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December 1, 2021

The Honorable John S. Edwards
Chair, Judiciary Committee
Senate of Virginia
P.O. Box 1179
Roanoke, Virginia 24006-1179

The Honorable Charniele L. Herring
Chair, Courts of Justice Committee
Virginia House of Delegates
P.O. Box 11779
Alexandria, VA 22312

Dear Chairs Edwards and Herring:

Chapter 523, Enactment Clause 2 of the Virginia Acts of Assembly (2021 Special Session I) requires the Office of the Executive Secretary (OES) to collect the following data and report such data annually to the Chairmen of the Senate Committee on the Judiciary and the House Committee for Courts of Justice by December 1, 2021, and December 1, 2022: (i) the number of cases in which a defendant introduces evidence concerning his mental condition pursuant to § 19.2-271.6 of the Code of Virginia; (ii) the number of cases in which such evidence is introduced and a jury or court finds that a defendant did not have the intent required for the offense charged due to a mental illness as defined in § 19.2-271.6 of the Code of Virginia, an intellectual or developmental disability, or autism spectrum disorder; (iii) the number of cases in which the court issues an emergency custody order pursuant to § 37.2-808 of the Code of Virginia, after a jury or the court finds that a defendant did not have the intent required for the offense charged due to a mental illness as defined in § 19.2-271.6 of the Code of Virginia, an intellectual or developmental disability, or autism spectrum disorder; and (iv) if an emergency custody order is issued in such case, the number of defendants for whom no subsequent temporary detention order is issued and who are released, the number of defendants for whom a subsequent temporary detention order is issued, and the number of defendants who are subsequently involuntarily admitted.

By email correspondence dated March 4, 2021, OES advised the patrons of the legislation, the members of the conference committees and the Governor's office that this office is not able to provide the specific information requested in Enactment Clause 2.

OES can, however, provide the numbers of cases in which a court indicated that an emergency custody order was issued pursuant to § 19.2-271.6, which are as follows for the period of July 1, 2021 through November 18, 2021:

- There were two such cases in juvenile and domestic relations district courts statewide;
- There were no such cases in general district courts statewide; and
- There were no such cases in circuit courts that utilize the case management system maintained by OES.¹

As previously communicated, OES is not able to report on the number of cases in which a defendant introduces evidence concerning his mental condition pursuant to § 19.2-271.6 of the Code of Virginia because information on evidence introduced at trial is not captured in any of the case management systems maintained by OES nor is such information recorded in any other place.

OES is also not able to report on the number of cases in which such evidence is introduced and a jury or court finds that a defendant did not have the intent required for the offense charged due to a mental illness as defined in § 19.2-271.6 of the Code of Virginia, an intellectual or developmental disability, or autism spectrum disorder because a jury does not indicate the basis for its verdict and neither a jury nor a judge is required to indicate such.

Finally, OES is not able to report, if an emergency custody order is issued in such case, the number of defendants for whom no subsequent temporary detention order is issued and who are released, the number of defendants for whom a subsequent temporary detention order is issued, and the number of defendants who are subsequently involuntarily admitted. Once a court issues an emergency custody order, the criminal case would be closed. Any additional information related to a subsequent temporary detention order or an involuntary commitment order issued regarding the same individual would not be known because the criminal matter, the temporary detention order and the involuntary commitment order are handled separately and are not linked in OES's case management systems. The courts are not notified of an individual's release after issuance of an emergency custody order or

¹ All circuit courts within the Commonwealth other than Alexandria Circuit Court and Fairfax Circuit Court utilize the case management system maintained by OES.

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temporary detention order. Therefore, OES is not able to report on any such outcomes.

If you have any questions regarding this report, please do not hesitate to contact me.

With best wishes, I am

Very truly yours,

A handwritten signature in black ink that reads "Karl R. Hade (by SMM)". The signature is written in a cursive, slightly slanted style.

Karl R. Hade

KRH:jrs

cc: Division of Legislative Automated Systems