, 83(4), 559-575; Trouteaud, A.R. (2015). Adolescent males in the metro Atlanta's sex trade and their buyers. Retrieved from <http://youth-spark.org/wp-content/uploads/2016/07/CSEC-Boys-Study.pdf>; The Schapiro Group. (2010). *Men who buy sex with adolescent girls: A scientific research study*. Retrieved from <http://prostitutionresearch.com/wp-content/uploads/2014/04/The-Schapiro-Group-Georgia-Demand-Study-1.pdf>; Demand Abolition (2018). *Who buys sex: Understanding and disrupting illicit market demand*. Retrieved from <https://www.demandabolition.org/who-buys-sex/>.
- ⁶⁰ See, e.g., United States Government Accountability Office. (2016). *Human trafficking: Agencies have taken steps to assess prevalence, address victim issues, and avoid grant duplication*. Retrieved from <https://www.gao.gov/assets/680/678041.pdf>; Gerassi, L. (2015). From exploitation to industry: Definitions, risks, and consequences of domestic sexual exploitation and sex work among women and girls. *Journal of Human Behavior in the Social Environment*, 25(6), 591-605; Hammond, G.C., & McGlone, M. (2014). Entry, progression, exit, and service provision for survivors of sex trafficking: Implications for effective interventions. *Global Social Welfare*, 1, 157-168; Jordan, J., Patel, B., & Rapp, L. (2013). Domestic minor sex trafficking: A social work perspective on misidentification, victims, buyers, traffickers, treatment, and reform of current practice. *Journal of Human Behavior in the Social Environment*, 23, 356-369; O'Brien, J.E., White, K., & Rizo, C.F. (2017). Domestic minor sex trafficking among child welfare-involved youth: An exploratory study of correlates. *Child Maltreatment*, 22(3), 265-274; Reid, J.A., Baglivio, M.T., Piquero, A.R., Greenwald, M.A., & Epps, N. (2017). Human trafficking of minors and childhood adversity in Florida. *American Journal of Public Health*, 107(2), 306-311; Varma, S., Gillespie, S., McCracken, C., & Greenbaum, V. J. (2015). Characteristics of child commercial sexual exploitation and sex trafficking victims presenting for medical care in the United States. *Child Abuse & Neglect*, 44, 98-105; Covenant House. (2013). Homelessness, survival sex, and human trafficking: As experienced by the youth of Covenant House New York. Retrieved from

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⁶¹ Staff has elected not to identify websites that advertise the sale of sex.

⁶² Staff has elected not to identify these message boards used by sex buyers.

⁶³ 2019 Va. Acts ch. 854. Item 393(B) of the 2019 Appropriations Act. Retrieved from <https://budget.lis.virginia.gov/item/2019/1/HB1700/Chapter/1/393/>. See also the fiscal impact statements for Senate Bill 1669 (<http://lis.virginia.gov/cgi-bin/legp604.exe?191+oth+SB1669FER122+PDF>) and House Bill 2576 (<https://lis.virginia.gov/cgi-bin/legp604.exe?191+oth+HB2576FER122+PDF>).

⁶⁴ Savage, C., and Williams, T. (2018, April 7). U.S. seizes Backpage.com, a site accused of enabling prostitution. *The New York Times*. Retrieved from <https://www.nytimes.com/2018/04/07/us/politics/backpage-prostitution-classified.html>.

⁶⁵ Whitcomb, D. (2019, April 11). Exclusive: Report gives glimpse into murky world of U.S. prostitution in post-Backpage era. Retrieved from <https://www.reuters.com/article/us-usa-prostitution-internet-exclusive/exclusive-report-gives-glimpse-into-murky-world-of-u-s-prostitution-in-post-backpage-era-idUSKCN1RN13E>.

⁶⁶ Law enforcement officers and prosecutors, personal communications, various dates. See also Goebel, T. (2019, February 8). Sex trafficking: Backpage gone, but not the problem. *Salisbury Daily Times*. Retrieved from <https://www.delmarvanow.com/story/news/local/delaware/2019/02/07/backpage-gone-but-not-sex-trafficking-police/2539934002/>. Stassinopoulos, A. (2019, May 3). Anti-trafficking law has unexpected consequences on sex work in Bay Area. *The Daily Californian*. Retrieved from <https://www.dailycal.org/2019/05/03/anti-trafficking-law-has-unexpected-consequences-on-sex-work-in-bay-area/>. The Samaritan Women. (n.d.) *Research Brief: After FOSTA-SESTA*. Retrieved from <https://instituteforsheltercare.org/wp-content/uploads/2018/09/After-SESTA-FOSTA.pdf>. Schumacher, E., & Welle, D. (2018, June 29). Sex workers leave Twitter for Switter after controversial US law. *USA Today*. Retrieved from <https://www.usatoday.com/story/news/world/2018/06/29/fosta-sex-workers-leave-twitter-switter-after-us-law/744989002/>.

⁶⁷ 76% (26 of 34) of Court Service Unit Directors surveyed provided a response.

⁶⁸ 2015 Va. Acts ch. 690, 691.

⁶⁹ 2018 Va. Acts ch. 71.

⁷⁰ 2018 Va. Acts ch. 571.

⁷¹ See U.S. Department of Health and Human Services. (2017, August 31). *Virginia: Efforts to combat human trafficking*. Retrieved from https://www.acf.hhs.gov/sites/default/files/otip/virginia_profile_efforts_to_combat_human_trafficking.pdf.

- ⁷² U.S. Immigration and Customs Enforcement. (2016, November 2). *Federal grant funds Hampton Roads Human Trafficking Task Force*. Retrieved from <https://www.ice.gov/news/releases/federal-grant-funds-hampton-roads-human-trafficking-task-force>.
- ⁷³ Zuckerman, J. (2017, January 26). FBI forms human trafficking task force along I-81. *The Northern Virginia Daily*. Retrieved from https://www.nvdaily.com/news/crime/fbi-forms-human-trafficking-task-force-along-i/article_657d7859-0b88-5cdb-9324-61803070bd57.html.
- ⁷⁴ Northern Virginia Human Trafficking Task Force. Retrieved from <https://www.nvhddf.com/>.
- ⁷⁵ This collaborative is facilitated by the Bon Secours Richmond Health System.
- ⁷⁶ See, e.g., Office of the Governor, Office of the Secretary of Public Safety & Virginia Department of Criminal Justice Services. (2013). *Laying the foundation for Virginia's coordinated response to human trafficking*. Retrieved from <https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/victims/laying-foundation-virginias-coordinated-response-human-trafficking.pdf>. While the Executive Order establishing this Committee has expired, many of the agencies represented on the Committee continue to meet to address human trafficking matters.
- ⁷⁷ Virginia Department of Education. (2018). *Guidelines for training on the prevention of trafficking of children*. Retrieved from http://www.doe.virginia.gov/support/prevention/human_trafficking/index.shtml.
- ⁷⁸ Virginia Department of Social Services. *CWSE4000: Identifying sex trafficking in child welfare*. Retrieved from <https://www.dss.virginia.gov/family/trafficking/index.cgi>.
- ⁷⁹ Linking Systems of Care for Children and Youth in Virginia, personal communication, Sept. 17, 2018. See also Linking Systems of Care for Children and Youth in Virginia. *Pilot Sites*. Retrieved from <http://linkingsystemsofcarevirginia.com/pilotsites/>.
- ⁸⁰ See, e.g., Salisbury, E.J., Dabney, J.D., & Russell, K. (2015). Diverting victims of commercial sexual exploitation from juvenile detention: Development of the interCSEct screening protocol. *Journal of Interpersonal Violence*, 30(7), 1247-1276; Rafferty, Y. (2013). Child trafficking and commercial sexual exploitation: A review of promising prevention policies and programs. *American Journal of Orthopsychiatry*, 83(4), 559-575; U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. (2009). *Human trafficking into and within the United States: A review of the literature*, Retrieved from <https://aspe.hhs.gov/report/human-trafficking-and-within-united-states-review-literature>; Felner, J.K., & DuBois, D.L. (2017). Addressing the commercial sexual exploitation of children and youth: A systematic review of program and policy evaluations. *Journal of Child & Adolescent Trauma* 10, 187-201; Jordan, J., Patel, B., & Rapp, L. (2013). Domestic minor sex trafficking: A social work perspective on misidentification, victims, buyers, traffickers, treatment, and reform of current practice. *Journal of Human Behavior in the Social Environment*, 23, 356-369; Musto, J. (2013). Domestic minor sex trafficking and the detention-to-protection pipeline. *Dialectical Anthropology*, 37(2), 257-276.
- ⁸¹ *Id.*
- ⁸² While the definition of sex trafficking is generally consistent, the terminology used to describe the aspects of the commercial sex industry varies across the field.
- ⁸³ See Appendix 1.

- ⁸⁴ Virginia Department of Social Services, Division of Family Services, email correspondence, Aug. 30, 2018.
- ⁸⁵ *Id.*
- ⁸⁶ Dank, M., Khan, B., Downey, P., Kotonias, C., Mayer, D., Owens, C., Pacifici, L., & Yu, L. (2014). Estimating the size and structure of the underground commercial sex economy in eight major US cities. *The Urban Institute*. Retrieved from https://www.urban.org/sites/default/files/publication/22376/413047-estimating-the-size-and-structure-of-the-underground-commercial-sex-economy-in-eight-major-us-cities_0.pdf.
- ⁸⁷ *Id.*
- ⁸⁸ *Id.*
- ⁸⁹ Raphael, J., Reichert, J.A., & Powers, M. (2010). Pimp control and violence: Domestic sex trafficking of Chicago women and girls. *Women & Criminal Justice*, 20(1-2), 89-104; Rafferty, Y. (2013). Child trafficking and commercial sexual exploitation: A review of promising prevention policies and programs. *American Journal of Orthopsychiatry*, 83(4), 559-575; Shively, M., Kliorys, K., Wheeler, K., & Hunt, D. (2012). *A national overview of prostitution and sex trafficking demand reduction efforts*. Prepared for the National Institute of Justice, Office of Justice Programs by Abt Associates Inc. Retrieved from <https://www.ncjrs.gov/pdffiles1/nij/grants/238796.pdf>
- ⁹⁰ See, e.g., Jordan, J., Patel, B., & Rapp, L. (2013). Domestic minor sex trafficking: A social work perspective on misidentification, victims, buyers, traffickers, treatment, and reform of current practice. *Journal of Human Behavior in the Social Environment*, 23, 356-369; U.S. Department of Justice, Bureau of Justice Assistance, Office for Victims of Crime. (n.d.). *Anti-human trafficking task force strategy and operations e-guide*. Retrieved from <https://ncjtc-static.fvtc.edu/Resources/RS00002817.pdf>; U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. (2009). *Human trafficking into and within the United States: A review of the literature*, Retrieved from <https://aspe.hhs.gov/report/human-trafficking-and-within-united-states-review-literature>; Deshpande, N.A., & Nour, N.M. (2013). Sex trafficking of women and girls. *Reviews in Obstetrics & Gynecology*, 6(1), 22-27; Rafferty, Y. (2013). Child trafficking and commercial sexual exploitation: A review of promising prevention policies and programs. *American Journal of Orthopsychiatry*, 83(4), 559-575; Sprang, G., & Cole, J. (2018). Familial sex trafficking of minors: Trafficking conditions, clinical presentation, and system involvement. *Journal of Family and Violence*, 33, 185-195.
- ⁹¹ See, e.g., Salisbury, E.J., Dabney, J.D., & Russell, K. (2015). Diverting victims of commercial sexual exploitation from juvenile detention: Development of the interCSEct screening protocol. *Journal of Interpersonal Violence*, 30(7), 1247-1276; United States Government Accountability Office. (2016). *Human trafficking: Agencies have taken steps to assess prevalence, address victim issues, and avoid grant duplication*. Retrieved from <https://www.gao.gov/assets/680/678041.pdf>; Gerassi, L. (2015). From exploitation to industry: Definitions, risks, and consequences of domestic sexual exploitation and sex work among women and girls. *Journal of Human Behavior in the Social Environment*, 25(6), 591-605; Hammond, G.C., & McGlone, M. (2014). Entry, progression, exit, and service provision for survivors of sex trafficking: Implications for effective interventions. *Global Social Welfare*, 1, 157-168; Jordan, J., Patel, B., & Rapp, L. (2013). Domestic minor sex trafficking: A social work perspective

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⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ 2015 Va. Acts ch. 690, 691.

⁹⁶ Virginia State Police, CCH System, Fiscal Year of Arrest.

⁹⁷ *Id.*

⁹⁸ *Id.* That one locality accounted for 80% (318 of 397) of arrests under Virginia's commercial sex trafficking statute (Va. Code § 18.2-357.1) between FY16 to FY18.

⁹⁹ See, e.g., Musto, J. (2013). Domestic minor sex trafficking and the detention-to-protection pipeline. *Dialectical Anthropology*, 37(2), 257-276; Salisbury, E.J., Dabney, J.D., & Russell, K. (2015). Diverting victims of commercial sexual exploitation from juvenile detention: Development of the interCSECT screening protocol. *Journal of Interpersonal Violence*, 30(7), 1247-1276; United States Government Accountability

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¹⁰⁰ Va. Code § 18.2-346(A) (2018). *See also* Va. Code § 18.2-11(a) (2018). A Class 1 misdemeanor is punishable by up to twelve months in jail and a \$2,500 fine.

¹⁰¹ U.S. Department of Homeland Security, Blue Campaign. *Indicators of human trafficking*. Retrieved from <https://www.dhs.gov/blue-campaign/indicators-human-trafficking#>. The Blue Campaign provides a more comprehensive list of human trafficking indicators.

¹⁰² Dank, M., Yahner, J., Yu, L., Vasquez-Noriega, C., Gelatt, J., & Pergamit, M. (2017). Pretesting a human trafficking screening tool in the child welfare and runaway and homeless youth systems. *The Urban Institute*. Retrieved from https://www.urban.org/sites/default/files/publication/93596/pretesting_tool_1.pdf.

¹⁰³ Staff found that the Department of Social Services and certain medical and treatment providers are utilizing some type of screening tool.

¹⁰⁴ *See* Linking Systems of Care for Children and Youth in Virginia. *Home*. Retrieved from <http://linkingsystemsofcarevirginia.com/>.

- ¹⁰⁵ See Linking Systems of Care for Children and Youth in Virginia. *Pilot Sites*. Retrieved from <http://linkingsystemsofcarevirginia.com/pilotsites/>.
- ¹⁰⁶ Linking Systems of Care for Children and Youth in Virginia, personal communication, Sept. 17, 2018.
- ¹⁰⁷ Due to confidentiality and security concerns, staff has elected not to identify these programs.
- ¹⁰⁸ Due to confidentiality and security concerns, staff has elected not to identify that program.
- ¹⁰⁹ 2016 Va. Acts ch. 631.
- ¹¹⁰ Va. Code § 63.2-1508 (2018).
- ¹¹¹ *Id.*
- ¹¹² Va. Code § 63.2-1505 (2018).
- ¹¹³ Va. Code § 63.2-1506 (2018).
- ¹¹⁴ Va. Code § 18.2-346(B) (2018). Solicitation of prostitution is punished as a Class 1 misdemeanor if the victim is age 16 or older, and the penalty increases to a Class 5 felony if the victim is under the age of 16. See also Va. Code § 18.2-11(a) (2018). A Class 1 misdemeanor is punishable by up to twelve months in jail and a \$2,500 fine. See also Va. Code § 18.2-10(e) (2018). A Class 5 felony is punishable by one to ten years in prison, or up to twelve months in jail, and a maximum \$2,500 fine.
- ¹¹⁵ See Shively, M., Kliorys, K., Wheeler, K., & Hunt, D. (2012). *A national overview of prostitution and sex trafficking demand reduction efforts*. Prepared for the National Institute of Justice, Office of Justice Programs by Abt Associates Inc., Appendix I, for a Summary of John School Program Traits. Retrieved from <https://www.ncjrs.gov/pdffiles1/nij/grants/238796.pdf>.
- ¹¹⁶ Virginia Department of Juvenile Justice, email correspondence, Nov. 30, 2018. The data provided was as of November 27, 2018.
- ¹¹⁷ *Id.* Note that one of the complaints was missing information related to the adjudication.
- ¹¹⁸ See, e.g., Jordan, J., Patel, B., & Rapp, L. (2013). Domestic minor sex trafficking: A social work perspective on misidentification, victims, buyers, traffickers, treatment, and reform of current practice. *Journal of Human Behavior in the Social Environment*, 23, 356-369; Reid, J.A., Baglivio, M.T., Piquero, A.R., Greenwald, M.A., & Epps, N. (2017). Human trafficking of minors and childhood adversity in Florida. *American Journal of Public Health*, 107(2), 306-311; Covenant House. (2013). *Homelessness, survival sex, and human trafficking: As experienced by the youth of Covenant House New York*. Retrieved from <https://humantraffickinghotline.org/sites/default/files/Homelessness%2C%20Survival%20Sex%2C%20and%20Human%20Trafficking%20-%20Covenant%20House%20NY.pdf>; Gerassi, L. (2015). From exploitation to industry: Definitions, risks, and consequences of domestic sexual exploitation and sex work among women and girls. *Journal of Human Behavior in the Social Environment*, 25(6), 591-605.
- ¹¹⁹ Personal communication, June 13, 2018.
- ¹²⁰ See Colorado Human Trafficking Council. Retrieved from <https://sites.google.com/state.co.us/human-trafficking-council>.
- ¹²¹ See Florida Office of the Attorney General. *Statewide Council on Human Trafficking*. Retrieved from

<http://myfloridalegal.com/pages.nsf/Main/8AEA5858B1253D0D85257D34005AFA72>.

- ¹²² See Minnesota Human Trafficking Task Force. Retrieved from <http://www.mnhttf.com/>.
- ¹²³ See Ohio Human Trafficking Task Force. Retrieved from <https://humantrafficking.ohio.gov/>.
- ¹²⁴ See Texas Office of the Attorney General. (2018). *The Texas Human Trafficking Prevention Task Force*. Retrieved from <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/criminal-justice/HumanTraffickingReport-2018.pdf>.
- ¹²⁵ Governor Lawrence J. Hogan, Jr. (2018, August 9). Executive Order 01.01.2018.09. Retrieved from <https://governor.maryland.gov/wp-content/uploads/2018/10/01.01.2018.19-Statewide-Human-Trafficking-Response-Director-8.9.18.pdf>.
- ¹²⁶ Minnesota Human Trafficking Task Force. *About the Minnesota human trafficking task force*. Retrieved from <http://www.mnhttf.com/site/our-role-purpose/about/>.
- ¹²⁷ Governor's Ohio Human Trafficking Task Force Report. (Jan. 2019). *Letter from the anti-trafficking coordinator*, pp. 1. Retrieved from <https://humantrafficking.ohio.gov/OhioHumanTraffickingTaskForceReport0119.pdf>
- ¹²⁸ Walters, E. (2017, November 8). Texas has hired its first ever director of human trafficking prevention. *The Texas Tribune*. Retrieved from <https://www.texastribune.org/2017/11/08/texas-has-hired-its-first-ever-director-human-trafficking-prevention/>.
- ¹²⁹ 2019 Va. Acts ch. 381, 687.
- ¹³⁰ Va. Code § 18.2-357.1 (2018).
- ¹³¹ "The premise of the single larceny doctrine is that '[a] series of larcenous acts will be considered a single count of larceny if they 'are done pursuant to a single impulse and in execution of a general fraudulent scheme.'" *Moore v. Commonwealth*, 59 Va. App. 795, 804, 722 S.E.2d 668, 672 (2012), quoting *Acey v. Commonwealth*, 29 Va. App. 240, 247, 511 S.E.2d 429, 432 (1999) and *West v. Commonwealth*, 125 Va. 747, 754, 99 S.E. 654, 656 (1919).
- ¹³² Va. Code § 18.2-357.1(A) (2018). *See also* Va. Code § 18.2-10(e) (2018). A Class 5 felony is punishable by one to ten years in prison, or up to twelve months in jail, and a maximum \$2,500 fine.
- ¹³³ Va. Code § 18.2-357.1(B) (2018). *See also* Va. Code § 18.2-10(d) (2018). A Class 4 felony is punishable by two to ten years in prison and a maximum \$10,000 fine.
- ¹³⁴ Va. Code § 18.2-357.1(C) (2018). *See also* Va. Code § 18.2-10(e) (2018). A Class 3 felony is punishable by five to twenty years in prison and a maximum \$100,000 fine.
- ¹³⁵ 2019 Va. Acts ch. 617.
- ¹³⁶ *Id.*
- ¹³⁷ Other sections amended included Va. Code §§ 9.1-902, 17.1-805, 18.2-46.1, 18.2-513, 19.2-215.1, and 19.2-392.02 (2018).
- ¹³⁸ Legislation left in the Senate Committee on Finance is not enacted into law by the General Assembly.
- ¹³⁹ 2019 Va. Acts ch. 486, 514.
- ¹⁴⁰ 2019 Va. Acts ch. 854. Item 393(B) of the 2019 Appropriations Act. Retrieved from <https://budget.lis.virginia.gov/item/2019/1/HB1700/Chapter/1/393/>. *See also* the fiscal impact statements for Senate Bill 1669 (<http://lis.virginia.gov/cgi->

[bin/legp604.exe?191+oth+SB1669FER122+PDF](#)) and House Bill 2576 (<https://lis.virginia.gov/cgi-bin/legp604.exe?191+oth+HB2576FER122+PDF>).

- ¹⁴¹ Va. Code § 19.2-368.4(B) (2018).
- ¹⁴² Virginia Victims Fund, personal communication, Sept. 19, 2018, and email correspondence, Dec. 11, 2018.
- ¹⁴³ Virginia Victims Fund, email correspondence, Dec. 14, 2018.
- ¹⁴⁴ See Recommendation 6 describing funding from the Criminal Injuries Compensation Fund (Virginia Victims Fund). See also Recommendation 10 detailing Victims of Crime Act funding.
- ¹⁴⁵ 2019 Va. Acts ch. 728.
- ¹⁴⁶ Va. Code § 18.2-67.9(A) (2018).
- ¹⁴⁷ 2019 Va. Acts ch. 146.
- ¹⁴⁸ Systems Design Group. (2018). Final report on the job task analysis study of entry level law enforcement officers in the Commonwealth of Virginia and DCJS Basic Course Performance Outcomes. Retrieved from https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/jta_report.pdf.
- ¹⁴⁹ Virginia Department of Criminal Justice Services, personal correspondence, November 30, 2018.
- ¹⁵⁰ Va. Code § 16.1-260(B) (2018).
- ¹⁵¹ Va. Code § 16.1-278.8(A)(4) (2018).
- ¹⁵² See Marsh, E., Anthony, B., Emerson, J., & Mogulescu, K. (2019). *State report cards – Grading criminal record relief laws for survivors of human trafficking*. Polaris, American Bar Association Commission on Domestic & Sexual Violence, Brooklyn Law School, and University of Baltimore School of Law. Retrieved from <https://polarisproject.org/sites/default/files/Grading%20Criminal%20Record%20Relief%20Laws%20for%20Survivors%20of%20Human%20Trafficking.pdf>.
- ¹⁵³ See Va. Code § 19.2-392.2(A) (2018).
- ¹⁵⁴ Va. Code § 19.2-305.1(H) (2018).
- ¹⁵⁵ Personal communication, August 8, 2018.