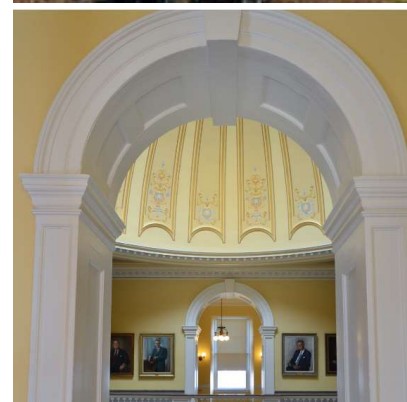




# 2019

## ANNUAL REPORT

VIRGINIA STATE CRIME COMMISSION





Patrick Henry Building • 1111 East Broad Street, Suite B036 • Richmond, Virginia 23219  
804-225-4534 • Fax: 804-786-7872 • <http://vscc.virginia.gov>

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Senator Mark D. Obenshain, *Chair*

*Executive Director*  
Kristen J. Howard

June 15, 2020

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 2019 Annual Report.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Mark D. Obenshain". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Mark D. Obenshain, Chair



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# 2019 ANNUAL REPORT

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AUTHORITY OF THE CRIME COMMISSION .....	2
MEMBERS OF THE CRIME COMMISSION .....	3
CRIME COMMISSION STAFF .....	3
2019 EXECUTIVE SUMMARY OF ACTIVITIES.....	4
OVERVIEW: VIRGINIA POST-CONVICTION DNA TESTING PROGRAM AND NOTIFICATION PROJECT.....	8

## **STUDY REPORTS**

VIRGINIA POST-CONVICTION DNA TESTING PROGRAM AND NOTIFICATION PROJECT .....	9
MASS KILLINGS AND GUN VIOLENCE.....	50
SEX TRAFFICKING IN VIRGINIA.....	58
VIRGINIA PRE-TRIAL DATA PROJECT: PRELIMINARY STATEWIDE FINDINGS .....	69

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## AUTHORITY OF THE CRIME COMMISSION

The Virginia State Crime Commission (“Crime Commission”) was established as a legislative agency in 1966. The Crime Commission is a criminal justice agency in accordance with Virginia Code § 9.1-101. The purpose of the Crime Commission is to study, report, and make recommendations on all areas of public safety and protection (Virginia Code § 30-156 *et seq.*). In doing so, the Crime Commission endeavors to:

- ascertain the causes of crime and recommend ways to reduce and prevent it;
- explore and recommend methods of rehabilitation of convicted criminals;
- study compensation of persons in law enforcement and related fields; and,
- study other related matters, including apprehension, trial, and punishment of criminal offenders.

The Crime Commission makes recommendations and assists other commissions, agencies, and legislators on matters related to Virginia’s criminal justice system. The Crime 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 Crime Commission. The Crime Commission also cooperates with the federal government and other state governments and agencies.

The Crime Commission consists of 13 members – six members of the House of Delegates, three members of the Senate, three non-legislative citizen members appointed by the Governor, and the Attorney General or his designee. Delegates are 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. Senators are appointed by the Senate Committee on Rules.

# 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, Office of the Attorney General,  
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  
John Venuti, Associate Vice President of Campus Safety,  
Virginia Commonwealth University and VCU Health

# 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  
Kashea P. Kovacs, Research Analyst  
Jacob M. Lubetkin, Staff Attorney  
Tracy M. Roe, Policy and Operations Analyst  
DeVon E. Simmons, Staff Attorney

Patrick Henry Building  
1111 East Broad Street, Suite B036  
Richmond, Virginia 23219

## 2019 EXECUTIVE SUMMARY OF ACTIVITIES

The Crime Commission engaged in a variety of studies and projects throughout 2019. Crime Commission staff focused efforts on examining mass killings and gun violence as a result of legislation referred to the Crime Commission during the July 2019 Special Session of the General Assembly. In August, the Crime Commission held a two-day public meeting on mass killings and gun violence. On the first day of the meeting, members heard presentations from federal agencies, state agencies, and prominent researchers, and the second day consisted of testimony from bill patrons, organizations, interest groups, and members of the general public. The Crime Commission published its *Report on Mass Killings and Gun Violence* in November.

Staff also continued work on several additional large-scale projects and studies, including the Virginia Post-Conviction DNA Testing Program and Notification Project, the Virginia Pre-Trial Data Project, sex trafficking, and fingerprinting of defendants.

Staff presented on the completion of the Virginia Post-Conviction DNA Testing Program and Notification Project at the Crime Commission meeting in October. This Project was a unique and unprecedented opportunity to address potentially wrongful convictions related to archived case files (1973 to 1988) at the Virginia Department of Forensic Science. After working on this Project for over a decade, hundreds of individuals who had been convicted of a criminal offense between 1973 and 1988 were notified that biological evidence believed to be suitable for DNA testing existed in the archived case file relating to their conviction. Ultimately, 13 wrongfully convicted individuals were exonerated as a result of all efforts stemming from this Project. Additionally, the Project led to at least 16 “hits” of offender DNA profiles for persons who were not originally named in the DFS archived case file.

Crime Commission members also heard presentations on two additional topics at the October meeting: sex trafficking and statewide data systems integration. Several agencies provided updates on the progress of Crime Commission recommendations from last year to address sex trafficking, as well as their plans for the upcoming year. The Chief Data Officer for the Commonwealth also delivered a report on the data governance project being implemented by the newly created Data Sharing and Analytics Advisory Committee.<sup>1</sup>

In December, the Crime Commission published its report on the *Virginia Pre-Trial Data Project: Preliminary Statewide Findings*. As part of the Virginia Pre-Trial Data Project, a cohort of adult defendants charged with a criminal offense during a one-month period (October 2017) was identified and tracked during the pre-trial period until final case disposition or December 31, 2018, whichever came first. Two specific outcomes were tracked in order to evaluate the effectiveness of various pre-trial release mechanisms: public safety and court appearance. A preliminary statewide descriptive analysis was conducted on the defendants in the cohort who were released on bond (personal recognizance, unsecured, and secured) during the pre-trial period. This preliminary analysis included whether the defendant was placed on pretrial services agency (PSA) supervision as a condition of bond and whether the criminal charges from the October 2017 contact event were heard in a locality served by a PSA during the October 2017 timeframe. Ultimately, when this Project is complete, the dataset will provide a baseline of pre-trial measures across the Commonwealth and can help inform policy decisions throughout the pre-trial process.

Crime Commission members unanimously endorsed legislation related to sex trafficking and fingerprinting of defendants for introduction during the Regular Session of the 2020 General Assembly. Ultimately, all of the legislation endorsed by the Crime Commission was passed by the General Assembly and signed into law by the Governor. The legislation accomplished numerous measures, including:

- expanding the scope of the current assessment performed by local departments of social services from sex trafficking to human trafficking;<sup>2</sup>
- amending the definition of prostitution to include acts of sexual touching;<sup>3</sup>
- requiring that fingerprints be taken and reports be submitted to the Central Criminal Records Exchange in the same manner for DUI-related offenses charged via summons pursuant to Virginia Code § 19.2-73(B) as for all other summonses issued pursuant to Virginia Code § 19.2-74;<sup>4</sup> and,
- authorizing law enforcement agencies, when directed by a court order, to take fingerprints of defendants who were found in contempt or in violation of the terms or conditions of a suspended sentence or probation for a felony offense.<sup>5</sup>

The Executive Director of the Crime Commission continued to serve as a member of the Forensic Science Board,<sup>6</sup> the Virginia Indigent Defense Commission,<sup>7</sup> and the Advisory Committee on Sexual and Domestic Violence,<sup>8</sup> as designee for the Chair of the Crime Commission.

Additional information about the Crime Commission is available on the agency website at <http://vscc.virginia.gov>.



## NOTES

<sup>1</sup> See VA. CODE § 2.2-203.2:4 (2019).

<sup>2</sup> 2020 Va. Acts ch. 6, 234. Senator Mark D. Obenshain (Senate Bill 706) and Delegate Charniele L. Herring (House Bill 1006).

<sup>3</sup> 2020 Va. Acts ch. 595. Delegate Karrie K. Delaney (House Bill 1524).

<sup>4</sup> 2020 Va. Acts ch. 91, 92. Delegate Paul E. Krizek (House Bill 1047) and Senator Mark J. Peake (Senate Bill 926).

<sup>5</sup> 2020 Va. Acts ch. 93, 189. Delegate Paul E. Krizek (House Bill 1048) and Senator Mark J. Peake (Senate Bill 925).

<sup>6</sup> VA. CODE § 9.1-1109(A)(7) (2019).

<sup>7</sup> VA. CODE § 19.2-163.02 (2019).

<sup>8</sup> VA. CODE § 9.1-116.2(A) (2019).



# OVERVIEW: VIRGINIA POST-CONVICTION DNA TESTING PROGRAM AND NOTIFICATION PROJECT

## Project Timeline

June 2020

2001 to 2004

Biological evidence is located in archived case files at DFS. DNA testing leads to 3 exonerations.

2004

Governor directs DFS to conduct DNA testing on 10% of the archived case files for sex offenses, resulting in 3 more exonerations.

2005

Governor orders a full review and DNA testing of the remaining archived case files for all felony crimes against persons.

2008

General Assembly passes budget language requiring the Forensic Science Board to notify convicted individuals if biological evidence exists in a related archived case file. DFS begins notification efforts on behalf of the Forensic Science Board.

2009

General Assembly passes emergency legislation to facilitate the Project. Crime Commission staff begin assisting with notification efforts.

2014

Crime Commission provides guidance on notification efforts and screening misdemeanors for DNA testing.

2018

Additional eligible individuals requiring notification are identified during the Project case file review.

2020

Due diligence is met for notification efforts and the Project is completed.

## Purpose of the Project

The Virginia Post-Conviction DNA Testing Program and Notification Project ("Project") was a unique and unprecedented opportunity to address potentially wrongful convictions related to archived case files (1973 to 1988) at the Virginia Department of Forensic Science (DFS) by:

- performing post-conviction DNA testing of biological evidence retained in these archived case files because such testing was not available at DFS at the time of the original convictions; and,
- notifying convicted individuals that biological evidence relating to their conviction was retained in these archived case files and may be suitable for DNA testing.

## Notification of Eligible Individuals

In 2008, the General Assembly passed budget language requiring the Forensic Science Board to notify convicted individuals if biological evidence suitable for DNA testing was retained in their archived case files. DFS staff screened over 534,000 files and identified 3,051 that contained biological evidence. From these 3,051 files, DFS staff identified 2,204 Project case files with at least one named suspect. Ultimately, it was determined that 969 individuals were convicted and required notification. The notification status of these 969 eligible individuals is as follows:

- Notified: 436
- Deceased: 280
- Unable to Locate (all leads exhausted): 253

## Notification of Additional Eligible Individuals

During a final review of the 2,204 Project case files, Crime Commission and DFS staff identified additional named suspects who were originally classified as "ineligible" in the early phases of the Project. An additional 289 individuals who were convicted of an offense (122 felonies and 167 misdemeanors) were identified. The notification status of these 289 additional eligible individuals is as follows:

- Notified: 56
- Deceased: 88
- Unable to Locate (all leads exhausted): 145

## Wrongful Convictions

Post-conviction DNA testing was conducted on biological evidence from 860 DFS archived case files for suspects who were convicted of felony offense against a person. The post-conviction DNA testing and notification efforts stemming from this Project resulted in 13 wrongfully convicted individuals being exonerated. Additionally, there were at least 16 cases where DNA testing led to hits of DNA profiles in the Virginia DNA Databank of persons *not* named in the DFS archived case file.

# VIRGINIA POST-CONVICTION DNA TESTING PROGRAM AND NOTIFICATION PROJECT

## EXECUTIVE SUMMARY

The Virginia Post-Conviction DNA Testing Program and Notification Project (“Project”) was a unique and unprecedented opportunity to address potentially wrongful convictions related to archived case files (1973 to 1988) at the Virginia Department of Forensic Science (DFS).<sup>1</sup> The primary objectives of the Project were to:

- perform post-conviction DNA testing of biological evidence retained in these archived case files because such testing was not available at DFS at the time of the original convictions; and,
- notify convicted individuals that biological evidence relating to their convictions was retained in these archived case files and may be suitable for DNA testing.

There are many factors that contribute to wrongful convictions. Post-conviction DNA testing has proven to be an effective tool in identifying wrongful convictions. Most states now allow for post-conviction DNA testing, which has led to an increase in the number of exonerations nationwide in recent years. Virginia is no exception to this trend. Since 1989, DNA evidence has been a substantial factor in 20 of the 56 total exonerations in Virginia.

In 2001, Virginia enacted legislation allowing convicted felons to request court ordered post-conviction DNA testing in their cases. Subsequently, in accordance with this new law, three individuals requested that DFS conduct post-conviction DNA testing on biological evidence retained in its archived case files. Post-conviction DNA testing was ordered and conducted for these cases between 2001 and 2004, which resulted in these three individuals being exonerated of crimes for which they had been wrongfully convicted.

In response to these three exonerations, Governor Mark R. Warner directed DFS in September 2004 to conduct a review of a random sample of ten percent of its

archived serology case files to identify cases containing biological evidence related to sex offenses. This resulted in testing of 31 cases and led to three additional wrongfully convicted individuals being exonerated. In 2005, as recommended by DFS, Governor Warner ordered a full review and DNA testing of biological evidence in the remaining archived case files for all felony crimes against persons. The Department of Forensic Science then completed a review of over 530,000 archived case files to identify those that contained biological evidence believed to be suitable for DNA testing and at least one named suspect.

In 2008, the Virginia General Assembly included language in the state budget requiring the Forensic Science Board to notify convicted individuals if evidence suitable for DNA testing had been retained in DFS archived case files. This mandate was initially undertaken by DFS on behalf of the Forensic Science Board. In order to accomplish this mandate, the Forensic Science Board created a DNA Notification Subcommittee. Based upon the mandate of the General Assembly and guidance from the DNA Notification Subcommittee, an individual was deemed eligible for notification if the following criteria were met:

- the DFS archived case file contained DNA evidence believed to be suitable for testing;
- the DFS archived case file listed at least one named suspect; and,
- the named suspect was convicted of an offense related to the DFS archived case file.

Emergency legislation was enacted by the Virginia General Assembly in 2009 to provide further direction for the Project. The legislation addressed various matters relating to the notification efforts and authorized the Chair of the Crime Commission to provide guidance for these notification efforts. The Crime Commission directed its staff to assist the Forensic Science Board with notification efforts each year from 2009 through the conclusion of the Project.

The combined efforts of DFS and Crime Commission staff led to the identification of 969 named suspects in 860 DFS archived case files who were convicted of a felony offense against a person and were thus eligible to receive notification. Post-

conviction DNA testing was conducted on biological evidence from all 860 DFS archived case files. Staff from DFS and the Crime Commission, along with numerous other stakeholders, ensured that all 969 individuals eligible for notification were ultimately notified, determined to be deceased, or had all leads exhausted in attempting to locate them.

As part of the final Project case file review, DFS and Crime Commission staff identified an additional 1,809 named suspects who were initially determined to be “ineligible” by DFS in the early phases of the Project when federal grant funding for DNA testing of the Project case files was restricted to violent felonies. It was ultimately determined that 289 of these named suspects were convicted and thus were eligible for notification. Attempts were then made to locate these 289 additional eligible individuals and notify them that they could request post-conviction DNA testing of biological evidence retained in the DFS archived case files.

Staff from DFS and the Crime Commission completed a joint review of all Project case files as a final step to ensure that all information relating to the post-conviction DNA testing outcome and notification status for each eligible individual was captured and reflected consistently in the records of each agency. DFS and Crime Commission staff presented an update on the status of the Project to the Forensic Science Board on October 3, 2019. The Forensic Science Board unanimously voted that once notifications were made to the additional eligible individuals who were initially classified as “ineligible,” due diligence had been met and all reasonable efforts had been made to notify eligible individuals as mandated in the 2008 budget language enacted by the General Assembly. Notification letters were sent to all remaining additional eligible individuals by January 2020. As such, due diligence was met and all reasonable efforts were made to notify eligible individuals as mandated by the General Assembly.

This Project proved very successful in identifying wrongful convictions in Virginia. There were 13 wrongfully convicted individuals exonerated as a result of the post-conviction DNA testing and notification efforts stemming from this

Project. Additionally, the Project led to at least 16 DNA data bank “hits” to offenders who were not listed as named suspects in the DFS archived case files.

Many lessons were learned in over a decade of work on this Project that can provide guidance to others who undertake a similar project, including the following:

1. One singular entity should be responsible for completion of the project.
2. Cooperation between state and local government agencies is essential.
3. Numerous databases and public information search tools must be used when attempting to locate individuals requiring notification.
4. Successful notification of individuals often requires numerous and repeated efforts.
5. Case files should be screened to confirm the probative value of the biological evidence and prioritize cases for post-conviction DNA testing.
6. Post-conviction DNA testing results should be used to prioritize notification efforts at the outset.
7. Sufficient funding must be available to conduct post-conviction DNA testing.
8. Independent laboratories should be considered as an option for performing post-conviction DNA testing in order to avoid delaying work on current DNA cases at state laboratories.
9. Notification letters sent to individuals should provide clear information on the project and any actions required by the recipient.
10. Procedures should be in place to respond to questions stemming from notification letters.

## **BACKGROUND**

The *Post-Conviction DNA Testing Program and Notification Project* (“Project”) provided a unique opportunity to address potentially wrongful convictions in

cases from 1973-1988 as DNA testing was not available at DFS at the time of the original convictions.<sup>2</sup> Wrongful convictions have enormous ramifications for the criminal justice system and society at large. Wrongfully convicted individuals, victims, and their respective families<sup>3</sup> are affected, as well as the witnesses, attorneys, judges, and other criminal justice professionals involved in the case. Furthermore, when an individual is wrongfully convicted, the actual perpetrator of the crime remains free. Ultimately, wrongful convictions undermine the public's confidence in the criminal justice system, which prides itself on justice, fairness, and finality.

A range of factors have been identified as contributing to wrongful convictions, such as:<sup>4</sup>

- age of the defendant;
- false accusations or perjury by witnesses;
- false confessions by the defendant;
- forensic evidence errors;
- inconsistent statements made by the defendant;
- ineffective assistance of criminal defense counsel;
- informant testimony;
- juror misconduct (implicit or explicit);
- misconduct by government officials;
- misidentification of the perpetrator by witnesses;
- race/ethnicity of the defendant;
- suggestive identification procedures;<sup>5</sup> and/or,
- “tunnel vision.”<sup>6</sup>

DNA has proven to be a powerful tool in addressing wrongful convictions because it can be retained for many years if stored under favorable conditions. This allows biological evidence from crimes that was collected decades ago to undergo DNA analysis today and yield DNA profiles for comparison. Although the criminal justice system emphasizes finality, evolutions in scientific study may discredit previous forensic approaches<sup>7</sup> or make it possible to test or re-test biological

evidence retained in cases. While DNA evidence is routinely utilized in modern day investigations and court proceedings, it can also be used to examine past convictions that occurred at a time when such testing was unavailable, inconclusive, or inadmissible in court proceedings.<sup>8</sup>

Post-conviction DNA testing may conclusively prove that an individual did not commit the crime in question or raise enough reasonable doubt to reverse or set aside a conviction. Currently, most states allow for post-conviction DNA testing; however, states may limit which types of convictions are eligible (i.e., any crime, only felonies, only *some* felonies) or the criteria that must be met in order for testing to be granted.<sup>9</sup> As the number of post-conviction DNA testing requests has increased, there has been a growing consensus that the criminal justice system must respond effectively to such requests.<sup>10</sup>

As a result of the increase in post-conviction DNA testing, the number of exonerations has also grown. Exonerations occur when a person is convicted of a crime but is either “declared to be factually innocent by a government official or agency with the authority to make that declaration,” or is “relieved of all the consequences of the criminal conviction by a government official or body with the authority to take that action.”<sup>11</sup> Based on this definition, there have been 2,552 exonerations in the United States since 1989 according to the National Registry of Exonerations.<sup>12</sup> DNA evidence was a substantial factor in over 500 of these exonerations.<sup>13</sup>

Post-conviction DNA testing can also assist law enforcement by identifying the actual perpetrator of the crime, which can solve past cases and prevent future crime. For instance, according to data from the Innocence Project, actual perpetrators have been identified in 162 DNA exoneration cases in the United States.<sup>14</sup> These 162 actual perpetrators were convicted of 152 violent crimes, including 82 sexual assaults, 35 murders, and 35 other violent crimes, that occurred while wrongfully convicted persons were incarcerated.<sup>15</sup>



## *Virginia Background*

Virginia has not been immune from the issue of wrongful convictions. Factors contributing to wrongful convictions nationwide have also occurred in numerous Virginia cases,<sup>16</sup> and DNA evidence has been particularly useful in identifying wrongful convictions. Since 1989, there have been 56 exonerations in Virginia, with DNA evidence being a substantial factor in 20 of those exonerations.<sup>17</sup>

The Supreme Court of Virginia first ruled that the results of DNA testing were admissible as evidence at trial in 1989.<sup>18</sup> The Virginia General Assembly then codified the admissibility of DNA evidence to “prove or disprove the identity of any person” in any criminal proceeding during the Regular Session of the 1990 General Assembly.<sup>19</sup> In 2001, the Virginia General Assembly enacted legislation allowing convicted felons to request the preservation and testing of human biological evidence in their cases, which could then be used during the newly created writ of actual innocence process to allow the Supreme Court of Virginia to determine whether their felony conviction should be overturned based on that biological evidence.<sup>20</sup>

## **ORIGINS OF THE PROJECT - THE FIRST THREE EXONERATIONS (2001-2004)**

Following enactment of the 2001 post-conviction DNA testing legislation, three individuals made requests for DFS<sup>21</sup> to test biological evidence discovered in DFS archived case files from the early 1980s. Post-conviction DNA testing resulted in the exoneration of these three individuals: Marvin Lamont Anderson, Julius Earl Ruffin, and Arthur Lee Whitfield.

### *Marvin Lamont Anderson*<sup>22</sup>

In January 2001, the Innocence Project sent a request to DFS asking for information on a 1982 case from Hanover County. The case file was retrieved from the State Records Center and reviewed by the Director of DFS, who found a worksheet in the case file with portions of swabs of biological evidence affixed to it. The Director notified the Innocence Project of this finding.

Pursuant to the newly enacted Virginia Code § 19.2-327.1, the Innocence Project requested that the evidence be tested. On November 1, 2001, the Hanover County Circuit Court ordered that post-conviction DNA testing be conducted. The results of the court-ordered testing showed that the convicted individual, Marvin Lamont Anderson, was excluded as a possible contributor of the genetic material detected in the sperm fraction of the victim's vaginal/cervical area sample swabs.<sup>23</sup> Mr. Anderson was granted an absolute pardon for the crimes of rape (2 counts), abduction, sodomy, and robbery by Governor Mark R. Warner on August 20, 2002.<sup>24</sup>

### *Julius Earl Ruffin*<sup>25</sup>

In June 2002, the Norfolk Commonwealth's Attorney's Office sent a request to DFS for information relating to a 1981 rape case. The case file was retrieved from the State Records Center and reviewed. Similar to Marvin Anderson's case, biological evidence was discovered that had been retained in the case file by the forensic scientist. On December 31, 2002, the Norfolk Circuit Court ordered DFS to conduct post-conviction DNA testing of the evidence. The results of the testing excluded Julius Earl Ruffin as a possible contributor to the genetic material detected from the sperm fractions of the evidence.<sup>26</sup> Mr. Ruffin was still incarcerated at the time of testing after having been ordered to serve five life sentences in this case. The Norfolk Commonwealth's Attorney contacted the Virginia Parole Board the day after the DNA testing results were issued, and Mr. Ruffin was released on parole that day. Mr. Ruffin was granted an absolute pardon for the crimes of rape, burglary, and forcible sodomy (3 counts) by Governor Mark R. Warner on March 19, 2003.<sup>27</sup>

### *Arthur Lee Whitfield*<sup>28</sup>

In December 2003, the Norfolk Commonwealth's Attorney's Office sent another request to DFS for information relating to two rape cases involving two different victims that occurred on the same night in 1981. Upon review of the case files retrieved from the State Records Center, it was also discovered that the forensic scientist had retained biological evidence in both files. On June 28, 2004, the

Norfolk Circuit Court ordered DFS to conduct post-conviction DNA testing of this evidence. The results of the testing excluded Mr. Whitfield as a contributor to the evidence in both of the rape cases. Mr. Whitfield had been convicted in both cases and sentenced to 63 years after being misidentified by both victims. Mr. Whitfield was promptly released on parole August 23, 2004, after the Norfolk Commonwealth's Attorney's Office sent a letter to the Virginia Parole Board advising that he had been exonerated of the offenses by DNA testing. Mr. Whitfield was granted an absolute pardon for the crimes of rape (2 counts), sodomy, and robbery by Governor Timothy M. Kaine on April 3, 2009.<sup>29</sup>

### ***Discovery of Biological Evidence in DFS Archived Case Files from 1973-1988***

In response to requests made in the Anderson, Ruffin, and Whitfield cases, DFS discovered that, from 1973 to 1988, some forensic scientists had routinely retained biological evidence in case files.<sup>30</sup> This era was a time before DFS was conducting DNA testing. During this time period, all submitted evidence was typically returned to the original submitting agency; however, some forensic scientists would affix remnants of the evidence that had undergone serological testing (e.g., swabs and cuttings) to worksheets in the case files.<sup>31</sup> The discovery of this biological evidence led to this unprecedented Project.

## **EXECUTIVE BRANCH RESPONSE (2004-2007)**

### ***Governor Orders a Random Review of 10% of Serology Cases: 2004***

Based on the first three exonerations, in September 2004, Governor Mark R. Warner directed DFS to conduct a review of a random sample of ten percent of its archived serology case files to identify cases containing biological evidence related to sex offenses.<sup>32</sup> To minimize the impact on pending criminal cases at DFS, post-conviction DNA testing in the identified cases was conducted by a private laboratory. The post-conviction DNA testing outcomes from this random sample of 31 identified cases<sup>33</sup> led to three additional individuals being exonerated: Phillip Thurman,<sup>34</sup> Willie N. Davidson,<sup>35</sup> and Victor Anthony Burnette.<sup>36</sup> All three individuals had been misidentified by the victims in the cases.<sup>37</sup>

### *Governor Orders Full Case File Review and Post-Conviction DNA Testing: 2005*

In December 2005, based on the results from the random review testing and on the recommendation of DFS, Governor Mark R. Warner ordered a full-scale review and post-conviction DNA testing of biological evidence in the remaining archived case files for all felony crimes against persons.<sup>38</sup> Approximately 534,000 archived case files from all four DFS regional laboratories for the time period between 1973 and 1988 were retrieved from the State Records Center and individually screened by DFS staff to determine if biological crime scene evidence was retained in each file.<sup>39</sup> Of the approximately 534,000 archived case files reviewed by DFS, less than 1% (3,051 of ~534,000) included swabs, cuttings, or threads containing biological evidence believed to be suitable for DNA testing. From the 3,051 case files with retained biological evidence, DFS staff identified 2,204 case files had at least one named suspect. These 2,204 case files formed the basis of the Project. Due to case files frequently having more than one named suspect, a review of the 2,204 Project case files resulted in a total of 3,026 named suspects for which the disposition of their respective cases needed to be determined.<sup>40</sup>

DFS then began to collect individual identifying information on named suspects within the 2,204 Project case files. Over the course of the Project, there were a total of 860 cases involving 969 convicted individuals where post-conviction DNA testing was completed.<sup>41</sup> Biological evidence related to the Project was first sent for post-conviction DNA testing in 2007. While the majority of post-conviction DNA testing occurred between 2007 and 2009,<sup>42</sup> testing and re-testing was not finalized until 2017.<sup>43</sup> To minimize the impact to its pending forensic biology caseload, DFS contracted with an independent laboratory to complete the large majority of post-conviction DNA testing.<sup>44</sup> After the contract laboratory analyzed the evidence, DFS scientists reviewed the results and prepared a certificate of analysis for each Project case file. The certificates of analysis, which contained the results of the post-conviction DNA testing, were then sent to the original investigating agency and the respective Commonwealth's Attorney. Additionally, a copy of the certificate of analysis was sent to the eligible convicted individual, if that person requested a copy of the post-conviction DNA testing results.<sup>45</sup>

The original case file for each of the 2,204 Project case files typically included the original request for laboratory examination (RFLE) form from the submitting law enforcement agency, bench notes and worksheets for the serological testing performed by DFS forensic scientists, and certificates of analysis (i.e., blood typing results, etc.). The retained biological evidence included remnants of the original evidence tested (swabs, cuttings, and/or threads) that were taped down to the serological worksheets in the files. A photograph of any worksheet containing retained biological evidence was placed in the original case file, and the original worksheet containing the taped down evidence was sent for DNA testing. Less frequently, the original case file would also include the arrest report. Any case where post-conviction DNA testing was performed would also have a DNA testing outcome file, which included the post-conviction DNA testing results, as well as all correspondence between DFS and the independent laboratory that completed the testing. There was also a legal file created for any case where testing was performed or where notification was attempted. The legal files contained documentation on all notification efforts and correspondence between DFS and other entities relating to the named suspect(s) in the case file.

### **JOINT EXECUTIVE BRANCH AND LEGISLATIVE BRANCH RESPONSE (2008-2020)**

While this Project began solely as an executive branch initiative, its structure changed in 2008 when the General Assembly passed budget language requiring the Forensic Science Board (FSB) to “ensure that all individuals who were convicted due to criminal investigations, for which its case files for the years between 1973 and 1988 were found to contain evidence possibly suitable for DNA testing, are informed that such evidence exists and is available for testing.”<sup>46</sup> After the enactment of this budget language, DFS undertook initial notification efforts on behalf of the FSB before assistance was provided by Crime Commission staff.

#### ***Creation of the FSB DNA Notification Subcommittee: 2008***

In May 2008, the FSB created a DNA Notification Subcommittee to guide the Board’s efforts in fulfilling the mandate of the 2008 budget language. The Executive Director of the Virginia State Crime Commission (Crime Commission)

serves on the FSB and was appointed to Chair the DNA Notification Subcommittee.<sup>47</sup> This subcommittee was responsible for overseeing the Project and developing a work plan to be adopted by the full FSB.

Ultimately, based on the 2008 budget language mandate and guidance provided by the subcommittee, it was determined that for an individual to be eligible for notification, the following criteria must have been met:

- the DFS archived case file contained DNA evidence suitable for testing;
- the DFS archived case file listed at least one named suspect; and,
- the named suspect was convicted of an offense related to the DFS archived case file.

### ***Enabling Legislation for the DNA Notification Project: 2009***

In developing a work plan for the Project, there was disagreement on the overall notification process and how sensitive information relating to the eligible individuals should be disseminated. Due to the large number of individuals eligible for notification, volunteers were used to assist with the Project, specifically *pro bono* attorneys.<sup>48</sup> During the Regular Session of the 2009 General Assembly, emergency legislation was passed which included the following six key measures to ensure successful completion of the Project:<sup>49</sup>

- Directed the FSB to continue notification efforts as required by the 2008 budget language;
- Allowed for the sharing of criminal history record information;
- Required all state agencies to provide assistance as requested by the FSB;
- Ordered the FSB to utilize the services of *pro bono* attorneys;
- Authorized the FSB to utilize the services of other individuals, state agencies, and private organizations; and,
- Mandated that Project volunteers sign a waiver of liability and a confidentiality agreement, as well as receive training.<sup>50</sup>

Additionally, this legislation authorized the Chair of the Crime Commission to provide guidance for notifying any additional individuals for whom receipt of notification was uncertain.<sup>51</sup> The Crime Commission directed its staff to assist the FSB with notification efforts every year from 2009 through the conclusion of the Project in 2020.

### *Conviction Verification by DFS*

As noted earlier, DFS staff previously reviewed approximately 534,000 archived case files and identified 2,204 Project case files with evidence believed to be suitable for DNA testing and at least one named suspect. The Project case files included 3,026 named suspects. After all of these named suspects were identified, the next step involved determining how many of those 3,026 named suspects had been convicted of any offense(s) related to the Project case file.

The task of verifying whether a named suspect had been convicted was initially undertaken by DFS. In seeking to determine whether an eligible individual had been convicted in relation to a Project case file, DFS requested in-state criminal history records from the Virginia State Police, as well as information from Circuit Court Clerks, Commonwealth's Attorneys, and law enforcement agencies.<sup>52</sup>

### *Conviction Verification by Crime Commission Staff*

Because verifying convictions was a time-consuming task, Crime Commission staff was asked to assist in determining whether named suspects had been convicted of any offenses related to the Project case files. During 2012 to 2013, staff was able to verify dispositions for over 1,100 cases across 83 circuit courts in the Commonwealth. Staff determined case dispositions by sending conviction verification request forms to Circuit Court Clerks and by visiting numerous courthouses.<sup>53</sup> As a result of these efforts, approximately 100 additional named suspects were identified as having been convicted of an offense related to a Project case file; therefore, post-conviction DNA testing and notification was required for these individuals.

The combined efforts of DFS and Crime Commission staff ultimately identified 969 individuals who were convicted of an offense related to a Project case file.<sup>54</sup> Extensive efforts were then made to locate these 969 eligible individuals and notify them of the existence of biological evidence in the DFS archived case files.

### *Notification of Eligible Individuals by DFS*

The task of notifying eligible individuals was also initially undertaken by DFS on behalf of the FSB. The 2008 budget language directed the FSB to prepare two form letters for mailing to eligible individuals, one letter for when DNA evidence had been tested and one for when such evidence had not been tested.<sup>55</sup> In order to accomplish this mandate, DFS requested assistance from the Virginia State Police, Virginia Department of Corrections, Virginia Department of Motor Vehicles, and Virginia Department of Health - Office of Vital Records to determine whether eligible individuals were deceased or, if presumed living, the last known address and incarceration status of each eligible individual.

When address information for an eligible individual was identified, DFS sent notification letters via first-class mail and certified mail. A pre-stamped postcard was included with each letter. The individual receiving the letter was asked to indicate on this postcard whether they were or were not the person specified in the letter, and, if so, whether or not they wished to receive a copy of the DNA testing results (certificate of analysis). The individual was further asked to return this completed postcard to DFS. If an eligible individual was incarcerated in a correctional facility, a first-class mailing was sent to both the individual and the warden or superintendent of the facility, with a request that the warden or superintendent have the letter hand-delivered to the eligible individual.

Notification letters were mailed to eligible individuals in 2008 by DFS between September and December.<sup>56</sup> These mailings resulted in over 300 confirmed notifications, with a significant portion of these notifications made to eligible individuals who were incarcerated within the Department of Corrections.



### ***Notification of Eligible Individuals by Crime Commission Staff***

In June 2009, DFS provided Crime Commission staff with an initial spreadsheet that included information on all Project case files with biological evidence believed to be suitable for DNA testing and at least one named suspect.<sup>57</sup> Crime Commission staff then began directly assisting DFS in notifying the remaining eligible individuals. As part of these notification efforts, staff requested information, assistance, and cooperation from numerous agencies, including the Virginia State Police,<sup>58</sup> Virginia Department of Corrections,<sup>59</sup> Office of the Attorney General,<sup>60</sup> Virginia Indigent Defense Commission and contract staff,<sup>61</sup> Richmond City Public Defender's Office,<sup>62</sup> and Virginia Department of Motor Vehicles.<sup>63</sup> Staff spent a significant amount of time coordinating these requests for information and merging the information provided by these agencies with existing information for each eligible individual. In addition, staff continuously updated DFS on any new information relating to an eligible individual's most recent address or incarceration status, or whether the individual was determined to be deceased. Furthermore, staff spent hundreds of hours manually entering the names of eligible individuals into various national people-finder and public record search tools, as well as conducting searches of Virginia and other states' online sex offender registries, inmate locators, and obituaries.

Each time new information on a last known address of an eligible individual was identified, Crime Commission staff prepared mailings on behalf of the FSB and hand-delivered those materials to DFS to physically mail out to the eligible individual. It was not uncommon that several first-class and certified mailings to multiple different addresses were required in order to successfully notify a single eligible individual.

### ***Conviction Verification and Notification of Eligible Individuals by Volunteers***

In 2009, the DNA Notification Subcommittee of the FSB became responsible for coordinating the participation of *pro bono* attorney and law school student volunteers to assist with conviction verification and notification of eligible individuals. The Mid-Atlantic Innocence Project (MAIP) developed a training course for the volunteers and provided a total of seven trainings across the

Commonwealth beginning in August 2009. The Virginia State Bar approved continuing legal education (CLE) credit for participants in this training course. Additionally, the Office of the Attorney General prepared liability waivers and confidentiality agreements for the individuals to sign as a condition of providing volunteer services.

Crime Commission staff assisted with case assignments for these volunteers. With limited exceptions, the volunteer effort proved challenging and produced marginal results for several different reasons. There was frequently a large gap in time between the volunteer requesting to participate, completion of the required MAIP training, and the case assignments made by Crime Commission staff, which impacted that volunteer's ability to assist. Additionally, some volunteers were not able or willing to participate in all aspects of the Project. For instance, some volunteers were willing to assist with conviction verifications and identification of last known addresses; however, they were uncomfortable or unwilling to provide in-person notifications to eligible individuals.<sup>64</sup>

## NOTIFICATION OF ELIGIBLE INDIVIDUALS BASED ON POST-CONVICTION DNA TESTING OUTCOMES

Crime Commission staff initially based notification efforts on the spreadsheet provided by DFS in June 2009.<sup>65</sup> This spreadsheet did not include the post-conviction DNA testing outcomes for each individual eligible for notification. In 2015, DFS provided post-conviction DNA testing outcomes for all eligible individuals, and Crime Commission staff was ultimately able to prioritize notification efforts for the 969 eligible individuals based upon these testing outcomes.<sup>66</sup>

The post-conviction DNA testing outcomes were categorized as follows:

- **Eliminated:** eligible individual was not a contributor to the DNA profile obtained from evidence in the DFS archived case file.<sup>67</sup>
- **Need Known:** a DNA profile was obtained from the evidence; however, a reference or "known" sample was needed from an individual (typically

from the suspect or victim) to compare to the DNA profile obtained from the evidence in the DFS archived case file.

- **Inconclusive:** insufficient data existed to reach a conclusion, or no DNA profile was obtained from the evidence in the DFS archived case file.
- **Indicated/Not Eliminated:** eligible individual could not be eliminated as a contributor to the DNA profile obtained from the evidence in the DFS archived case file.

Crime Commission staff used these DNA testing outcomes to prioritize notification efforts from highest to lowest as follows: eliminated, need known, inconclusive, and indicated/not eliminated. The post-conviction DNA testing outcomes for the 969 eligible individuals were as follows:

- 84 eliminated;
- 144 need known;
- 490 inconclusive; and,
- 251 indicated/not eliminated.

### *Crime Commission Guidance*

At the September 23, 2014, Crime Commission meeting, members voted on three matters impacting the notification efforts for eligible individuals where the post-conviction DNA testing outcome was eliminated, inconclusive, or indicated/not eliminated. Additionally, members provided guidance on post-conviction DNA testing for eligible individuals who had been convicted of misdemeanor offenses.

First, Crime Commission members voted that the next of kin (spouse, child, or parent) of a deceased eligible individual with an *eliminated* post-conviction DNA testing outcome should be notified. Crime Commission staff identified 18 of these deceased eligible individuals and determined, in consultation with DFS, whether post-conviction DNA testing of evidence in the respective case file would be probative in nature. It was determined that post-conviction DNA testing of the biological evidence was probative in regard to convictions for 11 of these deceased eligible individuals. Crime Commission staff prepared mailings for the next of kin that were similar to what had been provided to eligible individuals.

These mailings asked the recipient to verify that they were next of kin to the deceased eligible individual and, if so, DFS subsequently provided the next of kin with the post-conviction DNA testing outcome (certificate of analysis). Crime Commission staff successfully notified next of kin for 8 of the 11 deceased eligible individuals whose post-conviction DNA testing outcome was eliminated.<sup>68</sup>

Second, Crime Commission members voted that DFS should re-test the biological evidence of eligible individuals where the initial DNA testing outcome was *inconclusive* with a new DNA testing method (Y-STR) to determine if this new method could develop sufficient evidence to reach a conclusion. Staff from the Crime Commission, DFS, the Virginia Indigent Defense Commission, and MAIP completed a legal review of over 400 case files with inconclusive post-conviction DNA testing outcomes and identified 60 case files that contained spermatozoa or seminal fluid evidence, as Y-STR testing only examines male DNA.<sup>69</sup> DFS scientists then completed a scientific review of the 60 case files recommended for retesting following the legal review. This joint review resulted in 34 cases with inconclusive post-conviction DNA testing outcomes being recommended for additional testing. One of these cases did not have enough remaining biological evidence to submit for testing; therefore, a total of 33 cases were sent for Y-STR testing. The Y-STR testing resulted in the following post-conviction DNA testing outcomes:<sup>70</sup>

- 25 cases remained *inconclusive*;
- 6 cases were *need known* with a DNA sample needed from the eligible individual;
- 1 case was *need known* with a DNA sample needed from the victim; and,
- 1 case was an *indicated/not eliminated*.

DFS mailed notification letters regarding the updated post-conviction DNA testing outcomes to all 33 eligible individuals regardless of whether they had previously been notified. Similar to prior post-conviction DNA testing in the Project, DFS contracted with an independent laboratory to complete the Y-STR or mini-STR DNA analyses to minimize the impact to their existing forensic biology caseload.

Third, Crime Commission members voted that no additional resources should be used to notify eligible individuals whose post-conviction DNA testing outcome was *indicated/not eliminated*.

Finally, Crime Commission members voted that DFS should not conduct post-conviction DNA testing for eligible individuals with misdemeanor convictions unless either the eligible individual or the victim requested such testing.

### OVERALL NOTIFICATION STATUS OF ELIGIBLE INDIVIDUALS

The notification status of the 969 eligible individuals requiring notification is as follows:

- Notified: 436
- Deceased: 280
- Unable to Locate (all leads exhausted): 253

Table 1 illustrates the notification status of the 969 eligible individuals categorized by post-conviction DNA testing outcome.

**Table 1: Notification Status of Eligible Individuals by DNA Testing Outcome**

NOTIFICATION STATUS	POST-CONVICTION DNA TESTING OUTCOME				TOTAL
	Eliminated	Need Known	Inconclusive	Indicated/ Not Eliminated	
Notified	64	30	191	152	<b>436</b>
Deceased	18	59	158	46	<b>280</b>
Unable to Locate	2	55	141	53	<b>253</b>
<b>TOTAL</b>	<b>84</b>	<b>144</b>	<b>490</b>	<b>251</b>	<b>969</b>

Source: Virginia State Crime Commission analysis of the DFS Post-Conviction DNA Notification Project Database. Note: These figures exclude the 289 additional eligible individuals originally classified as “ineligible.”

### CHALLENGES IN NOTIFICATION EFFORTS

Nearly 75% (716 of 969) of the eligible individuals requiring notification were successfully notified or were determined to be deceased. There were several challenges to successfully notifying the remaining 26% (253 of 969) of eligible individuals.<sup>71</sup> The cases in the Project were between 30-45 years old, and in many

instances vital identifying information, such as dates of birth and social security numbers, were unavailable. This issue, combined with the fact that many of the eligible individuals had common names, made it difficult to identify the correct individuals. In some instances, legal name changes as a result of marriage, divorce, or other reasons, made it difficult to identify and locate the correct individual. Further, eligible individuals frequently changed their residences within Virginia, and other states and countries. Finally, there were a number of cases where staff was extremely confident that the correct eligible individual had been located; however, that individual never returned the postcard verification included in the mailing, and therefore could not be considered notified.

### **ADDITIONAL ELIGIBLE INDIVIDUALS REQUIRING NOTIFICATION**

As part of a final review of the 2,204 Project case files with evidence suitable for post-conviction DNA testing and at least one named suspect, Crime Commission and DFS staff identified additional eligible individuals in these case files who were originally classified as “ineligible” by DFS in the early phases of the Project. This classification was made primarily because federal grant funding for post-conviction DNA testing of evidence in the Project case files was restricted to *violent* felonies. In total 1,809 named suspects were identified who had initially been determined to be “ineligible.” Crime Commission staff ultimately determined that 16% (289 of 1,809) of these individuals were convicted of an offense,<sup>72</sup> thus making them eligible to receive notification:

- 122 were convicted of at least one felony;<sup>73</sup> and,
- 167 were convicted of at least one misdemeanor.<sup>74</sup>

The vast majority of the biological evidence retained in these “ineligible” case files had not undergone post-conviction DNA testing.<sup>75</sup> Therefore, the notification letters sent to these additional eligible individuals advised them of the options for requesting post-conviction DNA testing and of the free legal assistance that may be available from the Mid-Atlantic Innocence Project. The additional eligible individuals convicted of felonies were informed that post-conviction DNA testing would be performed upon court order,<sup>76</sup> while those individuals convicted of

misdemeanors were advised that DNA testing would only be performed upon request if it was determined that the evidence was probative.

The notification status of the 289 additional eligible individuals who were originally classified as “ineligible” is as follows:

- Notified: 56
- Deceased: 88
- Unable to Locate (all leads exhausted): 145

As of June 5, 2020, no requests had been made for post-conviction DNA testing by any of these additional eligible individuals.

## **CROSS-VALIDATION AND JOINT REVIEW OF CASE FILES**

Over the course of this Project, Crime Commission staff reviewed the original DFS case file for all 2,204 Project case files, along with the corresponding post-conviction DNA testing outcome and legal files, multiple times to ensure that all identifying information that could assist in locating eligible individuals was captured and cross-validated.

Once all leads for notifying eligible individuals were exhausted and cross-validation of files was completed, Crime Commission and DFS staff met to review all 2,204 Project case files to verify agreement in terms of (i) post-conviction DNA testing outcome (i.e., eliminated, need known, inconclusive, indicated/not eliminated, additional eligible, ineligible), (ii) notification status (i.e., notified, deceased, unable to locate); and, (iii) whether staff collectively determined that all leads had been exhausted in attempting to locate and notify eligible individuals. This joint review was an essential final step in the Project to ensure that all information, including post-conviction DNA testing outcome and notification status for each eligible individual, was captured and reflected consistently in both DFS and Crime Commission records.

## DUE DILIGENCE DETERMINATION

On October 3, 2019, DFS and Crime Commission staff presented an update on the status of the Project to the FSB.<sup>77</sup> The FSB unanimously voted that once notifications were made to the additional eligible individuals who were initially classified as “ineligible,” then due diligence had been met and all reasonable efforts had been made to notify eligible individuals as mandated in the 2008 budget language enacted by the General Assembly.<sup>78</sup> The Crime Commission received a final update on the status of the Project from Commission staff at its October 15, 2019, meeting.<sup>79</sup> The FSB submitted its annual report, which contained a final update on the Project, to the General Assembly in November 2019.<sup>80</sup>

Notification letters were sent to all remaining additional eligible individuals as of January 2020. As such, due diligence was met and all reasonable efforts were made to notify eligible individuals as mandated by the General Assembly.

## WRONGFUL CONVICTIONS

As previously noted, there have been 56 exonerations in Virginia, and DNA evidence has been a substantial factor in 20 of those exonerations.<sup>81</sup> The post-conviction DNA testing and notification efforts stemming from this Project resulted in the exonerations of the following 13 individuals:<sup>82</sup>

- Marvin Lamont Anderson<sup>83</sup>
- Bennett Barbour<sup>84</sup>
- Victor Anthony Burnette<sup>85</sup>
- Calvin Cunningham<sup>86</sup>
- Willie Neville Davidson<sup>87</sup>
- Garry Diamond<sup>88</sup>
- Thomas Haynesworth<sup>89</sup>
- Curtis Jasper Moore<sup>90</sup>
- Julius Earl Ruffin<sup>91</sup>
- Winston Lamont Scott<sup>92</sup>



- Philip Leon Thurman<sup>93</sup>
- Roy L. Watford, III<sup>94</sup>; and,
- Arthur Lee Whitfield.<sup>95</sup>

These 13 exonerations included six pardons, six writs of actual innocence based on biological evidence, and one special circumstance.<sup>96</sup> These exonerated individuals served a combined total of nearly 150 years in prison and shared several common factors, including:<sup>97</sup>

- all 13 were male;
- all 13 were convicted of at least one sex offense;
- 11 of the 13 were African American;<sup>98</sup> and,
- 11 of the 13 were convicted in all or in part due to misidentification by witnesses.<sup>99</sup>

In addition to the 13 exonerations, there were at least 16 cases where post-conviction DNA testing stemming from this Project led to hits of DNA profiles in the Virginia DNA Databank of persons *not* named in the DFS archived case file, such as:<sup>100</sup>

- The sperm fraction of the swabs in the Marvin Lamont Anderson case file identified the DNA contributor as a different individual who was subsequently convicted of the 1982 sexual assault.
- The sperm fraction of the evidence in the Julius Earl Ruffin case file matched to the DNA of a different individual who was serving multiple life sentences for rape and forcible sodomy convictions in another case.
- The sperm fractions from the evidence in the Arthur Lee Whitfield case file were also consistent with the DNA of the perpetrator identified in the Julius Ruffin case file.
- Evidence retained in the Phillip Thurman case file identified the DNA contributor as a different individual who was subsequently convicted of that 1985 rape offense.
- Evidence retained in the Thomas Haynesworth case file identified the DNA contributor as a different individual who was serving multiple life

sentences for rape offenses that occurred after Mr. Haynesworth's arrest in 1984.

- Evidence retained in the Bennett Barbour case file identified the DNA contributor as a different individual who was subsequently convicted of that 1978 rape offense.
- Evidence retained in the Curtis Jasper Moore case file identified the DNA contributor as a different individual who was subsequently convicted of that 1978 murder and rape offense, ultimately resulting in a life sentence.

## LESSONS LEARNED

Many lessons were learned when addressing the numerous legal and logistical challenges that arose during this Project. Crime Commission and DFS staff identified aspects of the Project that functioned well, along with improvements that could be made to other areas of the Project. The following lessons can provide guidance to others who undertake a similar project.

### *One Singular Entity Should Be Responsible for Completion of the Project*

There were many benefits to mandating that the Forensic Science Board be responsible for completion of the Project. An article published by the American Bar Association (ABA) cited this structure as a potential model for similar statewide notification systems requiring mass notification.<sup>101</sup> Most notably, the article remarked favorably that policy decisions on cases and the mechanics of notification were made by a group of criminal justice stakeholders on the Board, as opposed to being left to the discretion of individual prosecutors.<sup>102</sup>

Additionally, this centralized structure created accountability for completion of the Project. A report on the progress of the Project was required at each FSB meeting<sup>103</sup> and the FSB was required to make a final report on the status of the Project.<sup>104</sup> Further, the FSB is required to provide an annual report to General Assembly members.<sup>105</sup>

While this structure had many advantages, a significant challenge was that the FSB is a policy board and not a functioning agency. As such, the FSB and DNA

Notification Subcommittee were comprised of individuals who were full-time employees of various other agencies. This Project ultimately succeeded because of the assistance, cooperation, and perseverance of many individuals who carried out Project-related activities in addition to their demanding day-to-day job responsibilities at these other agencies. In retrospect, the creation of an independent, ad hoc entity with staff whose only responsibility was Project-related activities would likely have led to an earlier completion of the Project.

### ***Cooperation Between State and Local Government Agencies is Essential***

The importance of cooperation between government agencies and the amount of time needed to establish working relationships and trust cannot be understated. Collaboration began early on with the dissemination of information about the Project to the criminal justice community. This sharing of information proved helpful in determining how various agencies could assist and which tools were available to locate eligible individuals requiring notification. This cooperation continued for over a decade, as individuals in the executive, legislative, and judicial branches of state government, along with local government officials, worked diligently to provide assistance with notification efforts.

Additionally, the success of the conviction verification portion of the Project was due to the resounding work of the Circuit Court Clerks and their staff, along with the support of the Virginia Court Clerks' Association. Relying on Circuit Court Clerks was a far more efficient method for verifying convictions than asking *pro bono* attorneys to research cases on a one-by-one basis because Clerks are intimately familiar with their record retention and retrieval practices.

### ***Numerous Databases and Public Information Search Tools Must Be Used When Attempting to Locate Individuals Requiring Notification***

The collection of information across databases and search platforms, as opposed to relying on a singular source, was essential to successfully locate and notify eligible individuals. The information contained within the internal databases of the Virginia State Police, Virginia Department of Corrections, Virginia Department of Motor Vehicles, and Virginia Department of Health - Office of Vital Records

provided immeasurable assistance in verifying the identities of eligible individuals, identifying last known addresses, and determining whether any of these individuals were deceased. Additionally, subscriptions to various people finder tools and other online resources were integral in locating eligible individuals. Finally, conducting internet searches of various public sources of information, such as newspaper articles and obituaries, proved particularly helpful.

### ***Successful Notification of Individuals Often Requires Numerous and Repeated Efforts***

The amount of time required to *truly* meet due diligence in attempting to notify all eligible individuals cannot be underestimated. Completion of the Project required multiple iterations of notification efforts over numerous years by various agencies before it was determined that all leads had been exhausted in attempting to locate an eligible individual. This process was very tedious and required persistence to ensure that all reasonable efforts to identify and locate eligible individuals were made and documented accordingly.

### ***Case Files Should Be Screened to Confirm the Probative Value of the Biological Evidence and Prioritize Cases for Post-Conviction DNA Testing***

One of the most important lessons learned from the DNA testing portion of the Project was that an improved screening process for the testing of biological evidence in the archived case files would have been beneficial. At the beginning of the Project, any archived case file with biological evidence where a named suspect had been convicted of a felony offense against a person was sent for DNA testing. In retrospect, case files should have been screened to determine whether DNA testing would be probative of the convicted individual's guilt or innocence of the offense. Such screening would have saved a significant amount of time, resources, and costs.

A screening process was ultimately used for cases later in the Project. In September 2014, the Crime Commission recommended retesting of the 421 cases with "inconclusive" results. DFS received \$150,000 in Virginia's FY16 budget for

this retesting. A screening process was developed and implemented for these 421 cases in order to determine whether the biological evidence in each case file was probative and whether to submit the case for retesting. As a result, only 33 cases were sent for retesting and DFS was able to return \$75,000 of the funds allocated.

### ***Post-Conviction DNA Testing Results Should Be Used to Prioritize Notification Efforts at the Outset***

An important lesson learned during the notification portion of this Project was that it would have been helpful if the DNA testing outcomes were made available at the beginning of the project so that notification efforts could have been prioritized based upon the testing outcome. For example, had the DNA testing outcomes been available at the outset, cases with an outcome of “eliminated” would have taken priority over cases with an “indicated/not eliminated” outcome. As such, if a similar project were to be undertaken in the future, it is recommended that the DNA testing outcomes be made immediately available to the entity responsible for notifying eligible individuals.

Additionally, when developing terminology for DNA testing outcomes, how the public interprets the terms should be taken into account. For example, during this Project the scientific term “eliminated” was used for DNA testing outcomes that excluded the convicted person as a DNA contributor to the biological evidence in the case file; however, many members of the public could inadvertently interpret the scientific term “eliminated” as having the same meaning as the legal term of “exonerated.”

### ***Sufficient Funding Must Be Available to Conduct Post-Conviction DNA Testing***

It must be strongly emphasized that the DNA testing portion of this Project was supported by both federal and state funds. DFS would not have been able to complete DNA testing on the biological evidence in the archived case files without these additional federal and state funds to supplement its existing operating budget. As such, any similar project should determine how much funding will be necessary and available to conduct such DNA or other scientific testing.

### ***Independent Laboratories Should Be Considered as an Option for Performing Post-Conviction DNA Testing in Order to Avoid Delaying Work on Current DNA Cases at State Laboratories***

By outsourcing post-conviction DNA testing to an independent laboratory, DFS was able to ensure that such testing was performed without delaying work by DFS on its forensic biology caseload for pending investigations and criminal cases. Additionally, if a state laboratory will be responsible for reviewing the work of an independent laboratory (e.g., writing reports or uploading profiles to CODIS), it is critical that a digital file format for sharing information between these entities be determined in advance.

### ***Notification Letters Sent to Individuals Should Provide Clear Information on the Project and Any Actions Required by the Recipient***

Much time and attention was put into developing the format and wording of notification letters to eligible individuals as part of this Project; however, it was not uncommon for recipients to be confused about why they received the letter and what they were supposed to do in response. Additionally, there were instances when someone other than the intended recipient, such as a spouse or other family member, opened the letter.

Therefore, when drafting such a notification letter, careful consideration must be given to the content of the document. Letters should provide enough information to help the recipient recall the particular offense (name, place of conviction, court case number or investigating agency, internal identification number, date of offense or conviction) without explicitly stating the nature of the actual offense. The letter should also explain to the recipient, in basic “everyday” language, why they are receiving the letter and what actions they are required or advised to take in response. Furthermore, the letter should contain clear instructions on what the reader should do if they are not the intended recipient of the letter (e.g., provide to the intended recipient, forward to intended recipient, notify DFS that intended recipient is no longer at the address).

### *Procedures Should Be in Place to Respond to Questions Stemming from Notification Letters*

In addition to providing clear information in the notification letter, a plan for how to handle the wide array of reactions that recipients may have to receiving the letter must be established. For example, during this Project some recipients expressed distrust about receiving a letter from a government entity, others were frustrated because they had moved on with their lives since the conviction, and a few were angry because they were not the person who had been convicted of the offense. Letter recipients with these concerns were referred to the Mid-Atlantic Innocence Project (MAIP) for assistance.

While some have suggested that referring letter recipients to volunteer groups for legal advice is the government dodging a responsibility to respond,<sup>106</sup> MAIP proved to be a valuable asset to the public over the course of the Project. Hundreds of individuals reached out to MAIP for advice and assistance related to the notification letters. In addition, MAIP was involved in many of the cases that resulted in an exoneration.

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Office of the Attorney General

*Pro Bono* Attorneys

Richmond City Public Defender's Office

Virginia Court Clerks' Association

Virginia Department of Corrections

Virginia Department of Forensic Science

Virginia Department of Health - Office of Vital Records

Virginia Department of Motor Vehicles

Virginia Indigent Defense Commission

Virginia State Bar

Virginia State Police



## NOTES

- <sup>1</sup> See Virginia Department of Forensic Science. *About DFS*. Retrieved from <https://www.dfs.virginia.gov/about-dfs/>. In Virginia, the Department of Forensic Science is responsible for providing “forensic laboratory services to the Commonwealth’s state and local law enforcement agencies, medical examiners, Commonwealth’s Attorneys, fire departments, and state agencies in the investigation of any criminal matter.”
- <sup>2</sup> Forensic Science Board. *2008 Annual Report*. Retrieved from <https://rga.lis.virginia.gov/Published/2008/RD358/PDF>. The case files were reviewed to “ascertain whether any individuals convicted of a certain set of crimes during that 15-year period may have been wrongly convicted” (p.2).
- <sup>3</sup> See, e.g., The National Center for Victims of Crime. *DNA & crime victims: Post-conviction testing and exonerations*. Retrieved from [https://victimsofcrime.org/docs/DNA%20Resource%20Center/dna\\_exonerati\\_on\\_bro.pdf?sfvrsn=0](https://victimsofcrime.org/docs/DNA%20Resource%20Center/dna_exonerati_on_bro.pdf?sfvrsn=0).
- <sup>4</sup> See, e.g., Gould, J.B., & Leo, R.A. (2010). One hundred years later: Wrongful convictions after a century of research. *Journal of Criminal Law and Criminology*, 100(3), 825-868; Gould, J.B., Carrano, J., Leo, R., & Young, J. (2013). *Predicting erroneous convictions: A social science approach to miscarriages of justice*. Retrieved from <https://www.ncjrs.gov/pdffiles1/nij/grants/241389.pdf>; Huff, C.R. (2002). Wrongful conviction and public policy: The American Society of Criminology 2001 presidential address. *Criminology*, 40(1), 1-18; Olney, M., & Bonn, S. (2015). An exploratory study of the legal and non-legal factors associated with exoneration for wrongful conviction: The power of DNA evidence. *Criminal Justice Policy Review*, 26(4), 400-420; The Innocence Project. *All cases*. Retrieved from <https://www.innocenceproject.org/all-cases/>; The National Registry of Exonerations. *% exonerations by contributing factor*. Retrieved from <https://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx>.
- <sup>5</sup> Suggestive identification procedures may occur at various times, such as during photo arrays, showups, or lineups.
- <sup>6</sup> “Tunnel vision” refers to an emphasized focus on a single suspect in a case.
- <sup>7</sup> See, e.g., Wicoff, B. (2019). Challenges in responding to mass forensic error. *Criminal Justice*, 34(3), 29-36. The author discusses how certain forensic approaches have recently come under scrutiny, including bite mark analysis, arson investigation, tool mark analysis, shaken baby syndrome, comparative bullet lead analysis, and blood stain pattern analysis (pp. 29-30). See also National Research Council. (2009). *Strengthening forensic science in the United States: A path forward*. Washington, D.C. Retrieved from <https://www.ncjrs.gov/pdffiles1/nij/grants/228091.pdf>; President’s Council of Advisor’s on Science and Technology (PCAST). (2016). *Report to the*

*President. Forensic science in criminal courts: Ensuring scientific validity of feature-comparison methods.* Washington, D.C. Retrieved from [https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/P\\_CAST/pcast\\_forensic\\_science\\_report\\_final.pdf](https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/P_CAST/pcast_forensic_science_report_final.pdf).

- <sup>8</sup> The first state appellate court to uphold the admission of DNA evidence was in Florida in 1988. *Andrews v. State*, 533 So. 2d 841 (Fla. Dist. Ct. App. 1988). DNA evidence was ruled admissible by the U.S. District Court for the District of Vermont in September 1990. *U.S. v. Jakobetz*, 747 F. Supp. 250 (D. Vt. 1990). The first U.S. Court of Appeals decision that addressed the admissibility of DNA evidence was in October 1990. *U.S. v. Two Bulls*, 918 F.2d 56 (8<sup>th</sup> Cir. 1990).
- <sup>9</sup> National Conference of State Legislatures. *Post-conviction DNA testing*. Retrieved from <https://www.ncsl.org/Documents/cj/PostConvictionDNATesting.pdf>.
- <sup>10</sup> See, e.g., National Commission on the Future of DNA Evidence. (1999). *Postconviction DNA Testing: Recommendations for handling requests*. Retrieved from <https://www.ncjrs.gov/pdffiles1/nij/177626.pdf>. Although somewhat outdated, this report identifies some of the key actors involved in such requests and identifies recommendations for prosecutors, defense counsel, judiciary, victim assistance, and laboratory personnel. See also Wicoff, B. (2019). Challenges in responding to mass forensic error. *Criminal Justice*, 34(3), 29-36. The author of this article states that “it is essential that stakeholders in the criminal justice system work together to create efficient and cost-effective institutional responses...” (p. 36).
- <sup>11</sup> The National Registry of Exonerations. *Glossary*. Retrieved from <https://www.law.umich.edu/special/exoneration/Pages/glossary.aspx>.
- <sup>12</sup> The National Registry of Exonerations. Retrieved June 2, 2020, from <https://www.law.umich.edu/special/exoneration/Pages/Exoneration-by-Year.aspx>. The number of DNA exonerations reported by the National Registry of Exonerations and the Innocence Project differs due to a variation in definitions.
- <sup>13</sup> *Id.*
- <sup>14</sup> Innocence Project. *DNA exonerations in the United States*. Retrieved June 2, 2020, from <https://www.innocenceproject.org/dna-exonerations-in-the-united-states/>. The number of DNA exonerations reported by the Innocence Project and the National Registry of Exonerations differs due to a variation in definitions.
- <sup>15</sup> *Id.*
- <sup>16</sup> See, e.g., Innocence Commission for Virginia. (2005). *A vision for justice: Report and recommendations regarding wrongful convictions in the Commonwealth of Virginia*. Arlington, VA: Innocence Commission for Virginia. Retrieved from <https://www.prisonlegalnews.org/media/publications/innocence%20commission%20of%20va%20C%20wrongful%20convictions%20report%202005.pdf>; The National Registry of Exonerations. *% exonerations by contributing factor*. Retrieved from

<https://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx>.

- <sup>17</sup> The National Registry of Exonerations. *Exonerations by state*. Retrieved June 2, 2020, from <https://www.law.umich.edu/special/exoneration/Pages/Exonerations-in-the-United-States-Map.aspx>.
- <sup>18</sup> *Spencer v. Commonwealth*, 238 Va. 295, 313-316, 384 S.E.2d 785, 797 (1989).
- <sup>19</sup> 1990 Va. Acts ch. 669. See VA. CODE § 19.2-270.5 (2019).
- <sup>20</sup> 2001 Va. Acts ch. 873, 874. See VA. CODE §§ 19.2-270.4:1 and 19.2-327.1 through 19.2-327.6 (2019).
- <sup>21</sup> 2005 Va. Acts ch. 868, 881. In 2005, a major restructuring of the former Virginia Division of Forensic Science created the Department of Forensic Science as a department within the executive branch of the state government.
- <sup>22</sup> See, e.g., <https://www.innocenceproject.org/cases/marvin-anderson/>; Innocence Commission for Virginia. (2005). *A vision for justice: Report and recommendations regarding wrongful convictions in the Commonwealth of Virginia*. Arlington, VA: Innocence Commission for Virginia. Retrieved from <https://www.prisonlegalnews.org/media/publications/innocence%20commission%20of%20va%2C%20wrongful%20convictions%20report%2C%202005.pdf>.
- <sup>23</sup> The post-conviction DNA testing results were included on a certificate of analysis dated December 6, 2001. In Virginia, the results of scientific testing are reported on a form prepared by DFS entitled “certificate of analysis.”
- <sup>24</sup> Office of Governor Mark R. Warner. (2003). *List of pardons, commutations, reprieves and other forms of clemency*. Retrieved from <https://rga.lis.virginia.gov/Published/2003/SD2/PDF>.
- <sup>25</sup> See, e.g., <https://www.innocenceproject.org/cases/julius-ruffin/>; Innocence Commission for Virginia. (2005). *A vision for justice: Report and recommendations regarding wrongful convictions in the Commonwealth of Virginia*. Arlington, VA: Innocence Commission for Virginia. Retrieved from <https://www.prisonlegalnews.org/media/publications/innocence%20commission%20of%20va%2C%20wrongful%20convictions%20report%2C%202005.pdf>.
- <sup>26</sup> The post-conviction DNA testing results were included on a certificate of analysis dated February 11, 2003.
- <sup>27</sup> Office of Governor Mark R. Warner. (2004). *List of pardons, commutations, reprieves and other forms of clemency*. Retrieved from <https://rga.lis.virginia.gov/Published/2004/SD2/PDF>.
- <sup>28</sup> See, e.g., <https://www.innocenceproject.org/cases/arthur-lee-whitfield/>; Innocence Commission for Virginia. (2005). *A vision for justice: Report and recommendations regarding wrongful convictions in the Commonwealth of Virginia*. Arlington, VA: Innocence Commission for Virginia. Retrieved from <https://www.prisonlegalnews.org/media/publications/innocence%20commis>

[sion%20of%20va%2C%20wrongful%20convictions%20report%2C%202005.pdf](#).

- <sup>29</sup> Office of Governor Timothy E. Kaine. (2010). *List of pardons, commutations, reprieves and other forms of clemency*. Retrieved from <https://rga.lis.virginia.gov/Published/2010/SD2/PDF>.
- <sup>30</sup> The biological evidence retained in these DFS archived case files consisted of remnants of evidence previously subjected to serological testing in the 1970s and 1980s; therefore, the amount of remaining biological evidence varied across the case files.
- <sup>31</sup> See, e.g., DFS presentation at the October 14, 2008, Crime Commission meeting. Available at [http://services.dlas.virginia.gov/user\\_db/frmvsc.asp?viewid=125](http://services.dlas.virginia.gov/user_db/frmvsc.asp?viewid=125). Slide 4 provides an example of a photocopy of retained evidence on worksheets in the case files. This retention practice was discontinued by DFS in 1989 in order to meet accreditation standards.
- <sup>32</sup> See, e.g., DFS presentation at the October 14, 2008, Crime Commission meeting. Available at [http://services.dlas.virginia.gov/user\\_db/frmvsc.asp?viewid=125](http://services.dlas.virginia.gov/user_db/frmvsc.asp?viewid=125). Slide 5 provides the official directive issued by Governor Mark R. Warner in September 2004.
- <sup>33</sup> These 31 cases are not included in the total number of cases reported in the full archived case file review ordered by Governor Mark R. Warner in 2005. DNA evidence retained in these 31 case files was sent to an independent laboratory for testing in 2004. The results of the post-conviction DNA testing of the 31 cases were as follows: in 16 cases, the individual could not be eliminated from the evidence that was tested; in 9 cases, the DNA testing results were inconclusive; and, in the remaining 6 cases, the individual was eliminated as a contributor to the DNA evidence retained. In 3 of the 6 cases where the individual was eliminated as a contributor, it was determined that either the individual had not been convicted of the offense in question *or* that the individual had been properly convicted based upon other information as determined by the respective Commonwealth's Attorney. The remaining 3 individuals in these 6 cases were exonerated. See Forensic Science Board. (2008, Jan. 9). *Meeting minutes*. Retrieved from [https://townhall.virginia.gov/L/GetFile.cfm?File=meeting\144\10470\Minutes\\_DFS\\_10470\\_v2.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=meeting\144\10470\Minutes_DFS_10470_v2.pdf). These meeting minutes provide additional discussion on the nine inconclusive cases in the 10% random review ordered by Governor Mark R. Warner in 2004. (Addendum 1).
- <sup>34</sup> Office of Governor Mark R. Warner. (2006). *List of pardons, commutations, reprieves and other forms of clemency*. Retrieved from <https://rga.lis.virginia.gov/Published/2006/SD2/PDF>. See also <https://www.innocenceproject.org/cases/phillip-leon-thurman/>. Mr. Thurman spent nearly 20 years in prison for convictions of rape, assault and battery, and abduction stemming from a 1984 crime in Alexandria. Mr.

- Thurman was granted an absolute pardon by Governor Mark R. Warner on December 22, 2005.
- <sup>35</sup> *Id.* See also <https://www.innocenceproject.org/cases/willie-davidson/>. Mr. Davidson served 11.5 years in prison for convictions of rape, burglary, and forcible sodomy (2 counts) stemming from a 1980 crime in Norfolk. Mr. Davidson was granted an absolute pardon by Governor Mark R. Warner on December 22, 2005.
- <sup>36</sup> Office of Governor Timothy E. Kaine. (2010). *List of pardons, commutations, reprieves and other forms of clemency*. Retrieved from <https://rga.lis.virginia.gov/Published/2010/SD2/PDF>. See also <https://www.innocenceproject.org/cases/victor-burnette/>. Mr. Burnette served nearly 8 years in prison after being convicted of rape and burglary in 1979 in the City of Richmond. Mr. Burnette was granted an absolute pardon by Governor Timothy E. Kaine on April 3, 2009.
- <sup>37</sup> See *infra* notes 93, 87, and 85, respectively.
- <sup>38</sup> See, e.g., DFS presentation at the October 14, 2008, Crime Commission meeting. Available at [http://services.dlas.virginia.gov/user\\_db/frmvsc.asp?viewid=125](http://services.dlas.virginia.gov/user_db/frmvsc.asp?viewid=125). Slide 6 includes the December 14, 2005, press release from Governor Mark R. Warner.
- <sup>39</sup> See Forensic Science Board. (2008, May 7). *Meeting minutes*. Retrieved from [https://townhall.virginia.gov/L/GetFile.cfm?File=meeting\144\10581\Minutes\\_DFS\\_10581\\_v2.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=meeting\144\10581\Minutes_DFS_10581_v2.pdf).
- <sup>40</sup> During this archived case file review, interns and part-time employees of DFS created a spreadsheet to enter data points related to the contents of the case files. This spreadsheet served as the foundational document for determining which case files required post-conviction DNA testing and which named suspects were eligible to receive notification. Portions of this spreadsheet were first provided to Crime Commission staff in June 2009.
- <sup>41</sup> See Forensic Science Board. *2019 Annual Report*. Retrieved from <https://rga.lis.virginia.gov/Published/2019/RD497/PDF>. This report includes additional details relating to funding for the Post-Conviction DNA Testing Program (p.2). These figures do not include the 31 cases tested in the 10% random review ordered by Governor Mark R. Warner in 2004.
- <sup>42</sup> See Forensic Science Board. *2009 Annual Report*. Retrieved from <https://rga.lis.virginia.gov/Published/2009/RD290/PDF>. As of October 13, 2009, a total of 829 cases had been sent to the contracting laboratory for post-conviction DNA testing (p. 3).
- <sup>43</sup> Forensic Science Board. *2017 Annual Report*. Retrieved from <https://rga.lis.virginia.gov/Published/2017/RD423/PDF>. See also *infra* note 92. A “known” sample from Winston Lamont Scott was submitted for analysis in July 2017. The testing outcome in Mr. Scott’s case was initially listed as *need known* because his DNA sample was needed to compare to the DNA profile obtained from the case file evidence. DNA testing excluded him as a contributor to the DNA profile obtained from the evidence. Mr. Scott filed a

- petition for a writ of actual innocence in September 2017 and was ultimately exonerated of the crimes of rape, carnal knowledge, and burglary in 2019. *See In re: Scott*, 297 Va. 166 (2019).
- <sup>44</sup> The contract laboratory was ASCLD/LAB accredited at the time the DNA evidence was tested. While the large majority of post-conviction DNA testing was conducted by the contract laboratory, it should be mentioned that DFS did conduct some cases “in-house” after the grant funding ended.
- <sup>45</sup> In order for an individual to be eligible for notification, the Project case file had to contain evidence suitable for DNA testing and at least one named suspect, and that named suspect must have been convicted of an offense related to the Project case file.
- <sup>46</sup> 2008 Va. Acts ch. 879. Item 408(B) of the 2008 Appropriations Act. Available at <https://budget.lis.virginia.gov/item/2008/1/HB30/Chapter/1/408/>. *See also* VA. CODE §§ 9.1-1109 and 1110 (2019) for additional information about the Forensic Science Board. Note that the Forensic Science Board is a policy board within the executive branch of state government and therefore the Virginia Department of Forensic Science provides staffing for the Board.
- <sup>47</sup> *See* VA. CODE § 9.1-1109(A)(7) (2019). Since 2007, the Executive Director of the Crime Commission has served on the Forensic Science Board as the designee for the Chair of the Crime Commission.
- <sup>48</sup> *See, e.g.*, Forensic Science Board. (2008, Aug. 6). *Meeting minutes*. Retrieved from [https://townhall.virginia.gov/L/GetFile.cfm?File=meeting\144\11156\Minutes\\_DFS\\_11156\\_v1.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=meeting\144\11156\Minutes_DFS_11156_v1.pdf). These meeting minutes provide a more thorough discussion of initial concerns relating to the overall notification process and use of *pro bono* volunteers (pp. 4-7 and Addendums A, B, and C).
- <sup>49</sup> 2009 Va. Acts ch. 172. This legislation (Senate Bill 1391) was introduced by the Chair of the Crime Commission, Senator Kenneth W. Stolle.
- <sup>50</sup> *Id.*
- <sup>51</sup> *Id.*
- <sup>52</sup> *See, e.g.*, Forensic Science Board. (2008, May 7). *Meeting minutes*. Retrieved from [https://townhall.virginia.gov/L/GetFile.cfm?File=meeting\144\10581\Minutes\\_DFS\\_10581\\_v2.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=meeting\144\10581\Minutes_DFS_10581_v2.pdf). These meeting minutes provide a more detailed discussion of the efforts DFS undertook in collecting information relating to the Project case files from other agencies (Addendum 1).
- <sup>53</sup> Circuit Court Clerks were asked to provide a copy of the final court order (by fax or mail) to assist in documenting case dispositions.
- <sup>54</sup> This figure does not include individuals in Project case files that were originally classified as “ineligible” by DFS due to grant funding restrictions that had been placed on the post-conviction DNA testing. Further information about these additional eligible individuals who were initially deemed “ineligible” is available on page 28 of this report.

- <sup>55</sup> 2008 Va. Acts ch. 879. Item 408(B) of the 2008 Appropriations Act. Available at <https://budget.lis.virginia.gov/item/2008/1/HB30/Chapter/1/408/>.
- <sup>56</sup> See Forensic Science Board. *2009 Annual Report*. Retrieved from <https://rga.lis.virginia.gov/Published/2009/RD290/PDF>. See also Forensic Science Board. (2008, Oct. 8). *Meeting minutes*. Retrieved from [https://townhall.virginia.gov/L/GetFile.cfm?File=meeting\144\11600\Minutes\\_DFS\\_11600\\_v2.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=meeting\144\11600\Minutes_DFS_11600_v2.pdf). These meeting minutes provide further details on the process for these initial notification letters (pp.3-6).
- <sup>57</sup> *Supra* note 40.
- <sup>58</sup> The Virginia State Police assisted by searching within their internal databases to determine last known addresses of eligible individuals.
- <sup>59</sup> The Virginia Department of Corrections assisted by verifying whether an eligible individual was incarcerated in Virginia or another state, on detainer, on state probation or parole supervision for any offense, or had died while in DOC custody or on DOC supervision. The Department of Corrections also provided Crime Commission staff with presentence investigation reports which provided valuable information about the eligible individual, next of kin, and ties to certain areas or residences.
- <sup>60</sup> The Office of the Attorney General assisted in locating eligible individuals by using their internal people search tools.
- <sup>61</sup> In 2014, contract employees with the Virginia Indigent Defense Commission conducted research, successfully located numerous eligible individuals, and found many leads for locating eligible individuals who had not received notification.
- <sup>62</sup> The Richmond City Public Defender’s Office assisted on two occasions by completing hundreds of searches that led to the notification of multiple eligible individuals and the determination that some of these individuals were deceased.
- <sup>63</sup> The Virginia Department of Motor Vehicles assisted in locating last known addresses for eligible individuals by searching within their internal databases.
- <sup>64</sup> See, e.g., Forensic Science Board. (2009, Aug. 12). *Meeting minutes*. Retrieved from [https://townhall.virginia.gov/L/GetFile.cfm?File=meeting\144\12439\Minutes\\_DFS\\_12439\\_v2.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=meeting\144\12439\Minutes_DFS_12439_v2.pdf). These meeting minutes provide further discussion on some of the challenges relating to *pro bono* case assignments (pp.5-6).
- <sup>65</sup> *Supra* note 40.
- <sup>66</sup> See, Forensic Science Board (2015, Jan. 7). *Meeting minutes*. Retrieved from [https://townhall.virginia.gov/L/GetFile.cfm?File=meeting\144\22187\Minutes\\_DFS\\_22187\\_v2.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=meeting\144\22187\Minutes_DFS_22187_v2.pdf) at p. 4.
- <sup>67</sup> “Eliminated” does not mean that the individual was “exonerated.” Elimination is a *scientific* term; whereas, exoneration is a *legal* term. A DNA testing outcome of “eliminated” does not mean that the DNA evidence alone is sufficient to exonerate the individual.

- <sup>68</sup> Challenges in notifying next of kin were similar to the challenges in notifying eligible individuals as described on p. 12 of this report.
- <sup>69</sup> See, e.g., Orchid Cellmark. (2007, Dec. 13). *An introduction to Y-STR Testing*. Available at [http://services.dlas.virginia.gov/user\\_db/frmvscs.aspx?viewid=667](http://services.dlas.virginia.gov/user_db/frmvscs.aspx?viewid=667).
- <sup>70</sup> Forensic Science Board. *2016 Annual Report*. Retrieved from <https://rga.lis.virginia.gov/Published/2016/RD449/PDF>.
- <sup>71</sup> At the September 23, 2014, Crime Commission meeting, members voted that no additional resources should be used to notify eligible individuals whose post-conviction DNA testing outcome was indicated/not eliminated. Those individuals accounted for 53 of the 253 eligible individuals with a post-conviction DNA testing outcome of indicated/not eliminated who were unable to be located.
- <sup>72</sup> Most of the case files for these named suspects contained documentation on the disposition of the case (i.e., convicted, *nolle prosequi*, dismissed, etc.). However, in 2019, Crime Commission staff conducted another conviction verification process for the additional named suspects whose case dispositions were unknown or unclear. Staff was able to verify the dispositions of over 370 named suspects across 75 circuit courts in the Commonwealth. As a result of these efforts, 120 individuals were determined to have been convicted and, thus, classified as an additional eligible individual for notification.
- <sup>73</sup> The felonies were primarily for burglary, breaking and entering, grand larceny, and hit and run offenses.
- <sup>74</sup> Approximately two-thirds of the misdemeanors were for felony sex offense charges that resulted in misdemeanor convictions. At the September 23, 2014, Crime Commission meeting, members voted that DFS should not conduct DNA testing for misdemeanor convictions unless requested either by the eligible individual or the victim.
- <sup>75</sup> There were a small number of instances where the additional eligible individual who was originally classified as “ineligible” was also a named suspect in the same case as an eligible individual with a post-conviction DNA testing outcome of *eliminated*, *need known*, *inconclusive*, or *indicated/not eliminated*. As such, the biological evidence in these case files was tested for all individuals.
- <sup>76</sup> See VA. CODE § 19.2-327.1 (2019).
- <sup>77</sup> See Forensic Science Board. (2019, Oct. 3). *Draft agenda*. Retrieved from [https://townhall.virginia.gov/L/GetFile.cfm?File=Meeting\144\29659\Agenda\\_DFS\\_29659\\_v1.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=Meeting\144\29659\Agenda_DFS_29659_v1.pdf).
- <sup>78</sup> See Forensic Science Board. (2019, Oct. 3). *Final minutes*. Retrieved from [https://townhall.virginia.gov/L/GetFile.cfm?File=Meeting\144\29659\Minutes\\_DFS\\_29659\\_v2.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=Meeting\144\29659\Minutes_DFS_29659_v2.pdf).



- <sup>79</sup> Virginia State Crime Commission. (2019). *Post-conviction DNA Notification Project* presentation. Available at <http://vscc.virginia.gov/2019/October/DNANotificationPowerPoint.pdf>.
- <sup>80</sup> Forensic Science Board. *2019 Annual Report*. Retrieved from <https://rga.lis.virginia.gov/Published/2019/RD497/PDF>.
- <sup>81</sup> *Supra* note 17.
- <sup>82</sup> See Urban Institute. (2012). *Post-conviction DNA testing and wrongful conviction*. Washington, DC: Urban Institute. As a grantee awarded funding by the National Institute of Justice (NIJ), DFS was obligated to provide access to the Project case files to an outside research team that was also funded by NIJ. This research team attempted to better understand the rate and correlates of wrongful convictions based on a portion of the Project case files. That study conceded several important limitations in attempting to determine a rate. Most importantly, the analysis was based on information solely within the Project case files, which frequently did not include the *context* of the existing evidence or other non-forensic facts that would be critical in making a determination of the probative value of the post-conviction DNA testing results.
- <sup>83</sup> Office of Governor Mark R. Warner. (2003). *List of pardons, commutations, reprieves and other forms of clemency*. Retrieved from <https://rga.lis.virginia.gov/Published/2003/SD2/PDF>. See also <https://www.innocenceproject.org/cases/marvin-anderson/>.
- <sup>84</sup> *In re: Barbour*, Record No. 120372, slip op. at 1-2 (Va. May 24, 2012) (unpublished). See also <https://www.innocenceproject.org/cases/bennett-barbour/>.
- <sup>85</sup> Office of Governor Timothy E. Kaine. (2010). *List of pardons, commutations, reprieves and other forms of clemency*. Retrieved from <https://rga.lis.virginia.gov/Published/2010/SD2/PDF>. See also <https://www.innocenceproject.org/cases/victor-burnette/>.
- <sup>86</sup> *In re: Cunningham*, Record No. 100747, slip op. at 1 (Va. Apr. 12, 2011) (unpublished). See also <https://www.innocenceproject.org/cases/calvin-wayne-cunningham/>.
- <sup>87</sup> Office of Governor Mark R. Warner. (2006). *List of pardons, commutations, reprieves and other forms of clemency*. Retrieved from <https://rga.lis.virginia.gov/Published/2006/SD2/PDF>. See also <https://www.innocenceproject.org/cases/willie-davidson/>.
- <sup>88</sup> *In re: Diamond*, Record No. 121462, slip op. at 1 (Va. Mar. 8, 2013) (unpublished). See also <https://www.innocenceproject.org/cases/gary-diamond/>.
- <sup>89</sup> *In re: Haynesworth*, Record No. 090942, slip op. at 1-2 (Va. Sept. 18, 2009) (unpublished). See also <https://www.innocenceproject.org/cases/thomas-haynesworth/>.

- <sup>90</sup> See, e.g., <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3487>.
- <sup>91</sup> Office of Governor Mark R. Warner. (2004). *List of pardons, commutations, reprieves and other forms of clemency*. Retrieved from <https://rga.lis.virginia.gov/Published/2004/SD2/PDF>. See also <https://www.innocenceproject.org/cases/julius-ruffin/>.
- <sup>92</sup> *In re: Scott*, 297 Va. 166 (2019). See also <https://www.innocenceproject.org/cases/winston-scott/>.
- <sup>93</sup> Office of Governor Mark R. Warner. (2006). *List of pardons, commutations, reprieves and other forms of clemency*. Retrieved from <https://rga.lis.virginia.gov/Published/2006/SD2/PDF>. See also <https://www.innocenceproject.org/cases/philip-leon-thurman/>.
- <sup>94</sup> *In re: Watford*, 295 Va. 114 (2018). See also <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5288>.
- <sup>95</sup> Office of Governor Timothy E. Kaine. (2010). *List of pardons, commutations, reprieves and other forms of clemency*. Retrieved from <https://rga.lis.virginia.gov/Published/2010/SD2/PDF>. See also <https://www.innocenceproject.org/cases/arthur-lee-whitfield/>.
- <sup>96</sup> The special circumstance involved a deceased individual (Curtis Jasper Moore) whose conviction was previously overturned in 1980 on other grounds. See *Moore v. Ballone*, 488 F. Supp. 798 (E.D. Va. 1980). Mr. Moore was exonerated post-mortem when DNA testing from the Project led to the identification of the actual perpetrator. Mr. Moore is the only exonerated individual who was not notified of the post-conviction DNA testing outcome in his case; however, Mr. Moore's son was made aware of the testing results.
- <sup>97</sup> Six of the 13 individuals were incarcerated at the time of the DNA testing results.
- <sup>98</sup> Nine of the 11 individuals who were convicted in all or in part due to misidentification by a witness were African American.
- <sup>99</sup> See *supra* notes 83-89, 91-93, and 95. The two individuals who were wrongly convicted due to factors other than witness misidentification were Curtis Jasper Moore (*supra* note 90) and Roy L. Watford (*supra* note 94).
- <sup>100</sup> See Forensic Science Board. *2011 Annual Report*. Retrieved from <https://rga.lis.virginia.gov/Published/2011/RD277/PDF> (p. 2).
- <sup>101</sup> Wicoff, B. (2019). Challenges in responding to mass forensic error. *Criminal Justice*, 34(3), 29-36.
- <sup>102</sup> *Id.* See also VA. CODE § 9.1-1109(A) (2019) for the composition of the Forensic Science Board.
- <sup>103</sup> 2008 Va. Acts ch. 879. Item 408(B) of the 2008 Appropriations Act. Available at <https://budget.lis.virginia.gov/item/2008/1/HB30/Chapter/1/408/>.
- <sup>104</sup> 2009 Va. Acts ch. 172.

<sup>105</sup> VA. CODE § 9.1-1110(B) (2019).

<sup>106</sup> Wicoff, B. (2019). Challenges in responding to mass forensic error. *Criminal Justice*, 34(3), 29-36.

# MASS KILLINGS AND GUN VIOLENCE

## STUDY SUMMARY

Following the Special Session called by the Governor, Senate Majority Leader Thomas K. Norment, Jr., and Speaker M. Kirkland Cox sent a letter to the Crime Commission on July 9, 2019, requesting "a systematic review of the events that occurred in Virginia Beach and proposed legislative changes to Virginia's laws concerning firearms and public safety."<sup>1</sup> As a result of this letter request, Crime Commission staff was asked to examine these matters and provide a report to the General Assembly.

Staff determined that inconclusive evidence exists to develop recommendations. While staff researched a wide variety of policies and many other matters related to gun violence, the overall findings from the research were often insufficient, mixed, contradictory, or based on limited methodology. The absence of recommendations should not be interpreted as a finding that no changes to Virginia's laws are necessary. Any changes to these laws are policy decisions which can only be made by the General Assembly.

A large amount of information was collected and numerous policy considerations were identified in relation to gun violence and the proposed changes to Virginia's laws. As such, staff is available to provide technical assistance to members of the General Assembly.

## SYSTEMATIC REVIEW OF THE EVENTS THAT OCCURRED IN VIRGINIA BEACH

A systematic review of the events that occurred in Virginia Beach on May 31, 2019, was not able to be completed. On September 24, 2019, staff attended a public meeting where the Virginia Beach City Council was updated on the status of the investigations.<sup>2</sup> However, two separate law enforcement investigations by the Virginia Beach Police Department and the Federal Bureau of Investigation will likely take several more months to complete. Additionally, the security risk management firm (Hillard Heintze) retained by the City of Virginia Beach to

conduct an independent investigation is planning to present its report to the Virginia Beach City Council on November 13, 2019.

## WRITTEN COMMENTS

The Crime Commission accepted a total of 4,145 written comments relating to gun violence between July 19, 2019 and September 30, 2019, which consisted of 3,297 emails and 848 letters or post cards. All of these written comments were reviewed by staff and emailed to Crime Commission members.

## STUDY METHODOLOGY

Gun violence occurs in many different forms, such as suicide, community-based violence, domestic/intimate partner violence, mass shootings, and accidental shootings. Staff completed the following activities during this study:

- Examined relevant literature and reports;
- Reviewed the laws of Virginia, numerous other states, and the federal government;
- Requested and analyzed relevant data;
- Consulted with subject-matter experts;
- Attended the Virginia Department of Criminal Justice Services' Applied Threat Assessment for K-12 School Teams and Practitioners Training;<sup>3</sup> and
- Attended a Congressional briefing on mass shootings by leading academic researchers in Washington, D.C.<sup>4</sup>

During the first month, staff focused efforts on reviewing legislation introduced during the Special Session and planning for the August Crime Commission meetings. Staff conducted a cursory review of 78 bills and grouped the legislation into categories based upon their subject matter. Additionally, staff began a literature review of gun violence in an effort to identify specific topics for discussion at the August meetings. Staff spent an extraordinary amount of time coordinating the logistics of these meetings. On August 19, 2019, Crime Commission members heard detailed presentations from federal and state agencies and reports from leading academic researchers.<sup>5</sup> On August 20, 2019,

members heard testimony from bill patrons, organizations, interest groups, and comments from members of the general public.<sup>6</sup>

After the August meetings, staff examined the following policies, as well as many other matters related to gun violence, based upon information presented at those meetings and legislation introduced during the Special Session:

1. Assault Rifle / Firearm Accessory Restrictions (e.g., magazine capacity, suppressors)
2. Background Checks for Private Firearm Sales and Transfers
3. Child Access Prevention / Safe Storage of Firearms
4. Crisis Response Plans for Victim Services
5. Domestic and Intimate Partner Violence
6. Enhanced Penalties / Mandatory Minimum Sentences
7. Local Authority to Regulate Firearms
8. Restoration of One Handgun Per Month Purchase Limit
9. Reporting of Lost and Stolen Firearms
10. Substantial Risk Orders (“Red Flag” Laws)
11. Suicide Prevention

Staff sought to ascertain the intended outcome of any proposed changes, determine the effectiveness of such changes, and identify any unintended consequences if such changes were implemented. It was determined that inconclusive evidence exists to develop recommendations due to the following factors:

- Limited availability of studies on particular policies;
- Difficulty isolating the impact of individual policies;
- Nature of the evidence from research findings being insufficient, mixed, or contradictory;
- Methodologies of studies being limited;
- Bias associated with particular studies; and,
- Unavailable or limited data.

The absence of recommendations should not be interpreted as meaning that no changes to Virginia's laws are necessary, but rather that any changes are policy decisions which can only be made by the General Assembly.



## **APPENDIX A**

# **JULY 9, 2019, LETTER TO THE CRIME COMMISSION**



# Virginia General Assembly



July 9, 2019

Senator Mark Obenshain  
Chairman, Virginia Crime Commission  
1111 E Broad St Rm B036  
Richmond, VA 23219

Delegate Rob Bell  
Vice Chairman, Virginia Crime Commission  
1111 E Broad St Rm B036  
Richmond, VA 23219

## **VIA EMAIL**

Dear Senator Obenshain and Delegate Bell:

As you know, the General Assembly convened today for a Special Session called by Governor Northam in response to the tragedy that occurred in Virginia Beach earlier this year. We continue to pray for the victims, their families, and the Virginia Beach community.

Like you, we are committed to keeping our streets, neighborhoods, counties, and cities free from all forms of violence – including gun violence. The General Assembly has consistently taken steps to make the Commonwealth safer, and the results speak for themselves.

Our Commonwealth is one of the safest states in the nation. Our firearm mortality rate is below the national average. We have the fourth lowest violent crime rate in the country. And as Governor Northam proudly pointed out in a January press release, Virginia also has the lowest recidivism rate in the country.

We have achieved this because of our brave men and women in law enforcement, a strong criminal justice system, and by enacting sound, evidenced-based public policy through thoughtful legislative dialogue.

Following the 2007 murders at Virginia Tech, then-Governor Tim Kaine convened a blue-ribbon commission that produced dozens of recommendations on mental and behavioral health. We took similar action after the tragedy in Parkland, Florida. The bipartisan Select Committee on School Safety produced meaningful legislation to address systemic weaknesses and keep our kids safer.

We believe we should once again take a thoughtful and deliberative approach. To that end, we respectfully direct the Virginia State Crime Commission undertake a systematic review of the

events that occurred in Virginia Beach and proposed legislative changes to Virginia's laws concerning firearms and public safety.

The investigation into these events is ongoing. The Virginia Beach City Council recently authorized an independent investigation into the tragedy that hopefully will provide much-needed insight. The Crime Commission should carefully review any findings that are available because of the independent investigation as part of its effort.

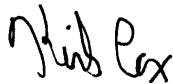
We have asked the committees of the House and Senate to refer all legislation introduced during the Special Session to the Crime Commission for review. Any additional legislation filed by members of the General Assembly before July 19 should also be included.

We ask the Chairman of the Crime Commission, in consultation with the Executive Committee, to schedule a meeting no later than August 23, 2019, to begin its work, and to make its final report to the General Assembly after November 12, 2019.

The Crime Commission is a widely-respected, bipartisan panel known for its substantive work on matters of public policy. We are confident that, under your leadership, the Crime Commission will be able to better understand what steps Virginia might take to keep our communities safe without the distraction of partisan politics.

We thank you for your service to the Commonwealth and your work on this important issue.

Respectfully yours,



M. Kirkland "Kirk" Cox  
Speaker



Thomas K. Norment, Jr.  
Majority Leader, Senate of Virginia

## NOTES

- <sup>1</sup> See Appendix A for a copy of the July 9, 2019, letter to the Crime Commission.
- <sup>2</sup> Miller, M.E., Jamison, P., & Cox, J.W. (2019, September 24). Motive of shooter in Virginia Beach rampage remains a mystery, investigators say. *The Washington Post*. Retrieved from [https://www.washingtonpost.com/local/virginia-beach-mass-shooting-details-to-be-made-public-in-interim-police-account/2019/09/23/1aa73266-de3b-11e9-b199-f638bf2c340f\\_story.html](https://www.washingtonpost.com/local/virginia-beach-mass-shooting-details-to-be-made-public-in-interim-police-account/2019/09/23/1aa73266-de3b-11e9-b199-f638bf2c340f_story.html).
- <sup>3</sup> This training was held on July 29, 2019, at the Hampton Roads Convention Center.
- <sup>4</sup> George Mason University Center for Evidence-Based Crime Policy. (2019, September 17). Countering mass shootings in the U.S. Retrieved from <https://cebcp.org/outreach-symposia-and-briefings/mass-violence/>.
- <sup>5</sup> Crime Commission meeting agenda for August 19, 2019. Available at <http://vscc.virginia.gov/2019/VSCC%20August%2019%20Draft%20Agenda%20FINAL-2.pdf>. Presentations from the August 19, 2019, meeting are available at <http://vscc.virginia.gov/meetings.asp>.
- <sup>6</sup> Crime Commission meeting agenda for August 20, 2019. Available at <http://vscc.virginia.gov/2019/VSCC%20August%2020%20Draft%20Agenda%20FINAL.pdf>.

# SEX TRAFFICKING IN VIRGINIA

## BACKGROUND

During 2018, the Crime Commission conducted a comprehensive study on sex trafficking in Virginia.<sup>1</sup> Staff examined various trends and data and proposed numerous recommendations to combat this problem.<sup>2</sup> Crime Commission members directed staff to continue the study for an additional year to examine further areas of concern and identify potential solutions. This report provides an overview of 2019 Crime Commission activities, a summary of 2020 legislation, and an update on the 2018 study recommendations.<sup>3</sup>

## 2019 ACTIVITIES

Staff attended several trainings and seminars during 2019, including the Virginia Summit on Childhood Trauma & Resilience,<sup>4</sup> Building Recovery: Starting a Comprehensive Residential Program for Survivors of Human Trafficking,<sup>5</sup> Foster Care for Legislators,<sup>6</sup> the release of the United States Advisory Council on Human Trafficking Annual Report,<sup>7</sup> and the Coalition to End Sexual Exploitation Global 2019 Summit.<sup>8</sup>

As part of a continuing effort to promote collaboration, examine areas of concern, and identify potential solutions, staff met with numerous stakeholders, including:

- Henrico County Commonwealth's Attorney's Office;
- Joint Commission on Health Care;
- Prince William County Public Schools;
- Richmond Regional Human Trafficking Collaborative;
- Space of Her Own, Inc.;
- Virginia Center for School and Campus Safety;
- Virginia Department of Criminal Justice Services;
- Virginia Department of Education;
- Virginia Department of Juvenile Justice;
- Virginia Department of Motor Vehicles;
- Virginia Department of Social Services;

- Virginia Victims Fund (Criminal Injuries Compensation Fund); and,
- Voices for Virginia’s Children.

During meetings with stakeholders, staff was informed that victims of sex trafficking were having difficulty obtaining personal identification documents. While meeting with the Virginia Department of Motor Vehicles (DMV), staff learned that DMV has an identification review unit to assist individuals who are having difficulty obtaining personal identification documents. This unit is available to assist victims of sex trafficking on a case-by-case basis. Staff provided information about the DMV identification review unit to the State Trafficking Response Coordinator for inclusion in the list of resources available to stakeholders for assisting sex trafficking victims.<sup>9</sup>

The Crime Commission met in October 2019 and heard presentations from the following:

- Henrico County Commonwealth’s Attorney’s Office;<sup>10</sup>
- Joint Commission on Health Care;<sup>11</sup>
- Virginia Department of Criminal Justice Services;<sup>12</sup>
- Virginia Department of Social Services;<sup>13</sup> and,
- Virginia Victims Fund (Criminal Injuries Compensation Fund).<sup>14</sup>

## 2020 LEGISLATION

The Crime Commission endorsed legislation on two topics for the Regular Session of the 2020 General Assembly to (i) expand the scope of the current sex trafficking assessment to a human trafficking assessment and, (ii) amend the definition of prostitution.

### *Human Trafficking Assessment*

As a result of legislation from the Crime Commission during the Regular Session of the 2019 General Assembly, local departments of social services were required to begin conducting a sex trafficking assessment when a report was received that a child was the victim of sex trafficking.<sup>15</sup> The Department of Social Services (DSS) received feedback from the field that these assessments should be modified to a

human trafficking assessment in order to encompass both sex and labor trafficking cases. Additionally, some local departments of social services were concerned that the Virginia Code did not grant the same express authority to interview a child victim without the consent of the parent or guardian when conducting a sex trafficking assessment as permitted when performing an investigation or family assessment.<sup>16</sup>

Based upon this information provided by DSS, the Crime Commission endorsed legislation to:

- expand the existing sex trafficking assessment to a human trafficking assessment; and,
- grant local departments of social services specific authority to interview a child victim without the consent of the parent or guardian when conducting a human trafficking assessment.

Senator Mark D. Obenshain (Senate Bill 706) and Delegate Charniele L. Herring (House Bill 1006) introduced identical bills during the Regular Session of the 2020 General Assembly to address these matters. Both bills were passed by the General Assembly and signed into law by the Governor.<sup>17</sup>

### *Manual Stimulation*

The Crime Commission endorsed legislation to prohibit the touching of another person's intimate parts with the intent to sexually gratify in exchange for money or some other item of value. The primary purpose of this legislation was to include the manual stimulation of another's genitals (e.g., acts of prostitution involving sexual touching but not penetration) in the definition of prostitution.<sup>18</sup>

This legislation was necessary because the Virginia Code limited the definition of prostitution only to sex acts that involved penetration.<sup>19</sup> Staff heard from numerous stakeholders that this posed a challenge to law enforcement when attempting to address illicit massage parlors, as the operators of these parlors could not be prosecuted for serious felony offenses, such as commercial sex trafficking, racketeering, or money laundering.<sup>20</sup> By amending the definition of

prostitution, law enforcement will be better able to prosecute the operators of these illicit parlors and recover victims from these locations.

Delegate Karrie K. Delaney introduced House Bill 1524 during the Regular Session of the 2020 General Assembly to address this issue. The bill was amended through the legislative process to prohibit the touching of the unclothed genitals or anus of another person with the intent to sexually gratify in exchange for money or some other item of value. The bill was passed by the General Assembly and signed into law by the Governor.<sup>21</sup>

## 2018 STUDY RECOMMENDATIONS UPDATE

The Crime Commission endorsed 11 staff recommendations relating to sex trafficking at its December 2018 meeting.<sup>22</sup> Many of these recommendations either directed or requested that other entities adopt measures to address sex trafficking in Virginia. The following is a summary of the actions taken in 2019 by these entities:

### *Virginia Department of Criminal Justice Services (DCJS)*<sup>23</sup>

As a result of Crime Commission legislation from the Regular Session of the 2019 General Assembly, DCJS hired Virginia's first State Trafficking Response Coordinator in August 2019.<sup>24</sup> The State Trafficking Response Coordinator works collaboratively with agencies and localities to develop a coordinated statewide response to human trafficking.<sup>25</sup> In October 2019, DCJS published a report on *The State of Human Trafficking in Virginia* that outlined the planned activities for the State Trafficking Response Coordinator in the coming year.<sup>26</sup> In addition, DCJS will monitor the newly created Virginia Prevention of Sex Trafficking Fund on a quarterly basis and will establish guidelines for using the Fund based on needs related to human trafficking.<sup>27</sup>

### *Virginia Department of Social Services (DSS)*<sup>28</sup>

Crime Commission legislation enacted during the Regular Session of the 2019 General Assembly authorized local departments of social services to intervene in situations where a sex trafficker was not the child victim's parent or other

caretaker, allowed departments to take emergency custody of child victims, and required departments to complete a newly created sex trafficking assessment when child victims were identified.<sup>29</sup> DSS reported that between July 1, 2019, and October 15, 2019, local departments of social services conducted six sex trafficking assessments and one sex trafficking investigation.<sup>30</sup> During the year, DSS implemented trainings and program guidance for each of the 120 local departments of social services regarding these legislative changes, made enhancements to the Child Welfare Information System, conducted training webinars, and convened a child trafficking workgroup.<sup>31</sup>

### *Virginia Victims Fund (VVF)<sup>32</sup>*

The Crime Commission sent a letter to VVF in the spring of 2019 requesting that the agency collaborate with stakeholders to develop informational materials, increase outreach, and support training efforts related to claims filed with the Fund by victims of sex trafficking. In-service training for VVF staff was provided by Safe Harbor's Human Trafficking Training and Outreach Coordinator in an effort to increase access and decrease barriers to resources for victims of sex trafficking.<sup>33</sup> Additionally, VVF staff conducted trainings for forensic nurses and healthcare providers and participated in a healthcare panel and round table to raise awareness of agency resources for sex trafficking victims.<sup>34</sup> Lastly, VVF designated a staff member as its law enforcement liaison to educate law enforcement officers on properly identifying individuals as victims of sex trafficking in their investigative reports.<sup>35</sup>



## ACKNOWLEDGMENTS

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

Henrico County Commonwealth's Attorney's Office

Joint Commission on Health Care

Prince William County Public Schools

Richmond Regional Human Trafficking Collaborative

Space of Her Own, Inc.

Virginia Center for School and Campus Safety

Virginia Department of Criminal Justice Services

Virginia Department of Education

Virginia Department of Juvenile Justice

Virginia Department of Motor Vehicles

Virginia Department of Social Services

Virginia Victims Fund (Criminal Injuries Compensation Fund)

Voices for Virginia's Children



## **APPENDIX A**

# **CRIME COMMISSION 2018 SEX TRAFFICKING RECOMMENDATIONS**

## APPENDIX A

### Crime Commission 2018 Sex Trafficking Recommendations

**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 departments of social services 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

## NOTES

- <sup>1</sup> See Virginia State Crime Commission. *2018 Annual Report: Sex Trafficking in Virginia*. Retrieved from <https://rga.lis.virginia.gov/Published/2019/RD247/PDF>.
- <sup>2</sup> *Id.*
- <sup>3</sup> See Appendix A for a summary of the Crime Commission 2018 sex trafficking recommendations.
- <sup>4</sup> This summit was hosted by Voices for Virginia’s Children on April 25, 2019. Information about the summit is available at <https://vakids.org/join-us/events/virginia-summit-on-childhood-trauma-and-resilience>.
- <sup>5</sup> This conference was hosted by Safe Harbor on April 26, 2019. Information about this conference is available at <https://safeharborshelter.com/2019/02/18/human-trafficking-conference/>.
- <sup>6</sup> This seminar was hosted by the Virginia Commission on Youth on May 6, 2019. Information about the seminar is available at <http://vcoy.virginia.gov/meetings.asp>.
- <sup>7</sup> See United States Advisory Council on Human Trafficking. (2019, May 8). *United States Advisory Council on Human Trafficking Annual Report 2019*. Retrieved from <https://www.state.gov/united-states-advisory-council-on-human-trafficking-annual-report-2019/>.
- <sup>8</sup> This summit was hosted by the National Center on Sexual Exploitation from June 12-15, 2019. Information about the summit is available at <https://endsexualexploitation.org/cesesummit2019/>.
- <sup>9</sup> Virginia Department of Criminal Justice Services, email correspondence, October 17, 2019. See also VA. CODE § 9.1-116.5(A)(3) (2019). The DMV identification review unit can be reached at (804) 367-6774.
- <sup>10</sup> The presentation by the Henrico County Commonwealth’s Attorney’s Office is available at <http://vscc.virginia.gov/2019/October/Henrico.pdf>.
- <sup>11</sup> The presentation by the Joint Commission on Health Care is available at <http://vscc.virginia.gov/2019/October/JCHC.pdf>.
- <sup>12</sup> The presentation by the Virginia Department of Criminal Justice Services is available at <http://vscc.virginia.gov/2019/October/DCJSPowerPoint.pdf>.
- <sup>13</sup> The presentation by the Virginia Department of Social Services is available at <http://vscc.virginia.gov/2019/October/DSSPowerPoint.pdf>.
- <sup>14</sup> The presentation by the Virginia Victims Fund (Criminal Injuries Compensation Fund) is available at <http://vscc.virginia.gov/2019/October/VVFPowerPoint.pdf>.
- <sup>15</sup> See VA. CODE § 63.2-1506.1 (2019).
- <sup>16</sup> See VA. CODE § 63.2-1518 (2019).
- <sup>17</sup> 2020 Va. Acts ch. 6, 234.

- <sup>18</sup> See Appendix A, Recommendation 4.
- <sup>19</sup> See VA. CODE § 18.2-346 (2019).
- <sup>20</sup> Operators of these illicit establishments could be prosecuted for keeping a bawdy place in violation of Virginia Code § 18.2-347 or under a local ordinance prohibiting illegal massages; however, these are misdemeanor offenses.
- <sup>21</sup> 2020 Va. Acts ch. 595.
- <sup>22</sup> See Appendix A for a summary of the Crime Commission 2018 sex trafficking recommendations.
- <sup>23</sup> See Appendix A, Recommendations 5 and 7.
- <sup>24</sup> See Appendix A, Recommendation 5. See also VA. CODE § 9.1-116.5 (2019). See also Virginia Department of Criminal Justice Services Employee Directory. Retrieved from <https://www.dcjs.virginia.gov/users/angellaalvernaz>. See also McCloskey, S. (2019, Oct. 24). *First State Trafficking Response Coordinator begins work throughout Virginia*. ABC 8 News. Retrieved from <https://www.wric.com/news/politics/capitol-connection/first-state-trafficking-response-coordinator-begins-work-throughout-virginia/>.
- <sup>25</sup> See Virginia Department of Criminal Justice Services. (October 2019). *The State of Human Trafficking in Virginia*. Retrieved from <https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/victims/state-human-trafficking-virginia.pdf>.
- <sup>26</sup> *Id.*
- <sup>27</sup> *Id.*
- <sup>28</sup> See Appendix A, Recommendation 1.
- <sup>29</sup> See VA. CODE §§ 63.2-1506.1, 63.2-1508, and 63.2-1517 (2019).
- <sup>30</sup> See *supra* note 13, slide 8.
- <sup>31</sup> See *supra* note 13, slide 6. During this presentation, DSS stated that the child trafficking work group was comprised of numerous stakeholders, including Bon Secours, Court Improvement Program, DCJS, FACT, Families Forward, Greater Richmond SCAN, Homeland Security, Office of the Attorney General, Richmond Justice Initiative, Trauma and Hope, VCU Health, Virginia Beach Justice Initiative, and the Virginia Department of Education. This work group eventually became a subcommittee of the Virginia Anti-Trafficking Coordinating Committee, which is facilitated by DCJS. See also Virginia Department of Social Services webinar. *CWSE4000: Identifying Sex Trafficking in Child Welfare*. Retrieved from <https://www.dss.virginia.gov/family/trafficking/index.cgi>.
- <sup>32</sup> See Appendix A, Recommendation 6.
- <sup>33</sup> See *supra* note 14, slide 7. See also Information on Safe Harbor's Human Trafficking Community Outreach & Education program is available at <https://safeharborshelter.com/issues-we-support/#human-trafficking>.
- <sup>34</sup> See *supra* note 14, slide 8.
- <sup>35</sup> See *supra* note 14, slide 9.

# VIRGINIA PRE-TRIAL DATA PROJECT: PRELIMINARY STATEWIDE FINDINGS

## EXECUTIVE SUMMARY

The Virginia Pre-Trial Data Project is an unprecedented, collaborative effort between numerous state and local agencies representing all three branches of government to examine matters related to the pre-trial process. The pre-trial period encompasses the various stages of a criminal case from the time a defendant is charged with an offense until the final disposition (trial and/or sentencing) of the matter. The Project was developed as a result of the Crime Commission's study of the pre-trial process in order to determine how effective various pre-trial release mechanisms are at ensuring public safety and appearance at court proceedings.<sup>1</sup>

As part of this Project, a cohort of 22,993 adult defendants charged with a criminal offense during a one-month period (October 2017) was identified and tracked during the pre-trial period until final case disposition or December 31, 2018, whichever came first. Two specific outcomes were tracked in order to evaluate the effectiveness of pre-trial release mechanisms:

- Public safety: measured by whether the defendant was *arrested* for a new in-state offense punishable by incarceration during the pre-trial period;<sup>2</sup> and,
- Court appearance: measured by whether the defendant was *charged* with failure to appear during the pre-trial period.<sup>3</sup>

A preliminary descriptive analysis was conducted of the 9,504 defendants in the cohort who were released on bond (personal recognizance, unsecured, and secured) during the pre-trial period. This preliminary analysis included whether the defendant was placed on pretrial services agency (PSA) supervision as a condition of bond and whether the criminal charges from the October 2017 contact event were heard in a locality served by a PSA during the October 2017 timeframe.

Two research questions were developed in order to assess the effectiveness of various pre-trial release mechanisms. Based upon the preliminary descriptive

findings from the Project dataset, the answers to the two research questions are as follows:

**Research Question #1:** Did public safety and court appearance rates vary between defendants released on bond whose cases were heard in localities served by pretrial services agencies versus localities not served by pretrial services agencies?

- *Public Safety Answer:* The percentage of defendants released on bond who were arrested for a new in-state offense punishable by incarceration during the pre-trial period did not vary between localities served by pretrial services agencies and localities not served by these agencies.
- *Court Appearance Answer:* The percentage of defendants released on bond who were charged with FTA during the pre-trial period was slightly lower for defendants whose cases were heard in localities not served by pretrial services agencies than for defendants whose cases were heard in localities served by pretrial services agencies.

**Research Question #2:** For defendants released on bond whose cases were heard in localities served by pretrial services agencies, did public safety and court appearance rates vary between defendants receiving pretrial services agency supervision and defendants not receiving pretrial service agency supervision?

- *Public Safety Answer:* The percentage of defendants arrested for a new in-state offense punishable by incarceration during the pre-trial period was nearly identical among defendants released on “PR/unsecured bond with PSA supervision,” defendants released on “secured bond only,” and defendants released on “secured bond with PSA supervision.” The percentage of defendants released on “PR/unsecured bond only” who were arrested for a new in-state offense punishable by incarceration during the pre-trial period was lower than the other three categories, which was not surprising given that these defendants typically had lower risk levels for new criminal activity.
- *Court Appearance Answer:* While defendants released on “secured bond with PSA supervision” had a higher risk of FTA, a lower percentage of these defendants were charged with FTA during the pre-trial period as



compared to defendants released on “PR/unsecured bond only,” defendants released on “PR/unsecured bond with PSA supervision,” or defendants released on “secured bond only.” Further research will need to be conducted to determine why defendants released on “secured bond with PSA supervision” had a lower rate of FTA than any of the other group of defendants.

While aggregate findings are an excellent method for examining overall trends, this method does not fully account for variations across localities. Therefore, these statewide findings cannot be generalized to the individual locality level because they do not necessarily reflect the demographics, risk levels, or outcomes of specific localities. Considerable additional research is necessary in order to place these locality-specific findings in context.

Ultimately, when this Project is complete, the dataset will provide a baseline of pre-trial process measures across the Commonwealth and can serve as a source to inform policy decisions throughout the pre-trial process.

## **VIRGINIA PRE-TRIAL DATA PROJECT METHODOLOGY<sup>4</sup>**

The Virginia Pre-Trial Data Project consisted of two phases: (i) developing a cohort of criminal defendants and (ii) tracking various outcomes within that cohort.

Crime Commission staff obtained data for the Project from the following seven agencies:

- Alexandria Circuit Court;<sup>5</sup>
- Fairfax County Circuit Court;<sup>6</sup>
- Compensation Board;<sup>7</sup>
- Office of the Executive Secretary of the Supreme Court of Virginia;<sup>8</sup>
- Virginia Department of Corrections;<sup>9</sup>
- Virginia Department of Criminal Justice Services;<sup>10</sup> and,
- Virginia State Police.<sup>11</sup>

The Virginia Criminal Sentencing Commission (VCSC) was the central repository for the data provided by these agencies and spent a tremendous amount of time preparing and merging the data into one dataset for analysis. Crime Commission staff worked closely with VCSC staff to finalize the variables included in the dataset.

As a result of these efforts, a cohort was developed which included 22,993 adult defendants charged with a criminal offense during a one-month period (October 2017).<sup>12</sup> 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, and is therefore generalizable to and representative of any other month.<sup>13</sup> The cohort was tracked until final case disposition or December 31, 2018, whichever came first. The dataset contains over 800 variables for each of the 22,993 defendants, such as demographics, pending charges, state or local probation status, nature of the October 2017 charge(s), bond type, bond conditions, release status, prior criminal history, risk level,<sup>14</sup> and aggregate locality characteristics. The merged dataset allows for comparisons to be made between similarly situated defendants based upon type of pre-trial release mechanism, criminal offense, and locality.

Staff met with all agencies that provided data, as well as numerous practitioners and stakeholders, to discuss the methodology, variables, and limitations of the dataset for the Project.<sup>15</sup> Appendix B outlines the descriptions, measurements, sources, and limitations of variables related to the preliminary analysis in this report. It is imperative to be aware of how each variable was captured in order to understand the extent to which the preliminary statewide findings contained in this report can be generalized, as well as any limitations that impact how these findings should be interpreted.

### ***Preliminary Analysis of 9,504 Defendants Released on Bond***

The October 2017 cohort includes 22,993 defendants released on summons, released on bond, and detained for the entire pre-trial period. However, the preliminary analysis focused solely on defendants who were released on bond because only those defendants were in a position to receive PSA supervision.<sup>16</sup>

Overall, 13,577 defendants in the October 2017 cohort were released on bond. However, some of these defendants were excluded from the preliminary analysis because their October 2017 contact event was the result of a pre-existing court obligation.<sup>17</sup> Thus, after accounting for these exclusions, only 9,504 defendants released on bond were included in the preliminary analysis.

In order to answer the research questions, two outcomes were tracked:

- **Public safety:** measured by whether the defendant was *arrested* for a new in-state offense punishable by incarceration during the pre-trial period;<sup>18</sup> and,
- **Court appearance:** measured by whether the defendant was *charged* with failure to appear during the pre-trial period.<sup>19</sup>

The 9,504 defendants were categorized by the type of bond on which they were released: personal recognizance (PR) bond,<sup>20</sup> unsecured bond,<sup>21</sup> or secured bond.<sup>22</sup> The analysis for each of these bond types also included whether the defendant received PSA supervision during the pre-trial period as a condition of bond and whether the charges were heard in a locality served by a PSA during the October 2017 timeframe.

### **Research Question #1: Localities with and without Pretrial Services Agencies (PSAs)**

- Did public safety and court appearance rates vary between defendants released on bond whose cases were heard in localities served by pretrial services agencies versus localities not served by pretrial services agencies?

Nearly 90% (8,449 of 9,504) of defendants released on bond had their cases heard in localities served by PSAs. Although caution must be taken when comparing defendants released on bond whose cases were heard in localities served or not served by PSAs, it is informative to examine how defendants released on bond in these two types of localities compared in terms of overall demographics, risk levels, and outcomes.

Overall, there were no significant differences in terms of public safety or court appearance rates between defendants released on bond whose cases were heard

in localities served by PSAs and localities that were not served by PSAs. Defendants whose cases were heard in either type of locality had similar demographics,<sup>23</sup> risk levels,<sup>24</sup> and outcomes based on the variables examined at a statewide level.

Table 1 shows that there was a smaller percentage of defendants released on bond who were charged with FTA during the pre-trial period for cases heard in localities not served by PSAs; however, additional research is needed to determine why this difference exists.

**Table 1: Outcomes of Defendants Released on Bond - Whether Case Was Heard in Locality Served by PSA**

	CASE HEARD IN LOCALITY SERVED BY PSA	CASE HEARD IN LOCALITY <u>NOT</u> SERVED BY PSA
Number of Defendants (N= 9,491) <sup>25</sup>	8,449	1,042
<b>OUTCOMES</b>		
% Charged with Failure to Appear (FTA)	14.5%	11.8%
% Arrested for New In-State Offense Punishable by Incarceration	24.0%	25.5%
<b>ARRESTED FOR NEW IN-STATE OFFENSES<sup>26</sup></b>		
% Arrested for New In-State Jailable Misdemeanor/Ordinance Violation	21.3%	22.0%
% Arrested for New In-State Felony Offense	9.5%	9.7%
% Arrested for New In-State VIOLENT Felony Offense per § 17.1-805	2.7%	3.3%

Source: Virginia Pre-Trial Data Project. Preliminary analysis completed by VSCC staff.

**Research Question #2: Outcomes of Defendants Released on Bond Whose Cases Were Heard in Localities Served by Pretrial Services Agencies**

- For defendants released on bond whose cases were heard in localities served by pretrial services agencies, did public safety and court appearance rates vary between defendants receiving pretrial services agency supervision and defendants not receiving pretrial service agency supervision?

As noted in Table 2 below, the percentage of defendants released on bond who were arrested for a new in-state offense punishable by incarceration during the pre-trial period was nearly identical among defendants released on

“PR/unsecured bond with PSA supervision,” defendants released on “secured bond only,” and defendants released on “secured bond with PSA supervision.” Defendants released on “PR/unsecured bond only” had a lower percentage of new arrests for in-state offenses punishable by incarceration, which seems to confirm their lower risk for new criminal activity.<sup>27</sup>

A significant finding was that defendants released on “secured bond with PSA supervision” had the highest court appearance rates. As noted in Table 2, despite having a higher risk of FTA,<sup>28</sup> this group had the lowest percentage of defendants who were charged with FTA during the pre-trial period as compared to the other categories of defendants. However, additional research is needed to determine any moderating factors that must be accounted for to explain the reduction in FTAs for this higher risk group of defendants. Findings from this research may identify additional means to reduce FTAs across the other categories of defendants.

**Table 2: Outcomes of Defendants Released on Bond - Specific Bond Type/Condition (Cases Heard in PSA Localities Only)**

OUTCOMES OF DEFENDANTS RELEASED ON BOND	PR/ UNSECURED BOND ONLY	PR/ UNSECURED BOND WITH PSA SUPERVISION	SECURED BOND ONLY	SECURED BOND WITH PSA SUPERVISION
<b>Number of Defendants (N=8,449)</b>	4,178	625	2,633	1,013
<b>OUTCOMES</b>				
<b>% Charged with Failure to Appear (FTA)</b>	13.2%	15.5%	17.3%	12.3%
<b>% Arrested for New In-State Offense Punishable by Incarceration</b>	19.9%	28.0%	28.0%	28.2%
<b>ARRESTED FOR NEW IN-STATE OFFENSES<sup>29</sup></b>				
<b>% Arrested for New In-State Jailable Misdemeanor/Ordinance Violation</b>	17.9%	24.3%	24.6%	24.8%
<b>% Arrested for New In-State Felony Offense</b>	6.6%	11.8%	12.0%	14.1%
<b>% Arrested for New In-State VIOLENT Felony per § 17.1-805</b>	1.9%	3.5%	3.3%	3.8%

Source: Virginia Pre-Trial Data Project. Preliminary analysis completed by VSCC staff.

## SUMMARY OF STATEWIDE FINDINGS

In summary, the preliminary statewide analysis revealed the following findings:

### Overall:

- Most defendants released on bond (with or without PSA supervision) were not arrested for new in-state offenses punishable by incarceration or charged with failure to appear during the pre-trial period.<sup>30</sup> Additionally, only a small percentage of defendants were arrested for felonies, with even fewer being arrested for violent felonies.<sup>31</sup>
- Defendants released on bond who were male, between the ages of 18-35, or Black were overrepresented as compared to their overall general population across all categories.<sup>32</sup>

### Localities Served or Not Served by PSAs:

- Overall, there were no significant differences in terms of demographics,<sup>33</sup> risk levels,<sup>34</sup> or outcomes<sup>35</sup> between defendants released on bond whose cases were heard in localities served by PSAs and localities that were not.

### Localities Served by PSAs:

- Approximately 20% (1,638 of 8,449) of defendants released on bond received PSA supervision.
- 90% (3,267 of 3,646) of defendants released on secured bond (with or without PSA supervision) utilized the services of a bail bondsman.
- The percentage of defendants released on bond who were arrested for new in-state offenses punishable by incarceration was nearly identical among defendants released on “PR/unsecured bond with PSA supervision,” defendants released on “secured bond only,” and defendants released on “secured bond with PSA supervision.”<sup>36</sup>
- Defendants released on “PR/unsecured bond only” had the lowest percentage of arrests for new in-state offenses punishable by

incarceration.<sup>37</sup> This group was also generally classified as having a lower risk of such outcomes.<sup>38</sup>

- Defendants released on “secured bond with PSA supervision” had the lowest percentage charged with FTA as compared to the other groups of defendants,<sup>39</sup> despite having a higher risk of FTA than these other groups of defendants.<sup>40</sup>

## LIMITATIONS OF PRELIMINARY STATEWIDE FINDINGS

The findings in this report are based upon a preliminary descriptive statewide analysis of the dataset. While aggregate findings are an excellent method for examining overall trends, this approach does not fully account for variations across localities. Therefore, these statewide findings should not be generalized to the individual locality level as they do not necessarily reflect the demographics, risk levels, and outcomes of specific localities. Statewide findings can look quite different, if not opposite, when compared to an individual locality. Therefore, additional research is needed to place these locality-specific findings in context. Additionally, factors not considered or able to be included in the dataset are certain to have an impact on the outcomes. Analyzing these variances are paramount to obtaining a complete understanding of the pre-trial process in Virginia.

Virginia is a very diverse state with a population of over 8.5 million<sup>41</sup> across 133 localities.<sup>42</sup> Variances across localities in terms of demographics, judicial officers, court practices, pretrial services agencies, bail bondsmen, other stakeholders, and services available during the pre-trial period are vital considerations.

The following figures highlight some key variances across localities in Virginia during the study timeframe:

- Populations ranged from 2,200 to 1.1 million;<sup>43</sup>
- Population density ranged from 5.6 per square mile to 9,300 per square mile;<sup>44</sup>
- Total sworn law enforcement officers ranged from 7 officers to 1,500 officers;<sup>45</sup>

- Total number of adult arrests ranged from 13 to 22,300 per year;<sup>46</sup>
- Median household income ranged from \$26,900 to \$129,800;<sup>47</sup> and,
- Percentage below poverty level (all individuals) ranged from 2.9% to 37.5%.<sup>48</sup>

Further, pretrial services agencies are very diverse in terms of the number of localities served, funding, total number of investigations and supervision placements, average daily caseload, and overall success rates.<sup>49</sup> Similarly, bail bondsmen also vary by type,<sup>50</sup> licensing requirements,<sup>51</sup> caseload, jurisdictions served, structure of organization/business,<sup>52</sup> and overall success rates.

Finally, while many of the concerns relating to sampling are eliminated because the cohort represents a specific population, limitations still exist relating to matters such as the aggregate nature of the dataset,<sup>53</sup> definitions,<sup>54</sup> restriction to in-state arrests only,<sup>55</sup> timeframe,<sup>56</sup> data sources,<sup>57</sup> and exclusion categories.<sup>58</sup>

Ultimately, when this Project is complete, the dataset will provide a baseline of pre-trial process measures across the Commonwealth and can serve as a source to inform policy decisions throughout the pre-trial process.



## ACKNOWLEDGEMENTS

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Compensation Board

Fairfax County Circuit Court Clerk's Office

Indigent Defense Commission

Office of the Executive Secretary of the Supreme Court of Virginia

Virginia Association of Commonwealth's Attorneys

Virginia Bail Association

Virginia Community Criminal Justice Association

Virginia Department of Corrections

Virginia Department of Criminal Justice Services

Virginia Sheriffs' Association

Virginia State Police

*The Crime Commission wishes to thank all bail bondsmen, city and county administrators; Clerks of Court; Commonwealth's Attorneys; court-appointed counsel; judges; local and regional jail administrators; magistrates; pretrial services agency directors, managers, and officers; Public Defenders; and, Sheriffs who assisted in providing feedback on this Project.*

*Finally, the Crime Commission wishes to thank the Virginia Criminal Sentencing Commission staff for their utmost professionalism and dedication in developing the dataset for the Virginia Pre-Trial Data Project.*



## **APPENDIX A**

# **PUBLIC SAFETY ASSESSMENT: RISK ASSESSMENT TOOL**

## **PUBLIC SAFETY ASSESSMENT: RISK FACTORS AND FORMULA**

The pretrial phase of the criminal justice process should aim to protect public safety and assure defendants' appearance in court, while honoring individuals' constitutional rights, including the presumption of innocence and the right to bail that is not excessive. Yet research shows that low-risk, nonviolent defendants who can't afford to pay often spend extended time behind bars, while high-risk individuals are frequently released from jail. This system causes significant harm to too many individuals and is a threat to our communities.

A growing number of jurisdictions are now reforming their pretrial systems to change the way they make pretrial release and detention decisions. These communities are shifting away from decision making based primarily on a defendant's charge to decision making that prioritizes the individual's level of risk—both the risk that he will commit a new crime and the risk that he will fail to return to court if released before trial. This risk-based approach can help to ensure that the relatively small number of defendants who need to be in jail remain locked up—and the significant majority of individuals who can be safely released are returned to the community to await trial.

### **PUBLIC SAFETY ASSESSMENT: AN EVIDENCE-BASED TOOL TO EVALUATE RISK**

In partnership with leading criminal justice researchers, the Laura and John Arnold Foundation (LJAF) developed the Public Safety Assessment™ (PSA) to help judges gauge the risk that a defendant poses. This pretrial risk assessment tool uses evidence-based, neutral information to predict the likelihood that an individual will commit a new crime if released before trial, and to predict the likelihood that he will fail to return for a future court hearing. In addition, it flags those defendants who present an elevated risk of committing a violent crime.

## DEVELOPMENT

LJAF created the PSA using the largest, most diverse set of pretrial records ever assembled—1.5 million cases from approximately 300 jurisdictions across the United States. Researchers analyzed the data and identified the nine factors that best predict whether a defendant will commit new criminal activity (NCA), commit new violent criminal activity (NVCA), or fail to appear (FTA) in court if released before trial.

## RISK FACTORS

The table below outlines the nine factors and illustrates which factors are related to each of the pretrial outcomes—that is, which factors are used to predict NCA, NVCA, and FTA.

## RELATIONSHIP BETWEEN RISK FACTORS AND PRETRIAL OUTCOMES

Risk Factor	FTA	NCA	NVCA
1. Age at current arrest		X	
2. Current violent offense			X
<i>Current violent offense &amp; 20 years old or younger</i>			X
3. Pending charge at the time of the offense	X	X	X
4. Prior misdemeanor conviction		X	
5. Prior felony conviction		X	
<i>Prior conviction (misdemeanor or felony)</i>	X		X
6. Prior violent conviction		X	X
7. Prior failure to appear in the past two years	X	X	
8. Prior failure to appear older than two years	X		
9. Prior sentence to incarceration		X	

*Note: Boxes where an “X” occurs indicate that the presence of a risk factor increases the likelihood of that outcome for a given defendant.*

**The PSA relies solely on the above nine variables. It does not rely on factors such as race, ethnicity, or geography.**

## FACTOR WEIGHTING

Each of these factors is weighted—or, assigned points—according to the strength of the relationship between the factor and the specific pretrial outcome. The PSA calculates a raw score for each of the outcomes. Scores for NCA and FTA are converted to separate scales of one to six, with higher scores indicating a greater level of risk. The raw score for NVCA is used to determine whether the defendant should be flagged as posing an elevated risk of violence.

## HOW RISK SCORES ARE CONVERTED TO THE SIX-POINT SCALES AND NVCA FLAG

Risk Factor	Weights
<b>Failure to Appear (maximum total weight = 7 points)</b>	
Pending charge at the time of the offense	No = 0; Yes = 1
Prior conviction	No = 0; Yes = 1
Prior failure to appear pretrial in past 2 years	0 = 0; 1 = 2; 2 or more = 4
Prior failure to appear pretrial older than 2 years	No = 0; Yes = 1
<b>New Criminal Activity (maximum total weight = 13 points)</b>	
Age at current arrest	23 or older = 0; 22 or younger = 2
Pending charge at the time of the offense	No = 0; Yes = 3
Prior misdemeanor conviction	No = 0; Yes = 1
Prior felony conviction	No = 0; Yes = 1
Prior violent conviction	0 = 0; 1 or 2 = 1; 3 or more = 2
Prior failure to appear pretrial in past 2 years	0 = 0; 1 = 1; 2 or more = 2
Prior sentence to incarceration	No = 0; Yes = 2
<b>New Violent Criminal Activity (maximum total weight = 7 points)</b>	
Current violent offense	No = 0; Yes = 2
Current violent offense & 20 years old or younger	No = 0; Yes = 1
Pending charge at the time of the offense	No = 0; Yes = 1
Prior conviction	No = 0; Yes = 1
Prior violent conviction	0 = 0; 1 or 2 = 1; 3 or more = 2

FTA Raw Score	FTA 6 Point Scale	NCA Raw Score	NCA 6 Point Scale	NVCA Raw Score	NVCA Flag
0	1	0	1	0	No
1	2	1	2	1	No
2	3	2	2	2	No
3	4	3	3	3	No
4	4	4	3	4	Yes
5	5	5	4	5	Yes
6	5	6	4	6	Yes
7	6	7	5	7	Yes
		8	5		
		9-13	6		

### JUDICIAL DISCRETION

The PSA is a decision-making tool for judges. It is not intended to, nor does it functionally, replace judicial discretion. Judges continue to be the stewards of our judicial system and the ultimate arbiters of the conditions that should apply to each defendant.

### NONPROFIT IMPLEMENTATION AND OWNERSHIP

LJAF provides the PSA at no cost to jurisdictions that adopt it and funds technical support to help localities integrate the tool into their operations. The PSA cannot be implemented by a jurisdiction, incorporated into software, or otherwise used or reproduced without LJAF’s express, prior written consent.

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## **APPENDIX B**

# **VARIABLES USED IN PRELIMINARY STATEWIDE ANALYSIS**

**APPENDIX B: Virginia Pre-Trial Data Project - Variables Used in Preliminary Statewide Analysis**

<b>Bond Type, Bond Conditions, and Release Status</b>			
<b>Variable Description</b>	<b>Measurement</b>	<b>Source</b>	<b>Notes/Limitations</b>
Whether Defendant's Case was Heard in Locality Served by a Pretrial Services Agency (PSA)	0= No pretrial services agency serving locality in October 2017  1= Pretrial services agency serving locality in October 2017	DCJS <i>Community-Based Probation and Pretrial Services Map of Localities Served</i>	Note: Culpeper County did not implement a pretrial services agency until January 2018.
Bond Type at Release	1= not released 2= secured bond 3= unsecured bond 4= personal recognizance bond 5= bond set but coded as unable/unwilling/change accused conditions and no release information found 6= released on summons 7= release confirmed in LIDS but bond type cannot be determined 9= insufficient/missing information	Primary source: OES eMagistrate System (eMag)  Secondary source(s): Most bond types were identified within eMag; however, if not found in eMag, Virginia Criminal Sentencing Commission staff next attempted to identify the bond type within the Compensation Board LIDS database, followed by the Court Case Management Systems (CMS), and finally by calling individual clerks' offices to determine the bond type at release.	For the category of 1= not released: this includes those who were held without bond, as well as those for whom bond was set but the defendant was not released (i.e., secured bond, detainer).  Note: This dataset only captures bond type at initial contact and at release (if released). The dataset does not capture modifications to bond type or bond conditions in between initial contact and release (if released).
Pretrial Release Mechanism: Bond Type and Whether Defendant Received Pretrial Services Agency (PSA) Supervision	0= not released 1= personal recognizance or unsecured bond without pretrial services agency supervision 2= summons without pretrial services agency supervision 3= secured bond without pretrial services agency supervision 4= personal recognizance or unsecured bond with pretrial services agency supervision 5= summons with pretrial services agency supervision 6= secured bond with pretrial services agency supervision 9= cannot determine bond type (insufficient information, bond type at release unclear).	Internal Virginia Criminal Sentencing Commission staff calculation based on combining two variables: "Master_BailTypeat Release" and "PTCC_FinalStatus"	



**APPENDIX B: Virginia Pre-Trial Data Project - Variables Used in Preliminary Statewide Analysis**

Variable Description	Measurement	Source	Notes/Limitations
Secured Bond: Manner of Release	0= no bond info/info unclear 1= Bail bondsman only 2= Cash only 3= Other only (family/friend used real or personal property to prove solvency) 4= Bail bondsman and cash 5= Bail bondsman and other 6= Cash and other 7= Bail bondsman, cash, and other 8= not released 9= released on unsecured bond 10= released on PR bond  99= not applicable	OES eMagistrate System (eMag)	
Whether Defendant Received Pretrial Services Agency Supervision	0= never received supervision 1= received supervision (clear) 2= received supervision (clear placement to supervision but possibly related to another October 2017 contact event that occurred before placement to supervision) 3= received supervision (while continuing supervision related to a previous placement) 4= referred to a PSA but did not receive supervision 5= started or referred to supervision only after new FTA/offense 9= cannot determine (e.g., conflict of information among data sources) 99= pretrial services supervision with summons	DCJS Pretrial and Community Corrections Case Management System (PTCC)	Only those who clearly received supervision (categories 1, 2, and 3) were counted as <u>receiving</u> pretrial services agency supervision.  Category 99 to be examined further.

**APPENDIX B: Virginia Pre-Trial Data Project - Variables Used in Preliminary Statewide Analysis**

<b>Defendant Demographics and Status</b>			
<b>Variable Description</b>	<b>Measurement</b>	<b>Source</b>	<b>Notes/Limitations</b>
Defendant Sex	F= Female M= Male U= Unknown O= Other	Primary source: Court Case Management Systems (CMS)  Secondary source(s): Virginia State Police (VSP) Computerized Criminal History (CCH) database	
Defendant Age Groups	1= 15-17 years of age 2= 18-25 years of age 3= 26-35 years of age 4= 36-45 years of age 5= 46-55 years of age 6= 56-65 years of age 7= Over 65 years of age 9= unknown/missing	Primary source: OES eMagistrate System (eMag)  Secondary source(s): Court Case Management Systems (CMS)	Determined by age at time of October 2017 contact event
Defendant Race	A= Asian or Pacific Islander B= Black I= American Indian or Alaskan Native U= Unknown W= White	Primary source: Court Case Management Systems (CMS)  Secondary source(s): Virginia State Police (VSP) Computerized Criminal History (CCH) database	Note: VSP uses the codes standardized by the National Crime Information Center (NCIC) Code Manual. While the Court Case Management Systems have the capacity to capture the Hispanic ethnicity, NCIC categorizes the Hispanic ethnicity within the White racial category. As such, defendants of Hispanic ethnicity are included within the White racial category.
Type of Charges in Oct 2017 Contact Event	1= Only felony charges (including felony probation violation if accompanying other felony) 2= One or more felony charges and non-felonies 3= Only misdemeanor or special class charges (including probation violation) 4= Only probation violation, failure to appear, or contempt of court charges (felony or misdemeanor) 5= Only infractions (non-jailable offenses) 6= combination of non-felony charges (including probation violation, failure to appear, and contempt of court if accompanying other charges) 9= unknown	Primary source: OES eMagistrate System (eMag)  Secondary source(s): Court Case Management Systems (CMS)	The "At Least One Felony Charge" category included in Appendix C, Table 2 and Appendix D, Table 2 was created by combining categories 1 and 2 of this variable.

**APPENDIX B: Virginia Pre-Trial Data Project - Variables Used in Preliminary Statewide Analysis**

Variable Description	Measurement	Source	Notes/Limitations
On active DOC Supervision (State Probation) at Time of Oct 2017 Contact Event	0= no 1= yes 8= individual was not found in DOC database 9= unclear, but not in DOC	Virginia Department of Corrections' Correctional Information System (CORIS)	Note: This dataset does not capture whether a defendant was subject to the terms of a suspended sentence if they were not on <u>active</u> probation at the time of the October 2017 contact event.
On active DCJS Supervision (Local Community Corrections or Pretrial Services Agency Supervision) at Time of Oct 2017 Contact Event	0= no 1= yes 8= individual was not found in PTCC database 9= unclear, October 2017 current status is pending	DCJS Pretrial and Community Corrections Case Management System (PTCC)	Note: This dataset does not capture whether a defendant was subject to the terms of a suspended sentence if they were not on <u>active</u> probation at the time of the October 2017 contact event.
Attorney Type at Case Closure	0= None/no information 1= Appointed by the court 2= Public defender 3= Both court appointed and public defender 4= Retained 5= Waived 6= Court designation not to impose jail time  9= unknown, all dispositions for October 2017 contact event found in non-CMS sources 99= unknown, charge disposition record not found or individual was excluded due to lack of criminal history records.	Court Case Management Systems (CMS)	Circuit Court: Attorney Type (required at conclusion of case)  General District Court: ATTY TYPE (required)  Juvenile and Domestic Relations District Court: Attorney Type (required if final disposition is entered; required if attorney name is entered)  Note: This dataset only captures attorney type at case closure. It does not capture any change to attorney type during the case.  This variable was used to create the "Whether Defendant was Indigent" variable.
Whether Defendant was Indigent	0= not indigent 1= indigent based upon attorney type at case closure (at least one charge in the October 2017 contact event indicated indigent status)  9= unknown, all dispositions for October 2017 contact event found in non-CMS sources 99= unknown, charge disposition record not found or individual was excluded due to lack of criminal history records.	Internal calculation based upon "MASTER_Attorney Type Assigned at Case Closure" variable	Calculated based upon whether the attorney type at case closure was a public defender or court-appointed attorney for at least one charge in the October 2017 contact event.

**APPENDIX B: Virginia Pre-Trial Data Project - Variables Used in Preliminary Statewide Analysis**

<b>Select Risk Factors</b>			
<b>Variable Description</b>	<b>Measurement</b>	<b>Source</b>	<b>Notes/Limitations</b>
Public Safety Assessment-Failure to Appear (FTA) Risk Levels	Risk Level 1 (0 points) Risk Level 2 (1 point) Risk Level 3 (2 points) Risk Level 4 (3-4 points) Risk Level 5 (5-6 points) Risk Level 6 (7 points)	Internal Virginia Criminal Sentencing Commission staff calculation based upon Public Safety Assessment Scoring Manual	See Appendix A; Risk Level 1 is the lowest level of risk classification for FTA and Level 6 is the highest level of risk classification.
Public Safety Assessment-New Criminal Activity (NCA) Risk Levels	Risk Level 1 (0 points) Risk Level 2 (1-2 points) Risk Level 3 (3-4 points) Risk Level 4 (5-6 points) Risk Level 5 (7-8 points) Risk Level 6 (9-13 points)	Internal Virginia Criminal Sentencing Commission staff calculation based upon Public Safety Assessment Scoring Manual	See Appendix A; Risk Level 1 is the lowest level of risk classification for NCA and Level 6 is the highest level of risk classification.
Pending Charge at Time of Arrest for Oct 2017 Contact Event	0= no 1= yes	Virginia Pretrial Risk Assessment Instrument (VPRAI) Instruction Manual	See dcase. Virginia Pretrial Risk Assessment Instrument (VPRAI) Instruction Manual, pp. 9-10 at: <a href="https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/corrections/virginia-pretrial-risk-assessment-instrument-vprai_0.pdf">https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/corrections/virginia-pretrial-risk-assessment-instrument-vprai_0.pdf</a>  Per the VPRAI Manual definition: A defendant is counted as having a pending charge if there was one or more charges for jailable offenses pending in a criminal or traffic (not civil) court at the time of arrest. A pending charge(s) is defined as when there is an open criminal case that carries the possibility of a period of incarceration, and the pending charge has an offense date that is before the offense date of the current charge. (A charge with a disposition of “deferred” is NOT counted as a pending charge under this definition.)
Number of Prior Felony Convictions	Total number	Primary source: Virginia State Police (VSP) Computerized Criminal History (CCH) database  Secondary source(s): Court Case Management Systems (CMS)	
Number of Prior Felony Convictions in Past 2 Years	Total number	Primary source: Virginia State Police (VSP) Computerized Criminal History (CCH) database  Secondary source(s): Court Case Management Systems (CMS)	

**APPENDIX B: Virginia Pre-Trial Data Project - Variables Used in Preliminary Statewide Analysis**

Variable Description	Measurement	Source	Notes/Limitations
Number of Prior FTA Charges (including Contempt of Court for FTA)	Total number	Primary source: Virginia State Police (VSP) Computerized Criminal History (CCH) database  Secondary source(s): Court Case Management Systems (CMS)	Charged pursuant to Virginia Code §§ 19.2-128, 18.2-456, 16.1-69.24, 29.1-210, 46.2-936, 46.2-938, or 19.2-152.4:1.  A conservative approach was used for measuring this outcome. Only charges that were clearly designated as a FTA by the Code Section, Virginia Crime Code (VCC), and/or charge description were counted.
Number of Prior FTA Convictions (including Contempt of Court for FTA)	Total number	Primary source: Virginia State Police (VSP) Computerized Criminal History (CCH) database  Secondary source(s): Court Case Management Systems (CMS)	Charged pursuant to Virginia Code §§ 19.2-128, 18.2-456, 16.1-69.24, 29.1-210, 46.2-936, 46.2-938, or 19.2-152.4:1.  A conservative approach was used for measuring this outcome. Only charges that were clearly designated as a FTA by the Code Section, Virginia Crime Code (VCC), and/or charge description were counted.
Number of Prior FTA Convictions in Last 2 Years (including Contempt of Court for FTA)	Total number	Primary source: Virginia State Police (VSP) Computerized Criminal History (CCH) database  Secondary source(s): Court Case Management Systems (CMS)	Charged pursuant to Virginia Code §§ 19.2-128, 18.2-456, 16.1-69.24, 29.1-210, 46.2-936, 46.2-938, or 19.2-152.4:1.  A conservative approach was used for measuring this outcome. Only charges that were clearly designated as a FTA by the Code Section, Virginia Crime Code (VCC), and/or charge description were counted.

**APPENDIX B: Virginia Pre-Trial Data Project - Variables Used in Preliminary Statewide Analysis**

<b>Outcomes</b>			
<b>Variable Description</b>	<b>Measurement</b>	<b>Source</b>	<b>Notes/Limitations</b>
Defendant Charged with Failure to Appear during the Pre-Trial Period (including Contempt of Court for FTA)	0=no 1= yes	Primary source: Virginia State Police (VSP) Computerized Criminal History (CCH) database  Secondary source(s): Court Case Management Systems (CMS)	Defendant charged pursuant to Virginia Code §§19.2-128, 18.2-456, 16.1-69.24, 29.1-210, 46.2-936, 46.2-938, or 19.2-152.4:1 prior to the final disposition of case.  There are several limitations to this variable which have caused difficulty in determining a statewide court appearance or FTA rate. FTA is addressed in various manners across the Commonwealth due to the numerous Virginia Code provisions for FTA and local practices. Some Virginia Code sections clearly indicate that a charge is for FTA, while other Code sections are more ambiguous. A conservative approach was used for measuring this outcome. Only charges that were clearly designated as a FTA by the Code Section, Virginia Crime Code (VCC), and/or charge description were measured as "yes" (1).  A methodology was not able to be developed to determine if all FTA charges were linked specifically to the October 2017 contact event. Staff was able to determine that approximately 80% of defendants charged with FTA during the pre-trial period did <u>not</u> have a pending charge at the time of the October 2017 contact event. Approximately 20% of defendants charged with FTA during the pre-trial period <u>did</u> have a pending charge at the time of their October 2017 contact event; however, it was unclear if the new FTA charge was related to the pending charge or to the October 2017 contact event. It was also determined that, at most, 6% of FTA charges during the pre-trial period may have been in relation to a civil matter (i.e., child support). Finally, if the defendant was arrested for a new offense during the pre-trial period and was subsequently charged with FTA during the pre-trial period, the methodology was not able to clearly determine whether the FTA charge was related to the October 2017 contact event or to the new offense. These are all important limitations to consider when interpreting findings; however, the measures are based upon the best available statewide information at this time and are consistent across the entire cohort.
Defendant Arrested for New In-State Offense Punishable by Incarceration during the Pre-Trial Period (Excludes FTAs and Probation Violations)	0=no 1= yes	Primary source: Virginia State Police (VSP) Computerized Criminal History (CCH) database  Secondary source(s): Court Case Management Systems (CMS)	Defendant arrested for at least one new in-state offense punishable by incarceration prior to disposition or December 31, 2018.  The new in-state offense must have been committed during the pre-trial period.
Defendant Arrested for New In-State Felony Offense during the Pre-Trial Period (Excludes FTAs and Probation Violations)	0=no 1= yes	Primary source: Virginia State Police (VSP) Computerized Criminal History (CCH) database  Secondary source(s): Court Case Management Systems (CMS)	Defendant arrested for at least one new in-state felony offense prior to disposition or December 31, 2018.  The new in-state offense must have been committed during the pre-trial period.

**APPENDIX B: Virginia Pre-Trial Data Project - Variables Used in Preliminary Statewide Analysis**

Variable Description	Measurement	Source	Notes/Limitations
Defendant Arrested for New In-State Jailable Misdemeanor/Ordinance Violation during the Pre-Trial Period (Excludes FTAs and Probation Violations)	0=no 1= yes	Primary source: Virginia State Police (VSP) Computerized Criminal History (CCH) database  Secondary source(s): Court Case Management Systems (CMS)	Defendant arrested for at least one new in-state jailable misdemeanor/ordinance violation offense prior to disposition or December 31, 2018.  The new in-state offense must have been committed during the pre-trial period.
Defendant Arrested for New In-State Violent Felony Offense per § 17.1-805 during the Pre-Trial Period	0=no 1= yes	Primary source: Virginia State Police (VSP) Computerized Criminal History (CCH) database  Secondary source(s): Court Case Management Systems (CMS)	Defendant arrested for at least one new in-state violent offense as defined by § 17.1-805 prior to disposition or December 31, 2018.  The new in-state offense must have been committed during the pre-trial period.
Reason for Excluding Defendant from Preliminary Statewide Analysis	0= do not exclude 1= exclude, contact event includes only probation violation, failure to appear, or contempt of court charges 2= exclude, contact event does not include any offense punishable by incarceration 3= exclude, no record returned from request to VSP for criminal history (e.g., due to error or missing information relating to name, sex, race, or date of birth) 4= exclude, no disposition records found for charges in contact event 5= exclude, individual was never released during the pretrial period 6= exclude, individual was under the age of 18 at contact event 7= exclude, individual died during the pretrial period 8= exclude, individual was never indicted, charge was never filed, or CMS record is no longer available 9= exclude, other insufficient/conflicting information found (e.g., release/bond information unclear).	Internal staff determination	A defendant may have qualified for more than one exclusion category. If that was the case, the exclusion category with the lowest number prevailed.



## **APPENDIX C**

# **RESEARCH QUESTION #1: PRELIMINARY STATEWIDE ANALYSIS HANDOUT**



## APPENDIX C: RESEARCH QUESTION #1

**Did public safety and court appearance rates vary between defendants released on bond whose cases were heard in localities served by pretrial services agencies versus localities not served by pretrial services agencies?**

**Table 1: Outcomes of Defendants Released On Bond - Whether Case Was Heard in Locality Served by PSA**

Outcomes	Case Heard in Locality Served by PSA	Case Heard in Locality NOT Served by PSA
<b>Number of Defendants (N= 9,491)<sup>1</sup></b>	<b>8,449</b>	<b>1,042</b>
<b>Outcomes</b>		
% Charged with Failure to Appear (FTA)	14.5%	11.8%
% Arrested for New In-State Offense Punishable by Incarceration	24.0%	25.5%
<b>Arrested for New In-State Offenses<sup>2</sup></b>		
% Arrested for New In-State Jailable Misdemeanor/Ordinance Violation	21.3%	22.0%
% Arrested for New In-State Felony Offense	9.5%	9.7%
% Arrested for New In-State <i>VIOLENT</i> Felony Offense per § 17.1-805	2.7%	3.3%

Source: Virginia Pre-Trial Data Project. Preliminary analysis completed by VSCC staff.

- **Public Safety Answer:** The percentage of defendants released on bond who were arrested for a new in-state offense punishable by incarceration during the pre-trial period did not vary between localities served by pretrial services agencies and localities not served by pretrial services agencies.
- **Court Appearance Answer:** The percentage of defendants released on bond who were charged with FTA during the pre-trial period was slightly lower for defendants whose cases were heard in localities not served by pretrial services agencies.
- Overall, there were no significant differences in terms of outcomes, demographics, or risk levels between defendants released on bond whose cases were heard in localities served by PSAs versus localities that were not.

<sup>1</sup> There were 13 defendants where the locality in which their case was heard was not able to be determined.

<sup>2</sup> The percentages for the new in-state offenses cannot be added together for purposes of determining the overall public safety outcome because defendants may have been arrested for both felony and misdemeanor offenses during the pre-trial period. The *overall percentage* of defendants arrested for a “new in-state offense punishable by incarceration” is smaller than the *sum of percentages* for defendants arrested for a “new in-state jailable misdemeanor/ordinance violation” and “new in-state felony offense.” The larger percentages account for defendants who were arrested for both a felony and misdemeanor offense during the pre-trial period; whereas, the percentage of defendants arrested for “new in-state offense punishable by incarceration” accounts for whether the defendants were arrested for at least one new in-state offense. The percentage of defendants arrested for a “new in-state violent felony offense per § 17.1-805” is a subset of the overall percentage of defendants arrested for a “new in-state felony offense.”

**Table 2: Demographics of Defendants Released on Bond -  
Whether Case was Heard in Locality Served by PSA**

<b>Demographics</b>	<b>Case Heard in Locality Served by PSA</b>	<b>Case Heard in Locality NOT Served by PSA</b>
<b>Number of Defendants (N= 9,491)<sup>3</sup></b>	<b>8,449</b>	<b>1,042</b>
<b>Sex<sup>4</sup></b>		
Male	70.3%	68.3%
<b>Age<sup>5</sup></b>		
18-35 years old	62.0%	57.2%
<b>Race<sup>6</sup></b>		
White	58.4%	66.2%
Black	39.5%	32.9%
Asian or Pacific Islander	1.6%	0.1%
American Indian or Alaskan Native	<0.1%	0.0%
Unknown	0.5%	0.8%
<b>Types of Charges in October 2017 Contact Event</b>		
At Least One Felony Charge	44.6%	42.3%
Jailable Misdemeanor/Ordinance Violation Only	55.2%	57.6%
<b>Supervision Status at Time of October 2017 Contact Event</b>		
On State Probation	7.8%	8.7%
On Local Community Corrections or PSA Supervision	4.9%	2.8%
<b>Indigent<sup>7</sup></b>	55.5%	55.4%
<b>Pending Charge(s) at Time of October 2017 Contact Event</b>	13.6%	11.7%
<b>Prior In-State Criminal History</b>		
Prior Felony Conviction	23.8%	25.5%
Prior Felony Conviction in Past 2 Years	8.4%	7.4%
Prior FTA Charge	22.5%	21.5%
Prior FTA Conviction	12.3%	13.3%
Prior FTA Conviction in Past 2 Years	3.9%	4.2%

Source: Virginia Pre-Trial Data Project. Preliminary analysis completed by VSCC staff.

<sup>3</sup> There were 13 defendants where the locality in which their case was heard was not able to be determined.

<sup>4</sup> Per U.S. Census Bureau 2017 population estimates, males comprised 49% of Virginia's population.

<sup>5</sup> Per U.S. Census Bureau 2017 population estimates, 18-35 year olds comprised approximately 25% of the U.S. population.

<sup>6</sup> Per U.S. Census Bureau 2017 population estimates, Blacks comprised 19.8% of Virginia's population.

<sup>7</sup> The indigent variable is a proxy measure calculated based upon whether the attorney type at case closure was a public defender or court-appointed attorney. This measure does not capture any changes to attorney type occurring before case closure.

**Table 3: Public Safety Assessment Risk Levels -  
Whether Case Was Heard in Locality Served by PSA**

<b>Risk Levels</b>	<b>Case Heard in Locality Served by PSA</b>	<b>Case Heard in Locality NOT Served by PSA</b>
<b>Number of Defendants (N=9,491)<sup>8</sup></b>	<b>8,449</b>	<b>1,042</b>
<b>% Risk of Failure to Appear (FTA)</b>		
FTA Risk Level 1 (lowest risk)	41.2%	39.3%
FTA Risk Level 2	29.3%	32.4%
FTA Risk Level 3	15.3%	16.0%
FTA Risk Level 4	10.3%	9.1%
FTA Risk Level 5	3.0%	2.5%
FTA Risk Level 6 (highest risk)	0.9%	0.6%
<b>% Risk of New Criminal Activity (NCA)</b>		
NCA Risk Level 1 (lowest risk)	29.9%	28.1%
NCA Risk Level 2	28.5%	31.3%
NCA Risk Level 3	18.1%	18.0%
NCA Risk Level 4	12.0%	14.5%
NCA Risk Level 5	7.5%	5.6%
NCA Risk Level 6 (highest risk)	4.0%	2.5%

Source: Virginia Pre-Trial Data Project. Preliminary analysis completed by VSCC staff. For the Public Safety Assessment, Risk Level 1 is the lowest level of risk classification for FTA or NCA and Risk Level 6 is the highest level of risk classification.

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<sup>8</sup> There were 13 defendants where the locality in which their case was heard was not able to be determined.



## **APPENDIX D**

# **RESEARCH QUESTION #2: PRELIMINARY STATEWIDE ANALYSIS HANDOUT**

## APPENDIX D: RESEARCH QUESTION #2

**Did public safety and court appearance rates vary between defendants released on bond receiving pretrial services agency supervision and defendants not receiving pretrial services agency supervision? (Cases Heard in PSA Localities Only)**

**Table 1: Outcomes of Defendants Released on Bond - Specific Bond Type/Condition  
Defendants Whose Cases were Heard in Localities Served by PSAs**

Outcomes of Defendants Released on Bond	PR/ Unsecured Bond Only	PR/ Unsecured Bond with PSA Supervision	Secured Bond Only	Secured Bond with PSA Supervision
<b>Number of Defendants (N=8,449)</b>	<b>4,178</b>	<b>625</b>	<b>2,633</b>	<b>1,013</b>
<b>Outcomes</b>				
% Charged with Failure to Appear	13.2%	15.5%	17.3%	<b>12.3%</b>
% Arrested for New In-State Offense Punishable by Incarceration	19.9%	<b>28.0%</b>	<b>28.0%</b>	<b>28.2%</b>
<b>Arrested for New In-State Offenses<sup>1</sup></b>				
% Arrested for New In-State Jailable Misdemeanor/Ordinance Violation	17.9%	24.3%	24.6%	24.8%
% Arrested for New In-State Felony Offense	6.6%	11.8%	12.0%	14.1%
% Arrested for New In-State VIOLENT Felony per § 17.1-805	1.9%	3.5%	3.3%	3.8%

Source: Virginia Pre-Trial Data Project. Preliminary analysis completed by VSCC staff.

- **Public Safety Answer:** The percentage of defendants released on bond who were arrested for a new in-state offense punishable by incarceration during the pre-trial period was nearly identical among defendants released on “PR/ unsecured bond with PSA supervision,” defendants released on “secured bond only,” and defendants released on “secured bond with PSA supervision.” Defendants released on “PR/unsecured bond only” had a lower percentage of new in-state arrests for offenses punishable by incarceration during the pre-trial period, which was not surprising given that these defendants typically had lower risk levels for new criminal activity.
- **Court Appearance Answer:** While defendants released on “secured bond with PSA supervision” had a higher risk of FTA, a lower percentage of these defendants were charged with FTA during the pre-trial period as compared to defendants released on “PR/unsecured bond only,” defendants released on “PR/unsecured bond with PSA supervision,” or defendants released on “secured bond only.”

<sup>1</sup> The percentages for the new in-state offenses cannot be added together for purposes of determining the overall public safety outcome because defendants may have been arrested for both felony and misdemeanor offenses during the pre-trial period. The *overall percentage* of defendants arrested for a “new in-state offense punishable by incarceration” is smaller than the *sum of percentages* for defendants arrested for a “new in-state jailable misdemeanor/ordinance violation” and “new in-state felony offense.” The larger percentages account for defendants who were arrested for both a felony and misdemeanor offense during the pre-trial period; whereas, the percentage of defendants arrested for “new in-state offense punishable by incarceration” accounts for whether the defendants were arrested for at least one new in-state offense. The percentage of defendants arrested for a “new in-state violent felony offense per § 17.1-805” is a subset of the overall percentage of defendants arrested for a “new in-state felony offense.”

**Table 2: Demographics of Defendants Released on Bond in Localities Served by PSAs - Defendants Whose Cases were Heard in Localities Served by PSAs**

<b>Demographics</b>	<b>PR/ Unsecured Bond Only</b>	<b>PR/ Unsecured Bond with PSA Supervision</b>	<b>Secured Bond Only</b>	<b>Secured Bond with PSA Supervision</b>
<b>Number of Defendants (N= 8,449)</b>	<b>4,178</b>	<b>625</b>	<b>2,633</b>	<b>1,013</b>
<b>Sex<sup>2</sup></b>				
Male	66.1%	71.0%	73.9%	77.6%
<b>Age<sup>3</sup></b>				
18-35 years old	61.5%	64.3%	61.9%	63.0%
<b>Race<sup>4</sup></b>				
White	60.8%	56.5%	56.4%	54.6%
Black	36.3%	42.4%	42.1%	43.9%
Asian or Pacific Islander	2.1%	1.1%	1.1%	1.3%
American Indian or Alaskan Native	0.0%	0.0%	<0.1%	0.1%
Unknown	0.7%	0.0%	0.4%	0.1%
<b>Types of Charges in October 2017 Contact Event</b>				
At Least One Felony Charge	26.8%	56.7%	57.6%	76.7%
Jailable Misdemeanor/Ordinance Violation Only	73.2%	43.4%	41.9%	23.3%
<b>Supervision Status at Time of October 2017 Contact Event</b>				
On State Probation	4.2%	8.2%	12.2%	11.1%
On Local Community Corrections/Pretrial Supervision	4.0%	3.7%	7.1%	3.4%
<b>Indigent<sup>5</sup></b>	48.0%	69.1%	60.7%	64.2%
<b>Pending Charge(s) at Time of October 2017 Contact Event</b>	9.3%	15.4%	17.3%	20.5%
<b>Prior In-State Criminal History</b>				
Prior Felony Conviction	14.2%	26.1%	33.9%	35.9%
Prior Felony Conviction in Past 2 Years	4.5%	9.4%	13.0%	12.0%
Prior FTA Charge	15.2%	24.8%	29.8%	31.9%
Prior FTA Conviction	8.0%	13.1%	16.9%	17.9%
Prior FTA Conviction in Past 2 Years	2.3%	3.4%	5.8%	5.9%

Source: Virginia Pre-Trial Data Project. Preliminary analysis completed by VSCC staff.

<sup>2</sup> Per U.S. Census Bureau 2017 population estimates, males comprised 49% of Virginia's population.

<sup>3</sup> Per U.S. Census Bureau 2017 population estimates, 18-35 year olds comprised approximately 25% of the U.S. population.

<sup>4</sup> Per U.S. Census Bureau 2017 population estimates, Blacks comprised 19.8% of Virginia's population.

<sup>5</sup> The indigent variable is a proxy measure calculated based upon whether the attorney type at case closure was a public defender or court-appointed attorney. This measure does not capture any changes to attorney type occurring before case closure.

**Table 3: Public Safety Assessment Risk Levels -  
Defendants Released on Bond Whose Cases were Heard in Localities Served by PSAs**

<b>Risk Levels</b>	<b>PR or Unsecured Bond Only</b>	<b>PR or Unsecured Bond with PSA Supervision</b>	<b>Secured Bond Only</b>	<b>Secured Bond with PSA Supervision</b>
<b>Number of Defendants (N= 8,449)</b>	<b>4,178</b>	<b>625</b>	<b>2,633</b>	<b>1,013</b>
<b>% Risk of Failure to Appear (FTA)</b>				
FTA Risk Level 1 (lowest risk)	53.6%	35.8%	29.4%	24.1%
FTA Risk Level 2	26.1%	33.1%	32.0%	33.7%
FTA Risk Level 3	11.3%	14.4%	19.4%	21.4%
FTA Risk Level 4	6.9%	13.6%	13.1%	15.4%
FTA Risk Level 5	1.7%	1.9%	4.8%	3.9%
FTA Risk Level 6 (highest risk)	0.5%	1.1%	1.3%	1.5%
<b>% Risk of New Criminal Activity (NCA)</b>				
NCA Risk Level 1 (lowest risk)	39.5%	23.2%	21.5%	16.5%
NCA Risk Level 2	30.9%	31.2%	25.3%	25.0%
NCA Risk Level 3	15.1%	18.9%	20.7%	23.2%
NCA Risk Level 4	7.6%	12.5%	16.7%	17.3%
NCA Risk Level 5	4.6%	9.8%	10.1%	11.2%
NCA Risk Level 6 (highest risk)	2.2%	4.5%	5.7%	6.9%

Source: Virginia Pre-Trial Data Project. Preliminary analysis completed by VSCC staff. For the Public Safety Assessment, Risk Level 1 is the lowest level of risk classification for FTA or NCA and Risk Level 6 is the highest level of risk classification.

## NOTES

- <sup>1</sup> Virginia State Crime Commission. (2017). *Annual report: Pretrial services agencies*, pp. 111-144. Available at <https://rga.lis.virginia.gov/Published/2018/RD207/PDF>. Virginia State Crime Commission. (2018). *Annual report: Virginia Pre-Trial Data Project and pre-trial process*. pp. 42-71. Available at <https://rga.lis.virginia.gov/Published/2019/RD247/PDF>.
- <sup>2</sup> The new in-state offense must have been committed during the pre-trial period. Also, 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 a prohibition on disseminating out-of-state criminal histories for non-criminal justice purposes. As such, out-of-state criminal histories were not included in the dataset of this Project.
- <sup>3</sup> Charges of failure to appear pursuant to Virginia Code §§ 19.2-128, 18.2-456, 16.1-69.24, 29.1-210, 46.2-936, 46.2-938, or 19.2-152.4:1 prior to the final disposition of case. A methodology was not able to be developed to determine if all FTA charges were linked specifically to the October 2017 contact event. Staff was able to determine that approximately 80% of defendants charged with FTA during the pre-trial period did not have a pending charge at the time of the October 2017 contact event. Approximately 20% of defendants charged with FTA during the pre-trial period did have a pending charge at the time of their October 2017 contact event; however, it was unclear if the new FTA charge was related to the pending charge or to the October 2017 contact event. It was also determined that, at most, 6% of FTA charges during the pre-trial period may have been in relation to a civil matter (i.e., child support). Finally, if the defendant was arrested for a new offense during the pre-trial period and was subsequently charged with FTA during the pre-trial period, the methodology was not able to clearly determine whether the FTA charge was related to the October 2017 contact event or to the new offense.
- <sup>4</sup> A detailed, comprehensive overview of the methodology for this Project will be included in the final report.
- <sup>5</sup> Data source: Alexandria Circuit Court Case Management System.
- <sup>6</sup> Data source: Fairfax County Circuit Court Case Management System.
- <sup>7</sup> Data source: Local Inmate Data System (LIDS).
- <sup>8</sup> Data sources: eMagistrate and District/Circuit Court Case Management Systems (excludes Alexandria and Fairfax County Circuit Courts).
- <sup>9</sup> Data source: Corrections Information System (CORIS).
- <sup>10</sup> Data source: Pretrial and Community Corrections Case Management System (PTCC).



- <sup>11</sup> Data source: Central Criminal Records Exchange (CCRE)/Computerized Criminal History (CCH) Database.
- <sup>12</sup> Only the earliest contact event was captured and tracked for defendants having more than one contact event during the month of October 2017.
- <sup>13</sup> The breakdown of the cohort was exceptionally similar to a pilot cohort representing July 2015, as well as a 6-month timeframe cohort representing November 2017 through April 2018. As such, it is assumed that findings from the October 2017 cohort can be generalized to any other given month.
- <sup>14</sup> See Appendix A. Two standardized, existing pretrial risk assessment tools were used to measure risk across all defendants. The first risk assessment tool applied was a modified Virginia Pretrial Risk Assessment Instrument (VPRAI), which is the tool currently used by Virginia pretrial services agencies to assist judicial officers in determining an overall combined risk of public safety and FTA. The second risk assessment tool applied was the Public Safety Assessment. Although this tool has not been adopted in Virginia, staff was in a unique position to fully apply the tool to the cohort. The Public Safety Assessment also assists judicial officers in determining the risk of defendants. However, unlike the VPRAI, the Public Safety Assessment is able to provide distinct risk levels for new criminal activity (NCA) and FTA. Since the two outcomes focused upon in this report are public safety (new in-state arrests punishable by incarceration) and FTA, only the risk levels generated by the Public Safety Assessment are discussed for purposes of efficiency and clarity. The final report will discuss both the VPRAI and Public Safety Assessment risk levels.
- <sup>15</sup> A detailed codebook outlining the definitions, measurements, data sources, and any limitations of all 800+ variables will be made available as part of the final report.
- <sup>16</sup> Defendants released on summons are generally not placed on PSA supervision. Defendants detained for the entire pre-trial period, even if referred to PSA supervision by a judicial officer, would not have received such supervision.
- <sup>17</sup> The large majority of exclusions included defendants whose October 2017 contact events were solely for probation violations, failure to appear, or contempt of court. Such charges are generally associated with a pre-existing court obligation rather than a new offense. The remainder of defendants excluded were for reasons such as: the contact event did not include any offenses punishable by incarceration (e.g., summons for infractions or non-jailable misdemeanors), no criminal record was found for the defendant, no disposition record was found for the October 2017 contact event, the defendant was under the age of 18, or there was insufficient or conflicting information found (i.e., release or bond information unclear).
- <sup>18</sup> *Supra* note 2.
- <sup>19</sup> *Supra* note 3.

- <sup>20</sup> Personal recognizance (PR) bond: defendant makes a written promise to appear before the court and abide by any terms of release.
- <sup>21</sup> Unsecured bond: defendant is released without having to post a set bond amount; however, if the defendant fails to appear before the court, the defendant may be liable for the monetary amount of the bond.
- <sup>22</sup> Secured bond: defendant is released after the posting of a set bond amount. This can include a deposit of cash or a solvent surety (such as a bail bondsman, family member, or friend) who agrees to enter into the obligation for the bond amount.
- <sup>23</sup> See Appendix C, Table 2.
- <sup>24</sup> See Appendix C, Table 3.
- <sup>25</sup> There were 13 defendants where the locality in which their case was heard was not able to be determined.
- <sup>26</sup> The percentages for the new in-state offenses cannot be added together for purposes of determining the overall public safety outcome because defendants may have been arrested for both felony and misdemeanor offenses during the pre-trial period. The *overall percentage* of defendants arrested for a “new in-state offense punishable by incarceration” is smaller than the *sum of percentages* for defendants arrested for a “new in-state jailable misdemeanor/ordinance violation” and “new in-state felony offense.” The larger percentages account for defendants who were arrested for both a felony and misdemeanor offense during the pre-trial period; whereas, the percentage of defendants arrested for “new in-state offense punishable by incarceration” accounts for whether the defendants were arrested for at least one new in-state offense. The percentage of defendants arrested for a “new in-state violent felony offense per § 17.1-805” is a subset of the overall percentage of defendants arrested for a “new in-state felony offense.”
- <sup>27</sup> See Appendix D, Table 3.
- <sup>28</sup> *Id.*
- <sup>29</sup> The percentages for the new in-state offenses cannot be added together for purposes of determining the overall public safety outcome because defendants may have been arrested for both felony and misdemeanor offenses during the pre-trial period. The *overall percentage* of defendants arrested for a “new in-state offense punishable by incarceration” is smaller than the *sum of percentages* for defendants arrested for a “new in-state jailable misdemeanor/ordinance violation” and “new in-state felony offense.” The larger percentages account for defendants who were arrested for both a felony and misdemeanor offense during the pre-trial period; whereas, the percentage of defendants arrested for “new in-state offense punishable by incarceration” accounts for whether the defendants were arrested for at least one new in-state offense. The percentage of defendants arrested for a “new in-state violent felony offense per § 17.1-805” is a subset of the overall percentage of defendants arrested for a “new in-state felony offense.”

- <sup>30</sup> See Tables 1 and 2, pages 74 and 75 of this report.
- <sup>31</sup> *Id.*
- <sup>32</sup> See Appendix C, Table 2 and Appendix D, Table 2.
- <sup>33</sup> See Appendix C, Table 2.
- <sup>34</sup> See Appendix C, Table 3.
- <sup>35</sup> See Table 1, page 74 of this report.
- <sup>36</sup> See Table 2, page 75 of this report.
- <sup>37</sup> *Id.*
- <sup>38</sup> See Appendix D, Table 3.
- <sup>39</sup> See Table 2, page 75 of this report.
- <sup>40</sup> See Appendix D, Table 3.
- <sup>41</sup> U.S. Census Bureau, July 1, 2018, estimate.
- <sup>42</sup> There are 95 counties and 38 independent cities in Virginia.
- <sup>43</sup> U.S. Census Bureau, 2017 estimates.
- <sup>44</sup> *Id.*
- <sup>45</sup> Virginia State Police, *Crime in Virginia - 2017*.
- <sup>46</sup> *Id.*
- <sup>47</sup> U.S. Census Bureau, 2017 estimates.
- <sup>48</sup> *Id.*
- <sup>49</sup> See Virginia Department of Criminal Justice Services. (2019). *Report on Pretrial Services Agencies-FY2019*. For instance, some agencies serve only one locality while others serve up to 11 localities. Some agencies are funded 100% by state funds while others are funded 100% by their locality. In FY19, total investigations per year ranged from 40 to 5,647, total supervision placements per year ranged from 71 to 2,286, and average daily caseloads ranged from 28 to 854. Public safety rates ranged from 75% to 99%, appearance rates ranged from 87% to 100%, and compliance rates ranged from 67% to 98%.
- <sup>50</sup> Virginia Department of Criminal Justices Services, email communication, November 2, 2018. As of November 2018, there were 375 actively licensed bail bondsmen in Virginia. This included 238 surety bail bondsmen, 51 property bail bondsmen, 56 agents, and an additional 30 individuals who had a combination of these licenses.
- <sup>51</sup> VA. CODE §§ 9.1-185, 9.1-185.5, 38.2-1800, and 38.2-1814 (2019).
- <sup>52</sup> Some bail bondsmen operate their business individually while others have several bail bondsmen working as agents of their company.
- <sup>53</sup> While aggregate findings are an excellent method for examining overall trends, this approach does not fully account for individual defendant-level details. For example, the dataset captures whether a defendant was charged for FTA but it does not capture *why* that defendant failed to appear.

- <sup>54</sup> See Appendix B for definitional limitations of variables included in this preliminary statewide analysis.
- <sup>55</sup> 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 includes a prohibition on disseminating out-of-state criminal histories for non-criminal justice purposes. As such, out-of-state criminal histories were not included in the dataset of this Project. This limitation could skew public safety outcomes in localities bordering other states.
- <sup>56</sup> The dataset is limited to defendants charged during a one-month period (October 2017). Although there is the highest degree of confidence that this one-month cohort was not unique in terms of the number and types of defendants charged, it is a potential limitation that must be acknowledged. Furthermore, the methodology of the Project only captures a defendant's first contact/charge in the month of October 2017. The data does not capture and track individual defendants' additional contacts/charges in the month of October 2017 (i.e., it only captures whether a subsequent contact event was a new in-state offense punishable by incarceration or FTA).
- <sup>57</sup> Many of the data systems used to create the final dataset have limitations in how data is captured and/or defined. Appendix B outlines some of the limitations of the variables used in this preliminary analysis. A detailed codebook outlining the definitions, measurements, data sources, and any limitations for all 800+ variables will be made available as part of the final report.
- <sup>58</sup> The preliminary analysis only included defendants released on bond for charges that did not relate to a pre-existing court obligation. Defendants released on bond for an October 2017 charge relating solely to a probation violation, FTA, or contempt of court could also be examined in terms of demographics, risk levels, and outcomes. This group of defendants also contributes to the caseload of PSAs, bail bondsmen, and other sureties.

