Pretrial Services Agencies

Executive Summary

In 2016, the Executive Committee of the Crime Commission requested staff to conduct a broad review of pretrial services agencies in Virginia.[1] The study was extended an additional year due to the extensive amount of information available on the topic. During the course of the study, staff attempted to answer many questions related to pretrial services agencies that had been raised by Crime Commission members and stakeholders, including the following:

- Who is responsible for the administration of pretrial services agencies?
- Are pretrial services agencies successful at ensuring public safety and appearance at court hearings and trial?
- Are statewide public safety and appearance rates available for defendants not under the supervision of a pretrial services agency?
- How does the presence of a pretrial services agency impact jail populations?
- How are pretrial services agencies funded?
- Do pretrial services agencies provide a recommendation to the court in regard to bond?
- What is the difference between the VPRAI-Revised and the checklist for bail determinations used by magistrates?
- How is a person placed on supervision with a pretrial services agency?
- Are pretrial services agencies being overused to supervise defendants for low-level offenses?
- How are risk levels disbursed across pretrial services placements?
- Is supervision by a pretrial services agency the same as probation?
- Are defendants charged any fees for pretrial services supervision?
- Are defendants charged for any other forms of supervision before trial?
- Are defendants being ordered to post bail <u>and</u> be supervised by a pretrial services agency?
- Are pretrial services agencies supervising indigent defendants?
- Do pretrial services agencies regularly monitor local jail populations?

While seeking to answer these specific questions, staff made various findings and observations related to the administration of pretrial services agencies. Based upon numerous meetings, field visits, and informal surveys, staff found that broad support exists amongst stakeholders for the use of pretrial services agencies. Staff also found that a number of steps were taken throughout 2017 to improve the administration of pretrial services agencies across the Commonwealth.

Despite the broad support for pretrial services agencies, staff identified multiple concerns related to the functioning and operation of these agencies that need to be addressed. Staff was unable to assess the overall status and success of pretrial services agencies across Virginia for three reasons. First, such agencies are locality-based and therefore practices and resources vary greatly by agency.[2] Second, the Virginia Department of Criminal Justice Services (DCJS) has not published a report on pretrial services agencies since 2014.[3] Third, although the Code of Virginia requires DCJS to review each pretrial services agency's compliance with Minimum Standards for Pretrial Services, no formal process exists for conducting these reviews.[4]

Study findings were presented to the Crime Commission at its November meeting. Crime Commission members were provided with seven recommendations at the December meeting. All seven recommendations were unanimously endorsed.

Recommendation 1: Va. Code § 19.2-152.7 should be amended to require DCJS to report annually on the status of each pretrial services agency, such as:

- Amount of funding (local, state, federal, etc.);
- Number of investigations and placements;
- Average daily caseload;
- Success rates;
- Whether each pretrial services agency is in compliance with standards set forth by DCJS; and,
- Plans to address any issues within non-compliant agencies.

Legislation was introduced and enacted during the Regular Session of the 2018 General Assembly for Recommendation 1 to require an annual report by DCJS on the status of all pretrial services agencies across the Commonwealth.[5]

The following six recommendations did not require legislation, therefore the Crime Commission sent a letter to DCJS requesting that they take administrative actions in regard to Recommendations 2 through 7. Crime Commission members requested that DCJS provide a report on

the status of all the recommendations to the Crime Commission by November 1, 2018.

Recommendation 2: DCJS should conduct a formal needs assessment of stakeholders to identify the strengths and weaknesses of pretrial services agencies, including:

- Priorities and expectations of stakeholders;
- Areas in need of improvement;
- Integrity of data and reports;
- Strategic use of resources; and,
- Future program planning.

Recommendation 3: DCJS should convene a work group of stakeholders, including local pretrial services directors, pretrial services officers, representatives from the Virginia Community Criminal Justice Association, Office of the Executive Secretary of the Supreme Court of Virginia, Magistrate Services, Commonwealth's Attorneys' Services Council, Indigent Defense Commission, Virginia Criminal Sentencing Commission, Compensation Board, Virginia Sheriffs' Association, Virginia Association of Regional Jails, Virginia State Police, and any other relevant parties, to develop specific recommendations to improve the administration of pretrial services agencies. This work group will be organized and managed by DCJS with oversight provided by Crime Commission staff.

Of particular importance to Crime Commission members is the need for the work group to compare pretrial outcomes in jurisdictions with pretrial services agencies and jurisdictions without pretrial services agencies.

The work group shall also complete the following activities:

- Review the findings of the needs assessment;
- Provide information to assist with bond determinations at the magistrate level;
- Implement or develop a static risk assessment instrument to be used in assisting with bond determinations at the magistrate level;
- Develop strategies to ensure that investigations of all detained defendants who are eligible for pretrial services supervision are completed and information is provided to the courts;
- Identify staffing and resource needs of local pretrial services agencies, as well as what is required from DCJS to provide adequate support to those local pretrial services agencies;

- Analyze the impact of pretrial services agencies on local jail populations;
- Ascertain methods to better define and track statewide appearance, public safety, and success rates;
- Continue to educate stakeholders on the role, duties, and appropriate uses of pretrial services agencies;
- Determine guidelines for the use of the UNCOPE substance use screening tool;[6]
- Establish uniform vocabulary and definitions for data entry and tracking; and,
- Identify any other improvements to pretrial services agencies.

Recommendation 4: DCJS should monitor the implementation of the VPRAI-Revised and Praxis over the next year to examine the effectiveness of these instruments and identify any issues or unintended consequences in the application of these tools.

Recommendation 5: DCJS should work with localities, pretrial services agency directors, and any other stakeholders to determine a funding formula for grant disbursements to pretrial services agencies.

Recommendation 6: DCJS should explore options for improving or replacing the case management system used by pretrial services agencies (PTCC).

Recommendation 7: DCJS should monitor the use of the case management system (PTCC) by pretrial services agencies to ensure that comprehensive definitions are developed and utilized. DCJS should also examine PTCC to verify that necessary data is entered consistently and uniformly.

Background and Methodology

Delegate C. Todd Gilbert introduced House Bills 774 and 776 during the Regular Session of the 2016 General Assembly. Both bills were referred to the Crime Commission by the House Courts of Justice Committee. In 2016, the Executive Committee requested staff to conduct a broad review of pretrial services agencies in Virginia. The study was extended an additional year due to the voluminous amount of information available on this topic.

The purpose of a pretrial services agency is to "provide information to assist the court in making release/detention decisions [and to] provide monitoring and supervisory services in cases involving released defendants."[7] Pretrial services agencies in Virginia are currently governed by the Pretrial Services Act.[8] This Act was passed in 1994 as

part of legislation that abolished parole and created numerous other agencies and programs.[9] As of January 2018, there were 33 pretrial agencies serving 100 counties and cities across the Commonwealth.[10]

Pretrial services agencies are intended to provide information and services to judicial officers in determining risk to public safety and the assurance of appearance at trial for criminal defendants.[11] Some duties and responsibilities of local pretrial services officers are mandatory.[12] Pretrial services officers must investigate and interview defendants detained in jails prior to certain court proceedings,[13] present a pretrial investigation report and release recommendations to the court,[14] and monitor defendants placed on pretrial services supervision to ensure compliance with the bond conditions set by a judicial officer.[15] Other duties imposed on pretrial services officers are discretionary based upon the availability of resources.[16] Pretrial services officers may assist with the placement of defendants in substance abuse education or treatment programs,[17] supervise defendants placed on home electronic monitoring,[18] or prepare financial eligibility determination forms for indigent defendants.[19]

During the course of this study, staff sought to answer specific questions raised regarding pretrial services agencies and to provide Crime Commission members with a broad overview of how pretrial services agencies are performing across Virginia. Staff engaged in various activities to address these matters, including the following:

- Collected relevant literature and data related to the pretrial process, pretrial services agencies, and risk assessment instruments;
- Reviewed Virginia's Pretrial Services Act;
- Examined pretrial laws and systems in other states;
- Consulted with numerous stakeholders;
- Conducted informal surveys of judges, regional jails, Sheriffs, Commonwealth's Attorneys, and defense counsel;
- Surveyed pretrial services agency directors;[20]
- Visited Virginia's pretrial services agencies;
- Observed pretrial proceedings in magistrate offices and district courts; and,
- Attended various local, state, and national trainings.

This study was initially proposed because of concerns relating to the role of pretrial services agencies in the criminal justice system and how criminal defendants were being placed on pretrial services supervision. Therefore, staff focused primarily on the statutory mission of pretrial services agencies and the process by which defendants are investigated, assessed, and placed on pretrial services supervision.

Staff did not extensively examine the supervision practices utilized by pretrial services agencies when monitoring defendants released on such supervision. Further, the study did not address policies surrounding bail reform or the use of monetary bail.

Questions Addressed

Staff addressed a number of questions about pretrial services agencies in Virginia that were raised by Crime Commission members and other stakeholders. Staff answered many of the questions; however, some questions remain unanswered due to a variety of limiting factors.

Who is responsible for the administration of pretrial services agencies?

Both localities and DCJS have a role in the administration of pretrial services agencies. Any city, county, or combination thereof may establish a pretrial services agency.[21] If any locality establishes a pretrial services agency, it must submit a plan every two years to DCJS for review and approval.[22] DCJS provides funding for the administration of pretrial services agencies through grants to localities.[23] Any locality may stop providing pretrial services by notifying DCJS of its intent to withdraw from providing such services.[24]

DCJS must review and approve any plan submitted by a locality to establish a pretrial services agency.[25] DCJS is also required to prescribe statewide standards for the development, implementation, operation, and evaluation of pretrial services agencies.[26] Additionally, DCJS is mandated to periodically review each pretrial services agency and may suspend all or any portion of funding if the local agency is not in compliance with its approved plan or DCJS operating standards.[27]

Are pretrial services agencies successful at ensuring public safety and appearance at trial?

Staff found that while DCJS tracks the public safety, appearance, and compliance rates of defendants on pretrial services supervision, the limited definitions utilized for these measures fail to provide a complete picture of the statewide success rates of these agencies. Therefore, staff could not accurately assess the success rate of pretrial services agencies in the Commonwealth. For example, some of the limitations identified in the current DCJS pretrial services placement closure definitions include the following:

- New Arrest: "applies when a defendant is arrested for an offense which was allegedly committed while under pretrial supervision and, as a result, the Court revokes the defendant's release on pretrial supervision."[28]
  - This definition does not capture instances where a defendant is charged with a new offense while on pretrial services supervision and the Court takes no action. Additionally, this definition does not clearly capture instances where a defendant is detained on a new charge, but no court action is taken in regard to his pretrial supervision status (i.e. bail revocation, contempt of court, or *capias*).
- Failure to Appear (FTA): "applies when a defendant fails to appear in court and a *capias* is issued."[29]
  - This definition does not include other means by which failure to appear can be charged, such as with a show cause,[30] contempt of court,[31] or a warrant.[32]

Are statewide public safety and appearance rates available for defendants not under the supervision of a pretrial services agency?

Staff found that there was no reliable source of statewide aggregate data to determine comprehensive appearance rates for defendants not placed on pretrial services supervision. Tracking failure to appear rates is complicated by several factors. The primary issue is that there are multiple means by which failure to appear may be charged (*capias*/ show cause;[33] contempt of court;[34] or, failure to appear statute[35]). Further, courts may dismiss such charges when a defendant ultimately appears for trial.

The public safety rate for these individuals could be determined by analyzing criminal history records maintained by the Virginia State Police. However, this analysis would be limited to qualifying offenses for which fingerprinting is required and fingerprints are actually obtained.[36]

How does the presence of a pretrial services agency impact jail populations?

Staff was unable to assess the independent impact of pretrial services agencies on jail populations because a variety of factors can affect such levels, including the following:

- Population, demographics, and arrest trends of the locality and surrounding localities;
- Closure or opening of prisons and jails;
- Average length of stay and admission rates;
- Socioeconomic conditions/unemployment rates; and,
- Seasonal trends.[37]

Staff examined jail populations generally and found that over the past five years the total statewide jail population had remained fairly steady while the total number of defendants detained prior to trial had gradually increased.[38] Staff also noted that the populations of defendants detained prior to trial varied greatly amongst individual jails. For example, during May 2017 the total number of defendants detained prior to trial ranged widely by jail from 11%-50%.[39]

How are pretrial services agencies funded?

DCJS disbursed the following amount of grant funding over the past three fiscal years for the administration of pretrial services agencies:

- FY17: $10,122,834;
- FY16: $9,193,817; and,
- FY15: $9,794,374.[40]

In FY17, the $10,122,834 was distributed across 32 pretrial services agencies. The amount of funding provided to each individual agency that fiscal year varied greatly, ranging from approximately $73,000 to approximately $673,000.[41]

In addition to funds from DCJS, pretrial services agencies may also receive funding or other forms of financial assistance from local, federal, or other sources. Based on staff's 2017 survey of pretrial services agency directors, 64% (18 of 28) of respondents reported receiving local funding.

Do pretrial services agencies provide a recommendation to the court in regard to bond?

Pretrial services agencies are required by the Code of Virginia to provide the court with a pretrial investigation report that includes a release recommendation to assist judges with bail determinations.[42] The Code does not contain any requirement that the court follow the recommendation from the pretrial services officer. The pretrial investigation report "includes a face-to-face interview with the defendant, full criminal history, verification with community contacts, administration of the Virginia Pretrial Risk Assessment Instrument (VPRAI), and a bond recommendation."[43]

The VPRAI is a pretrial risk assessment instrument "used to identify a defendant's risk of failure (failure to appear for a scheduled court appearance or arrest for a new offense) if released pending trial."[44] DCJS was required to develop this instrument as part of the Pretrial Services Act.[45] In September 2017, the Virginia Pretrial Risk Assessment Instrument – Revised (VPRAI-Revised) and a newly created supervision tool (Praxis)[46] were implemented statewide.[47] The intent of the VPRAI-Revised is to provide more objective scoring of risk factors than the previous version of the VPRAI.[48] The Praxis is a tool that uses the VPRAI-Revised risk score and the defendant's current charge(s) to determine a release/detain recommendation and, if the recommendation is for release, a supervision level for those defendants placed on pretrial services supervision.[49] The recommendation of the Praxis can be overridden by the pretrial services officer performing the pretrial investigation.[50] The Praxis also allows for the use of differential supervision, with weekly, bi-weekly, or monthly meetings recommended for defendants placed on pretrial services supervision.

What is the difference between the VPRAI-Revised and the checklist for bail determinations used by magistrates?

The VPRAI-Revised, like the preceding VPRAI, is a validated pretrial risk assessment instrument "used to identify a defendant's risk of failure (failure to appear for a scheduled court appearance or arrest for a new offense) if released pending trial."[51] The following risk factors are scored on the VPRAI-Revised:

- Active community criminal justice supervision;
- Current charge is felony drug, felony theft or felony fraud;
- Pending charge at time of arrest;

- One or more adult criminal convictions;
- Two or more failures to appear;
- Two or more violent convictions;
- Unemployed at the time of arrest; and,
- History of drug abuse.

The "Checklist for Bail Determinations" is a court form (DC-327) developed to assist magistrates with bail determinations as required by statute.[52] The Code of Virginia specifies that a judicial officer must consider certain information when fixing the terms of bail.[53] The bail checklist serves to capture the information required by statute, including the following:

- Nature and circumstances of the offense;
- Whether a firearm is alleged to have been used in the offense;
- Weight of the evidence;
- Financial resources and ability to pay bond;
- Character of the accused, including his family ties, employment or involvement in education;
- Length of residence in the community;
- Record of convictions;
- Appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings;
- Whether the person is likely to obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate a prospective witness, juror, or victim; and,
- Any other information available which the court considers relevant to the determination of whether the accused is unlikely to appear for court proceedings.[54]

When comparing these two tools, staff found that the checklist for bail determinations requires consideration of far more factors than the VPRAI-Revised.[55] The only piece of information considered by the VPRAI-Revised that is not specifically contained in the bail checklist is the defendant's history of drug abuse (excluding alcohol); however, any prior drug charges or convictions should appear on the criminal record reviewed by the judicial officer.

How is a person placed on supervision with a pretrial services agency?

Only a judicial officer can place a defendant on pretrial services supervision.[56] The judicial officer also sets the terms and conditions of bail.[57] A judicial officer includes any judge or magistrate in the

Commonwealth.[58] The clerk or deputy clerk of any district or Circuit Court is also deemed to be a judicial officer under the Code.[59] Placement on pretrial services supervision can occur in two manners, including the following:

- Direct placement: the defendant is placed on pretrial services supervision by a judicial officer without the benefit of a pretrial services investigation;[60] or,
- Placement made with benefit of VPRAI-Revised: the defendant is placed on pretrial services supervision by a judicial officer, typically a judge, following a pretrial services investigation.[61]

Staff obtained and analyzed data from the Pretrial and Community Corrections case management system (PTCC) maintained by DCJS in regard to pretrial services placements. The data showed that over the past three fiscal years (FY15-FY17) the number of pretrial services investigations have slightly decreased, while the number of pretrial services placements have steadily increased. Many pretrial services investigations do not result in a placement on pretrial services supervision. Most of the defendants placed on pretrial services supervision are direct placements by judges or magistrates without the benefit of a pretrial services investigation.[62]

Are pretrial services agencies being overused to supervise defendants for low-level offenses?

PTCC data indicated that very few defendants were on pretrial services supervision for common, seemingly minor misdemeanor offenses. Further, the number of defendants on pretrial services supervision for such offenses has decreased over the past three fiscal years.[63]

A specific question was raised during the study about the number of defendants placed on pretrial services supervision who were charged with underage possession of alcohol. A detailed PTCC case review indicated that less than 1% (150 of 74,740) of statewide pretrial services placements between FY15-FY17 were for defendants charged solely with underage possession of alcohol. Certain localities were responsible for a higher number of these placements, including the following: Virginia Beach (25), Rockingham County (22), Charlottesville (18), and Chesterfield County (14).

These findings were significant because research has consistently cited the detrimental impacts of over-supervising low-risk defendants.[64] In analyzing this information, it is important to note that a minor offense does not necessarily equate to a low-risk level for the defendant. For example, multiple aggravating factors can be present for an individual charged with a seemingly minor offense, such as prior criminal history, previous failures to appear, or issues with substance abuse. These factors indicate that the defendant poses a higher risk of failure even though the current charge is relatively minor.

How are risk levels disbursed across pretrial services placements?

The disbursement of the total pretrial services placements by risk level could not be fully assessed due to missing information in PTCC. Of the 26,875 pretrial services placements made in FY17, 17% (4,463 of 26,875) did not have a risk level recorded.[65]

Staff sought to determine the number of individuals placed on pretrial services supervision by risk level for underage possession of alcohol charges. Staff found that similar to overall placement data, 35% (53 of 150) of risk levels for individuals who were placed on pretrial services supervision for underage possession of alcohol were not recorded in PTCC (FY15-FY17).[66]

Is supervision by a pretrial services agency the same as probation?

Pretrial services and probation are two different forms of supervision. Pretrial services agencies assist judicial officers with bail determinations and supervision before trial.[67] Probation agencies monitor defendants after trial as a condition of a suspended sentence or deferred disposition imposed by the court.[68] Defendants convicted of misdemeanors and certain felonies can be placed on local community-based probation by the court.[69] Some confusion may exist over the distinction between pretrial services supervision and probation because 76% (23 of 32) of pretrial services agencies shared an office location with a local community-based probation agency in 2017.[70]

Are defendants charged any fees for pretrial services supervision?

Defendants should not be charged a fee by pretrial services agencies. The DCJS Minimum Standards for Pretrial Services explicitly prohibit the collection of fees from defendants for providing pretrial services such as supervision or drug testing.[71] However, some pretrial services agencies do assess a fee if laboratory testing is requested by a defendant who is disputing a positive drug screen.

Are defendants charged for any other forms of supervision before trial?

Defendants may be responsible for paying the costs of other monitoring conditions ordered by the court before trial. The Code of Virginia allows a defendant to be charged for the use of a GPS tracking device, or any similar device, imposed as a condition of release by a judicial officer.[72] An informal survey found that the availability and vendors of such monitoring services varied across the Commonwealth. Similarly, the informal survey revealed that the costs of these monitoring services, can range from $3-$15 per day where available across Virginia. Staff noted that no statewide regulations exist for the use of these electronic devices before trial.

During the course of the study, staff also identified certain localities <u>without</u> pretrial services agencies that were charging defendants for drug and alcohol testing as a condition of release prior to trial. Each drug and alcohol test costs $25 and defendants may be required to take multiple tests per week until their pending charge is finalized.

Are defendants being ordered to post bail <u>and</u> be supervised by a pretrial services agency?

A review of PTCC data showed that most defendants placed on pretrial services supervision were also ordered to post secured bail in FY17. Specifically, 62% (16,514 of 26,634) of the defendants placed on pretrial services supervision were also on secured bail.[73]

Are pretrial services agencies supervising indigent defendants?

The percentage of defendants on pretrial services supervision who are indigent could not be determined because pretrial services agencies did not capture this information. However, during courtroom observations staff noted that many defendants placed on pretrial services supervision were found to be indigent and provided with court-appointed counsel.[74]

Do pretrial services agencies regularly monitor local jail populations?

Staff found that there were no routine reviews of jail inmates awaiting trial by pretrial services agencies. DCJS minimum standards require each pretrial services agency to develop policies and procedures from the initial appearance through adjudication for defendants who remain in jail.[75] However, based upon survey responses from pretrial services agencies and field visits to such agencies, staff determined that the frequency of these reviews vary greatly by agency.

Findings and Recommendations

While addressing the specific questions posed by Crime Commission members and stakeholders, staff made various findings and observations related to the administration of pretrial services agencies. Based upon numerous meetings, field visits, and informal surveys, staff found that broad support exists amongst stakeholders for the use of pretrial services agencies. Staff also found that a number of steps were taken throughout 2017 to improve the administration of pretrial services agencies across the Commonwealth, including the following:

- January: DCJS released revised Minimum Standards for Pretrial Services;[76]
- May: DCJS hosted a Pretrial Justice Summit in Chesterfield;
- June: Pretrial services was included as part of the regional trainings for magistrates;
- August: District Court Judges were given a presentation on pretrial services at their judicial conference; and,
- September: Revised risk assessment instrument (VPRAI-Revised) and a newly created supervision tool (Praxis) were implemented statewide across pretrial services agencies.

Despite this broad support for pretrial services agencies, staff identified multiple concerns related to the functioning and operation of these agencies that need to be addressed. Staff was unable to assess the overall

status and success of pretrial services agencies across Virginia for three reasons. First, such agencies are locality-based and therefore practices and resources vary greatly by agency.[77] Second, DCJS has not published a report on pretrial services agencies since 2014.[78] Third, although the Code of Virginia requires DCJS to review each pretrial services agency's compliance with Minimum Standards for Pretrial Services, no formal process exists for conducting these reviews.[79]

Study findings were presented to the Crime Commission at its November meeting. Crime Commission members were provided with seven recommendations at the December meeting. All seven recommendations were unanimously endorsed.

During the Regular Session of the 2018 General Assembly, legislation for Recommendation 1 was introduced in both chambers. Delegate C. Todd Gilbert (House Bill 996) and Senator Mark J. Peake (Senate Bill 783) introduced identical bills that passed the General Assembly and were enacted into law.[80]

Recommendation 1: Va. Code § 19.2-152.7 should be amended to require DCJS to report annually on the status of each pretrial services agency, such as:

- Amount of funding (local, state, federal, etc.);
- Number of investigations and placements;
- Average daily caseload;
- Success rates;
- Whether each pretrial services agency is in compliance with standards set forth by DCJS; and,
- Plans to address any issues within non-compliant agencies.

Amending Va. Code § 19.2-152.7 to require DCJS to report annually on the status of each pretrial services agency will serve a variety of functions. This report will provide an annual picture of the statewide status of pretrial services agencies. DCJS will be required to assess pretrial services agencies each year. Likewise, each agency will need to assess its own compliance with DCJS minimum standards. These reviews will provide transparency on the performance of each agency to the public, as well as to local and state officials. The report can be used by pretrial services agencies to compare their performance to other agencies and to generate ideas and procedures to improve their own practices.

The following six recommendations did not require legislation, therefore the Crime Commission sent a letter to DCJS requesting that they take administrative actions in regard to Recommendations 2 through 7.

Crime Commission members requested that DCJS provide a report on the status of all the recommendations to the Crime Commission by November 1, 2018.

Recommendation 2: DCJS should conduct a formal needs assessment of stakeholders to identify the strengths and weaknesses of pretrial services agencies, including:

- Priorities and expectations of stakeholders;
- Areas in need of improvement;
- Integrity of data and reports;
- Strategic use of resources; and,
- Future program planning.

Pretrial services agencies have been in existence for over 20 years in Virginia, yet confusion remains about what they are and what role they serve in the criminal justice system. This assessment will provide guidance to DCJS on the perceptions and needs of stakeholders as it works to improve the administration of pretrial services agencies.

Recommendation 3: DCJS should convene a work group of stakeholders, including local pretrial services directors, pretrial services officers, representatives from the Virginia Community Criminal Justice Association, Office of the Executive Secretary of the Supreme Court of Virginia, Magistrate Services, Commonwealth's Attorneys' Services Council, Indigent Defense Commission, Virginia Criminal Sentencing Commission, Compensation Board, Virginia Sheriffs' Association, Virginia Association of Regional Jails, Virginia State Police, and any other relevant parties, to develop specific recommendations to improve the administration of pretrial services agencies. This work group will be organized and managed by DCJS with oversight provided by Crime Commission staff.

Of particular importance to Crime Commission members is the need for the work group to compare pretrial outcomes in jurisdictions with pretrial services agencies and jurisdictions without pretrial services agencies.

The work group shall also complete the following activities:

- Review the findings of the needs assessment;
- Provide information to assist with bond determinations at the magistrate level;
- Implement or develop a static risk assessment instrument to be used in assisting with bond determinations at the magistrate level;

- Develop strategies to ensure that investigations of all detained defendants who are eligible for pretrial services supervision are completed and information is provided to the courts;
- Identify staffing and resource needs of local pretrial services agencies, as well as what is required from DCJS to provide adequate support to those local pretrial services agencies;
- Analyze the impact of pretrial services agencies on local jail populations;
- Ascertain methods to better define and track statewide appearance, public safety, and success rates;
- Continue to educate stakeholders on the role, duties, and appropriate uses of pretrial services agencies;
- Determine guidelines for the use of the UNCOPE substance use screening tool;[81]
- Establish uniform vocabulary and definitions for data entry and tracking; and,
- Identify any other improvements to pretrial services agencies.

Staff was unable to determine whether a difference exists in public safety rates, appearance rates, or jail populations in localities with pretrial services agencies as opposed to localities without such agencies. It is extremely difficult to isolate the independent impact of a pretrial services agency between similarly situated localities due to wide variances in local practices. This work group will bring together numerous stakeholders and subject matter experts in an attempt to answer these difficult questions. The group will also develop recommendations to address the areas of concern identified by staff in order to improve the administration of pretrial services agencies.

Recommendation 4: DCJS should monitor the implementation of the VPRAI-Revised and Praxis over the next year to examine the effectiveness of these instruments and identify any issues or unintended consequences in the application of these tools.

This revised risk assessment instrument (Virginia Pretrial Risk Assessment Instrument – Revised) and a newly created supervision tool (Praxis) were implemented statewide by pretrial services agencies in September 2017. Staff was unable to assess the impact and effectiveness of these instruments during the short time period between the implementation and the Crime Commission meeting in November. DCJS should monitor the use of the VPRAI-Revised and Praxis to identify any successes and address any complications caused by these new tools.

Recommendation 5: DCJS should work with localities, pretrial services agency directors, and any other stakeholders to determine a funding formula for grant disbursements to pretrial services agencies.

DCJS does not currently use a funding formula to determine disbursement amounts of grant funds to pretrial services agencies. Multiple pretrial services agencies expressed frustration that funding is not allocated based upon need. The practices of each pretrial services agency vary in part due to the availability of resources. Agencies consistently noted that staffing issues greatly impact their ability to conduct investigations and manage caseloads.

Recommendation 6: DCJS should explore options for improving or replacing the case management system used by pretrial services agencies (PTCC).

There was universal agreement amongst stakeholders that PTCC is antiquated and difficult to use. Certain data within that system is not readily accessible to individual pretrial services agencies without the assistance of DCJS. Ideally the system should be replaced; however, if the finances are not available, PTCC must at a minimum be upgraded to meet the needs of its users.

Recommendation 7: DCJS should monitor the use of the case management system (PTCC) by pretrial services agencies to ensure that comprehensive definitions are developed and utilized. DCJS should also examine PTCC to verify that necessary data is entered consistently and uniformly.

Staff identified several areas of concern during analysis of statewide data within the PTCC system. Numerous fields within PTCC were not completed or were left blank. Definitions of terminology were not consistently applied across or within pretrial services agencies. There was no regular compliance monitoring to readily identify and correct data entry errors or omissions. All of these factors impacted the integrity of the data within PTCC and must be addressed.

Acknowledgements

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

Commonwealth's Attorneys' Services Council

Compensation Board

Indigent Defense Commission

Office of the Executive Secretary of the Supreme Court of Virginia

Virginia Community Criminal Justice Association

Virginia Department of Criminal Justice Services

Virginia Sheriffs' Association

The Crime Commission wishes to thank all judges, Commonwealth's Attorneys, Public Defenders, court-appointed counsel, Sheriffs, regional jail administrators, magistrates, and pretrial services agencies directors and officers who took time to meet with staff and/or provide survey responses.

APPENDIX A

Total Statewide Jail Population and Pre-Trial Population Average Monthly Population, 2013-2017

Average Monthly Population	Total Statewide Jail Population	Total Pre-Trial Population	Percentage Pre-Trial Population
May 2017	28,646.87	8,596.17	30.0%
May 2016	28,259.42	7,861.67	27.8%
May 2015	28,646.82	7,490.04	26.1%
May 2014	29,428.36	7,704.47	26.2%
July 2013	29,558.68	7,973.60	27.0%

Source: Compensation Board, LIDS- Average Monthly Population Reports. Pre-trial population figures exclude pretrial probation, parole and ordinance violators. For purposes of this table, the term "pre-trial" refers to defendants being detained in jail while awaiting trial on a pending criminal charge. Chart prepared by Virginia State Crime Commission staff.

APPENDIX B

Manual Scoring Sheet for the VPRAI-Revised and Praxis

Virginia Pretrial Risk Assessment Instrument (Manual Scoring Sheet)

Instrument completion Date: _____ *Court Date:* _____
First Name: _____ *Last Name:* _____
SSN: _____ *DOB:* _____ *Race:* _____ *Sex:* _____

Charge(s): _____
_____

Research Factors:

1. Prior Adult Misdemeanor Conviction: ☐Yes ☐No
2. Prior Adult Felony Conviction: ☐Yes ☐No
3. Prior Violent Conviction: ☐0 ☐1 ☐2 ☐3 or More
4. Prior Failure to Appear Pretrial in Past 2 Years: ☐0 ☐1 ☐2 or More
5. Prior Failure to Appear Pretrial Older than 2 Years: ☐Yes ☐No
6. Prior Sentence to Incarceration: ☐Yes ☐No

Risk Factors:

#	Risk Factors	# Points	Yes √	No √	Score
1	Active Community Criminal Justice Supervision	2 points			
2	Current Charge is Felony Drug, Felony Theft or Felony Fraud	3 points			
3	Pending Charge at Time of Arrest	2 points			
4	One or More Adult Criminal Convictions	2 points			
5	Two or more Failures to Appear	1 point			
6	Two or more Violent Convictions	1 point			
7	Unemployed at the Time of Arrest	1 point			
8	History of Drug Abuse	2 points			
	Total Score				

Score	0 - 2	3 - 4	5 - 6	7 - 8	9 - 10	11 - 14
Risk Level	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6

The pretrial risk assessment identifies the defendant's risk level as _____

Praxis Recommendation:

1. Does the Praxis apply: ☐Yes ☐No
2. If yes, determine the most serious charge category:
   - ☐Violent Felony / Firearm
   - ☐Violent Misdemeanor
   - ☐Non-Violent Felony
   - ☐Driving Under the Influence
   - ☐Non-Violent Misdemeanor
   - ☐Failure to Appear (If selected, choose the primary charge category for the underlying charge.)
     - ☐Violent Felony / Firearm (If selected, Risk Level = Current Risk Level +1)
     - ☐Violent Misdemeanor (If selected, Risk Level = Current Risk Level + 1)
     - ☐Non-Violent Felony (If selected, Risk Level = Current Risk Level + 1)
     - ☐Driving under the Influence (If selected, Risk Level = Current Risk Level + 1)
     - ☐Non-Violent Misdemeanor (If selected, Risk Level = Current Risk Level + 1)

Confidential- Further disclosure prohibited by law pursuant to §2.2-3706FB and §19.2-152.4:2 of the Code of Virginia

APPENDIX B

Manual Scoring Sheet for the VPRAI-Revised and Praxis

Risk Level	Recommendation	VPRAI: Charge Category				
		Non-Violent Misd.	Driving Under the Influence	Non-Violent Felony	Violent Misd.	Violent Felony or Firearm
Level 1	Bail Status	Release	Release	Release	Release	Release
	Pretrial Supervision	No	No	No	No	Level II
	Special Conditions	No	No	No	No	As Needed
Level 2	Bail Status	Release	Release	Release	Release	Release
	Pretrial Supervision	No	Monitor	Monitor	Monitor	Level III
	Special Conditions	No	No	No	No	As Needed
Level 3	Bail Status	Release	Release	Release	Release	Detain
	Pretrial Supervision	Monitor	Monitor	Level I	Level I	No
	Special Conditions	No	No	No	As Needed	N/A
Level 4	Bail Status	Release	Release	Release	Release	Detain
	Pretrial Supervision	Level I	Level I	Level II	Level II	No
	Special Conditions	No	As Needed	As Needed	As Needed	N/A
Level 5	Bail Status	Release	Release	Release	Detain	Detain
	Pretrial Supervision	Level II	Level II	Level III	No	No
	Special Conditions	As Needed	As Needed	As Needed	N/A	N/A
Level 6	Bail Status	Detain	Detain	Detain	Detain	Detain
	Pretrial Supervision	No	No	No	No	No
	Special Conditions	N/A	N/A	N/A	N/A	N/A

Recommendation: √ the box below to indicate your recommendation

☐ Release without Pretrial Supervision	☐ Release with Pretrial Supervision	☐ Detain	☐ No Recommendation

Conditions of Release:

- _____
- _____

Mitigating / Aggravating Considerations:

_____

_____

Confidential- Further disclosure prohibited by law pursuant to §2.2-3706B and §19.2-152.4:2 of the Code of Virginia

APPENDIX C

Checklist for Bail Determinations

CHECKLIST FOR BAIL DETERMINATIONS
Commonwealth of Virginia

Name of the Accused ..... 1 .....

Nature and Circumstances of the Offense ..... 2 .....

.....

Weight of the Evidence ..... 3 .....

Length of Time in Community ..... 4 .....

Place of Employment ..... 5 ..... How Long .....

Family Ties ..... 6 .....

Involvement in Education ..... 7 .....

Financial Resources ..... 8 .....

Pending Charges ..... 9 .....

.....

10 Was a firearm allegedly used in the offense? [ ] No [ ] Yes

11 Currently on probation or parole? [ ] No [ ] Yes .....

Prior criminal record ..... 12 .....

.....

.....

13 [ ] The presumption set forth in Virginia Code § 19.2-120 (B) or (C) applies and has not been rebutted.

14 [ ] Bail was not set by a judge, the presumption set forth in Virginia Code § 19.2-120 (B) or (C) applies and has been rebutted, and an attorney for the Commonwealth concurs in the accused being admitted to bail. (For magistrate determinations only.)

15 [ ] The secured bond provision in Virginia Code § 19.2-123 applies [ ] and is waived with the concurrence of the attorney of the Commonwealth or the attorney for the county, city or town.

Prior charges of failing to appear ..... 16 .....

Is this person likely to obstruct or attempt to obstruct justice or threaten, injure or intimidate or attempt to threaten, injure or intimidate a prospective witness, juror or victim? [ ] No [ ] Yes .....

..... 17 .....

Other information considered ..... 18 .....

.....

.....

.....

.....

.....

Bail Set ..... 19 .....

Special instructions or conditions ..... 20 .....

.....

.....

21 [ ] Check if more information is on reverse

..... 22 .....
DATE

..... 23 .....
[ ] MAGISTRATE [ ] JUDGE

FORM DC-325 FRONT 07/13

APPENDIX C

Checklist for Bail Determinations

Form DC-327 **CHECKLIST FOR BAIL DETERMINATIONS** **Form DC-327**

Data Elements *front*

1. Name of defendant.
2. Nature and circumstances of the offense.
3. Weight of the evidence.
4. Length of time in community.
5. Place of employment and length of time employed there.
6. Family ties to the community.
7. Involvement in education.
8. Financial resources.
9. Any pending charges.
10. Check whether a firearm was allegedly used in the offense.
11. Check whether the accused is currently on probation or parole. Space is provided for comment if desired.
12. Describe prior criminal record.
13. Check if applicable.
14. Check if applicable.
15. Check if applicable.
16. Describe prior charges of failing to appear.
17. Check the applicable box. Space is provided for comment if desired.
18. Describe other information considered.
19. State amount of bail.
20. Describe special instructions or conditions.
21. Check box if additional information is contained on the reverse.
22. Date of signature.
23. Signature of judge or magistrate.

APPENDIX C

Checklist for Bail Determinations

The judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public if the person is currently charged with:

1. An act of violence as defined in § 19.2-297.1;
2. An offense for which the maximum sentence is life imprisonment or death;
3. A violation of §§ 18.2-248, 18.2-248.01, 18.2-255 or § 18.2-255.2 involving a Schedule I or II controlled substance if (i) the maximum term of imprisonment is 10 years or more and the person was previously convicted of a like offense or (ii) the person was previously convicted as a "drug kingpin" as defined in § 18.2-248;
4. A violation of §§ 18.2-308.1, 18.2-308.2, or § 18.2-308.4 and which relates to a firearm and provides for a minimum, mandatory sentence;
5. Any felony, if the person has been convicted of two or more offenses described in subdivision 1 or 2, whether under the laws of this Commonwealth or substantially similar laws of the United States;
6. Any felony committed while the person is on release pending trial for a prior felony under federal or state law or on release pending imposition or execution of sentence or appeal of sentence or conviction;
7. An offense listed in subsection B of § 18.2-67.5:2 and the person had previously been convicted of an offense listed in § 18.2-67.5:2 or a substantially similar offense under the laws of any state or the United States and the judicial officer finds probable cause to believe that the person who is currently charged with one of these offenses committed the offense charged;
8. A violation of § 18.2-374.1 or § 18.2-374.3 where the offender has reason to believe that the solicited person is under 15 years of age and that the offender is at least 5 years older than the solicited person.
9. A violation of §§ 18.2-46.2, 18.2-46.3, 18.2-46.5 or § 18.2-46.7;
10. A violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266 or § 46.2-341.24 and the person has, within the past five years of the instant offense, been convicted three times on different dates of a violation of any combination of these Code sections, or any ordinance of any county, city, or town or the laws of any other state or of the United States substantially similar thereto, and has been at liberty between each conviction; or
11. A second or subsequent violation of § 16.1-253.2 or § 18.2-60.4 or a substantially similar offense under the laws of any state or the United States; or
12. A violation of subsection H of § 18.2-57.2.
13. A violation of subsection C of § 18.2-460 charging the use of threats of bodily harm or force to knowingly attempt to intimidate or impede a witness.

The judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public if the person is being arrested pursuant to § 19.2-81.6.

A judicial officer who is a magistrate, clerk or deputy clerk of a district court or a circuit court may not admit to bail, that is not set by a judge, any person who is charged with an offense listed in 1 through 13 above or who is being arrested pursuant to § 19.2-81.6, without the concurrence of any attorney for the Commonwealth.

Virginia Code § 19.2-120

The judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of a person identified by U.S. Immigration and Customs Enforcement (ICE) as illegally present in the United States if such person is charged with one of the offenses enumerated below. However, for misdemeanor offenses under the provisions of law referred to in paragraphs a, b, c and e, and for felony offenses referred to in paragraph d, this presumption applies ONLY IF ICE has guaranteed that, in all such cases in the Commonwealth, it will issue a detainer for the initiation of removal proceedings and reimburse for the costs of incarceration from the time of issuance of the detainer.

a. An offense listed under subsection C of § 17.1-805 (acts of violence);
b. An offense listed under subsection A of § 19.2-297.1 (acts of violence);
c. An offense listed under Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 (crimes against the person) except any offense listed under subsection A of § 18.2-57.2;
d. A felony offense under Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 (drug offenses); or
e. An offense under Article 2 (§ 18.2-266 et seq.) or any local ordinance substantially similar thereto, Article 4 (§ 18.2-279 et seq.), Article 5 (§ 18.2-288 et seq.), Article 6 (§ 18.2-299 et seq.), Article 6.1 (§ 18.2-307.1 et seq.) or Article 7 (§ 18.2-308.1 et seq.) of Chapter 7 of Title 18.2 (crimes involving safety).

Virginia Code § 19.2-120.1.

Additional information:

.....

.....

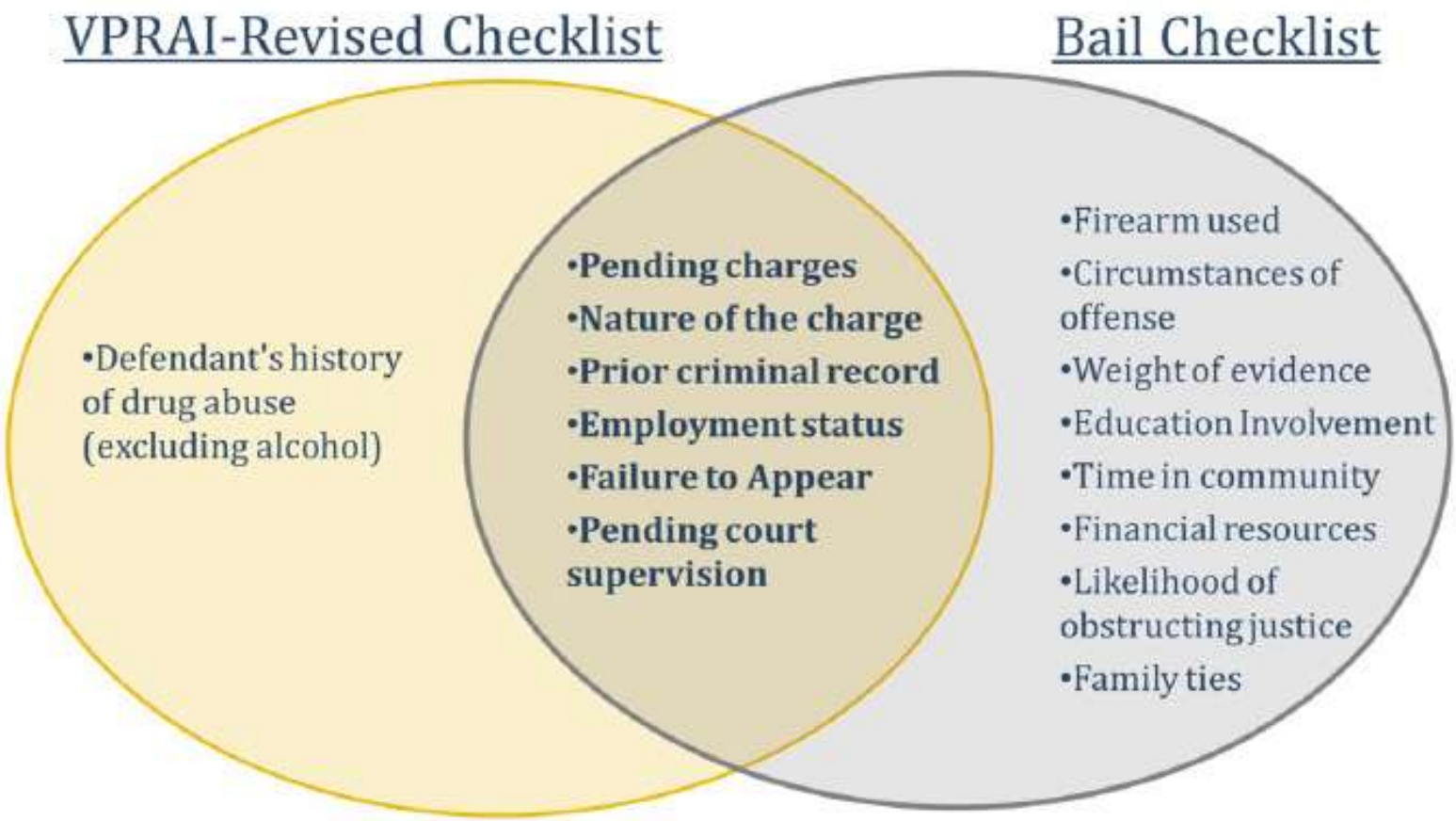
.....

.....

FORM DC-327 REVISED 07/13

APPENDIX D

Comparison of VPRAI-Revised and Bail Determination



Source: Virginia State Crime Commission staff analysis. Graphic prepared by Virginia State Crime Commission staff.

Note: Use of firearm is not a risk factor on the VPRAI-Revised, but is a consideration in the Praxis recommendation.

APPENDIX E

Pretrial Services Placement Types, FY15-FY17

Statewide	FY15	FY16	FY17
Direct Placements by Judges	9,480	11,390	12,131
Direct Placements by Magistrates	5,492	6,038	5,949
Placements Made w/Benefit of VPRAI	7,261	8,204	8,795
Total Placements	***22,233***	***25,632***	***26,875***

Source: Virginia Department of Criminal Justice Services, PTCC Case Management System. Virginia State Crime Commission staff analysis. Chart prepared by Virginia State Crime Commission staff.

APPENDIX F

Pretrial Services Placements for Specified Misdemeanors, FY15-FY17

Placement by Sole Charge	FY15 (N=22,233)	FY16 (N=25,632)	FY17 (N=26,875)	FY15-FY17 TOTAL (N=74,740)	% of FY15-FY17 TOTAL
DUI- 1st offense	1,270	738	653	**2,661**	3.6%
Trespassing	218	150	133	**501**	0.7%
Possess marijuana- 1st offense	128	107	123	**358**	0.5%
Petit larceny under $200 -1st offense	122	92	67	**281**	0.4%
Underage Possession of Alcohol	66	44	40	**150**	0.2%
Shoplifting under $200- 1st offense	60	52	35	**147**	0.2%
Drive while license revoked-1st offense	57	23	16	**96**	0.1%
Reckless driving	11	12	15	**38**	0.1%
Drive without license	5	3	7	**15**	0.0%

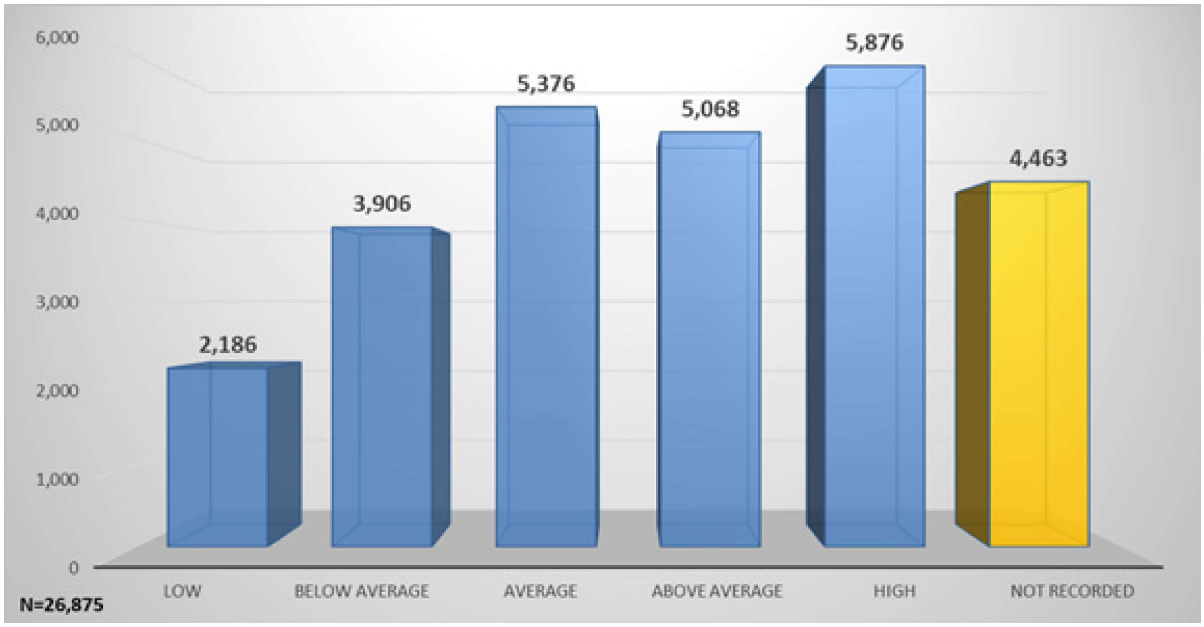
Source: Virginia Department of Criminal Justice Services, PTCC Case Management System. Virginia State Crime Commission staff analysis. Chart prepared by Virginia State Crime Commission staff.

Note: These numbers capture the number of placements where the offense listed is the sole charge.

Note: The above nine offenses comprised only 5.7% (4,247 of 74,740) of all pretrial services placements over a three-year time period (FY15-FY17). Additionally, while placements to pretrial services supervision have been increasing (as demonstrated in Appendix E), there has been a significant decrease in the number of pretrial services placements for several of these common, seemingly minor misdemeanor offenses.

APPENDIX G

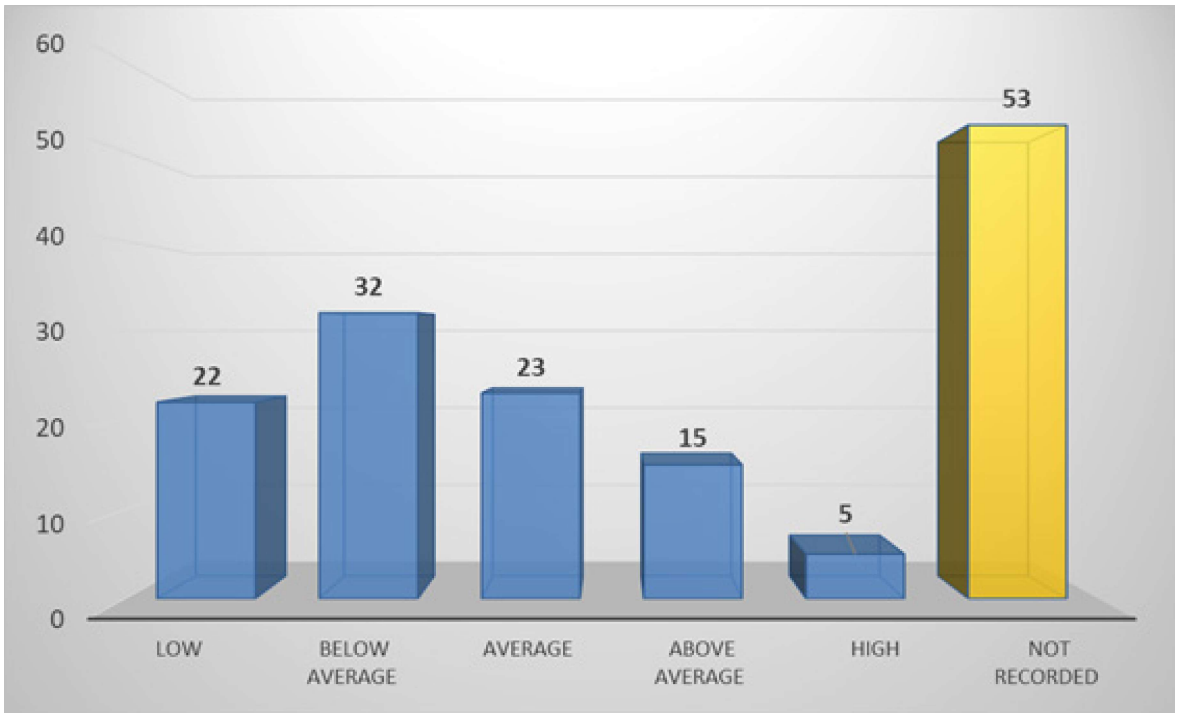
Total Pretrial Supervision Placements by Risk Level, FY17



Source: Virginia Department of Criminal Justice Services, PTCC Case Management System. Virginia State Crime Commission staff analysis. Chart prepared by Virginia State Crime Commission staff.

APPENDIX H

Total Pretrial Services Supervision Placements for Underage Possession of Alcohol by Risk Level FY15-FY17 (N=150)



Source: Virginia Department of Criminal Justice Services, PTCC Case Management System. Virginia State Crime Commission staff analysis. Chart prepared by Virginia State Crime Commission staff.

Endnotes

[1] The Executive Committee authorized this study based upon House Bills 774 and 776 (Delegate C. Todd Gilbert) which were referred to the Crime Commission by the House Courts of Justice Committee during the Regular Session of the 2016 General Assembly.
[2] *See* Va. Code § 19.2-152.2 (2018).
[3] Virginia Department of Criminal Justice Services. (2013, July 1, through 2014, June 30). *Comprehensive Community Corrections Act And Pretrial Services Act Report*. Available at https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/corrections/community-corrections-act-and-pretrial-services-act-report-fy-2014.pdf.
[4] Va. Code § 19.2-152.7 (2018).
[5] 2018 Va. Acts ch. 180, 407. Delegate C. Todd Gilbert introduced House Bill 996 and Senator Mark J. Peake introduced Senate Bill 783 during the Regular Session of the 2018 General Assembly.
[6] *See* Hoffman, N.G. UNCOPE. Available at http://www.evinceassessment.com/UNCOPE_for_web.pdf.
[7] National Association of Pretrial Services Agencies. (October 2004). *Standard 1.3. Standards on Pretrial Release, 3rd Ed.* Available at https://drive.google.com/file/d/0B1YIoljVNUF5NmJkY0wzRHR1Tmc/view.
[8] Va. Code § 19.2-152.2 *et al.* (2018).
[9] 1994 Special Session II, Va. Acts ch. 1, 2. The agencies and programs created include the Virginia Criminal Sentencing Commission, pretrial services agencies, detention and diversion center incarceration programs, a community-based corrections system for state-responsible offenders, community-based corrections programs for local-responsible offenders, and earned sentence credits.
[10] Virginia Department of Criminal Justice Services. (January 2018). *Community-Based Probation and Pretrial Services Administrative & Fiscal Agents and Localities Served*. Available at https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/corrections/community-based-probation-and-pretrial-services-map.pdf.
[11] Va. Code § 19.2-152.2 (2018). Pretrial services are generally available only to adult criminal defendants. Pretrial services are not available to adult defendants charged with a capital offense or to juvenile defendants, unless that juvenile has been transferred for trial as an adult.
[12] Va. Code § 19.2-152.4:3(A) (2018). *See also* Va. Code § 19.2-152.4 (2018).
[13] Va. Code § 19.2-152.4:3(A)(1) (2018).
[14] Va. Code § 19.2-152.4:3(A)(2) (2018).
[15] Va. Code § 19.2-152.4:3(A)(3) (2018).
[16] Va. Code § 19.2-152.4:3(B) (2018).
[17] Va. Code § 19.2-152.4:3(B)(2) (2018).
[18] Va. Code § 19.2-152.4:3(B)(5) (2018).
[19] Va. Code § 19.2-152.4:3(B)(6) (2018).
[20] A total of 88% (28 of 32) of directors responded to this survey. Although Culpeper County did not begin offering pretrial services until January 1, 2018, that agency also completed a survey; however, their survey response was not included in the response rate.
[21] Va. Code § 19.2-152.2 (2018). Per this same Code provision, localities receiving state reimbursement for construction of a local correctional facility must establish a pretrial services agency. *See* Va. Code § 53.1-82.1 (2018). Based on personal communications with DCJS, it was determined that state funding was previously provided for pretrial services agencies in relation to construction of the Central Virginia Regional Jail and Southwest Virginia Regional Jail; however, no pretrial services agencies are currently receiving such funding.
[22] Va. Code § 19.2-152.3 (2018).

[23] *See* Virginia Department of Criminal Justice Services. (February 2018). *Local Community-Based Probation and Pretrial Services Grant Application Guide for FY 2019 Continuation Funding.* Available at https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/grants/fy-2019-comprehensive-community-corrections-act-ccca-and-pretrial-services-act-psa/fy-2019-cccapsa-grant-guidelines.pdf.
[24] Va. Code § 19.2-152.6 (2018).
[25] Va. Code § 19.2-152.3 (2018).
[26] *Id. See also* Virginia Department of Criminal Justice Services. (2017, January 12). *Minimum Standards for Pretrial Services.* Available at https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/corrections/dcjs-minimum-standards-pretrial-services.pdf.
[27] Va. Code § 19.2-152.7 (2018).
[28] Virginia Department of Criminal Justice Services. (2011, March 18). *Key Definitions.* Available at https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/corrections/pretrial-key-definitions.pdf.
[29] *Id*.
[30] Va. Code §§ 19.2-11 and 19.2-129 (2018).
[31] Va. Code §§ 16.1-69.24 and 18.2-456 (2018).
[32] Va. Code § 19.2-128 (2018).
[33] Va. Code §§ 19.2-11 and 19.2-129 (2018).
[34] Va. Code §§ 16.1-69.24 and 18.2-456 (2018).
[35] Va. Code § 19.2-128 (2018).
[36] *See* Va. Code § 19.2-390 (2018).
[37] *See* Office of the Secretary of Public Safety and Homeland Security. (2017, October 15). *Report on the Offender Population Forecasts (FY2018 to FY2023).* Available at https://rga.lis.virginia.gov/Published/2017/RD375/PDF; Virginia Department of Criminal Justice Services. (2010). *Virginia's peculiar system of local and regional jails.* Available at https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/research/virginias-peculiar-system-local-and-regional-jails.pdf; Austin, J. Assessing and Managing Your Jail Population: A Toolkit For Practitioners. *The JFA Institute*. Available at http://www.ca-ilg.org/sites/main/files/file-attachments/jailassessmentoolkit10_31_12.pdf; Virginia Criminal Sentencing Commission. (2015, January 15). *Virginia's Offender Population Forecasts: Presentation to the House Appropriations Public Safety Subcommittee*. Available at http://hac.state.va.us/subcommittee/2015_Subcommittee/public_safety/files/01-15-15/Offender%20Forecasts.pdf.
[38] Compensation Board, LIDS- Average Monthly Population Reports. See Appendix A for total statewide jail population and number of defendants detained prior to trial by average monthly population, 2013-2017.
[39] *Id*.
[40] Figures for grant funding were provided by the Virginia Department of Criminal Justice Services.
[41] *Id.*
[42] Va. Code § 19.2-152.4:3(A)(2) (2018).
[43] Virginia Department of Criminal Justice Services. (2013, July 1, through 2014, June 30). *Comprehensive Community Corrections Act And Pretrial Services Act Report*, pp. 5, footnote 3. Available at https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/corrections/community-corrections-act-and-pretrial-services-act-report-fy-2014.pdf.
[44] Virginia Department of Criminal Justice Services. *CCCA-PSA –Pretrial Risk Assessment*. Available at DCJS website (2018, May 20): https://www.dcjs.virginia.gov/correctional-services/programs/comprehensive-community-corrections-act-ccca-pretrial-services-act/ccca-psa-pra.
[45] Va. Code § 19.2-152.3 (2018).

[46] Danner, M.J.E., VanNostrand, M., and Spruance, L.M. (November 2016). *Race and Gender Neutral Pretrial Risk Assessment, Release Recommendations, and Supervision: VPRAI and Praxis Revised*. Available at https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/corrections/race-and-gender-neutral-pretrial-risk-assessment-release-recommendations-and-supervision.pdf.

[47] *See* Virginia Department of Criminal Justice Services. *Legal and Evidence-Based Practices Random Agency Selections Handout.* Prior to September 2017, a total of 14 of the 32 pretrial services agencies were pilot programs for the VPRAI-Revised and Praxis.

[48] Several differences exist between the VPRAI-Revised and the VPRAI, including the following: (a) addition of the Praxis tool, (b) pretrial services officers no longer recommend monetary bail amounts, (c) instrument was re-validated to ensure against gender and racial predictive bias, (d) the number of risk levels increased from 5 to 6, (e) charge type risk factor was amended to "current charge is felony drug, felony theft or felony fraud", (f) "active community supervision" was added as a risk factor, (g) employment stability risk factor was amended to "unemployed at time of arrest", and (h) length at residence was removed as a risk factor. *See supra* note 46. *See also* Virginia Department of Criminal Justice Services. (2017, August 4). *Statewide Implementation of the Revised VPRAI and Praxis*.

[49] *See* Appendix B for the manual scoring sheet for the VPRAI-Revised and Praxis. The VPRAI-Revised score and Praxis recommendation are commonly generated via data entry into the Pretrial and Community Corrections Case Management System (PTCC).

[50] Virginia Department of Criminal Justice Services. (2017, August 1). *Virginia Pretrial Risk Assessment Instrument Instruction Manual*—Version 4, p. 15.

[51] Virginia Department of Criminal Justice Services. *CCCA-PSA –Pretrial Risk Assessment*. Available at DCJS website (2018, May 20): https://www.dcjs.virginia.gov/correctional-services/programs/comprehensive-community-corrections-act-ccca-pretrial-services-act/ccca-psa-pra.

[52] *See* Appendix C for the checklist for bail determinations.

[53] Va. Code § 19.2-121 (2018).

[54] *Id.*

[55] *See* Appendix D for a comparison of the VPRAI-Revised and bail determination checklist factors.

[56] *See* Va. Code §§ 19.2-152.4:3(A)(3) and 19.2-152.4:3(A)(4) (2018).

[57] *Id. See also* Va. Code § 19.2-123 (2018).

[58] Va. Code § 19.2-119 (2018).

[59] *Id.*

[60] Virginia Department of Criminal Justice Services. (2011, March 18). *Key Definitions*. Available at https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/corrections/pretrial-key-definitions.pdf.

[61] Terminology determined based upon personal communication with the Virginia Department of Criminal Justices Services. *See also supra* note 43. A pretrial investigation consists of "a face-to-face interview with the defendant, full criminal history, verification with community contacts, administration of the Virginia Pretrial Risk Assessment Instrument (VPRAI), and a bond recommendation."

[62] *See* Appendix E for pretrial services placement types, FY15-FY17.

[63] *See* Appendix F for pretrial services placements for specified misdemeanors, FY15-FY17.

[64] *See* VanNostrand, M., & Keebler, G. (2009). *Pretrial Risk Assessment in the Federal Court.* U.S. Department of Justice. Available at https://www.pretrial.org/download/risk-assessment/Pretrial%20Risk%20Assessment%20in%20the%20Federal%20Court%20Final%20Report%20(2009).pdf; Cohen, T.H., Cook, D., Lowenkamp, C.T. (2016). The supervision of low-risk federal offenders: How the Low-Risk Policy Has Changed Federal Supervision Practices Without Compromising Community Safety. *Federal Probation*, 80(1), 3-11. Available at http://www.uscourts.gov/sites/default/files/80_1_1_0.pdf.

[65] *See* Appendix G for a breakdown of FY17 pretrial services placements by risk level.
[66] *See* Appendix H for total underage possession of alcohol placements by risk level, FY15-FY17.
[67] Va. Code §§ 19.2-152.2 and 19.2-152.4:3 (2018). *See also* Va. Code §§ 19.2-119 through 19.2-134 (2018).
[68] Va. Code § 19.2-303 (2018).
[69] Va. Code § 19.2-303.3(A) (2018).
[70] Virginia Department of Criminal Justice Services, personal communication, November 13, 2017.
[71] Virginia Department of Criminal Justice Services. (2017, January 12). Standard § 3.8. *Minimum Standards for Pretrial Services*. Available at https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/corrections/dcjs-minimum-standards-pretrial-services.pdf.
[72] Va. Code § 19.2-123(A)(4) (2018).
[73] Virginia Department of Criminal Justice Services, PTCC Case Management System. Note that 241 cases did not have a bond type recorded in PTCC for FY17.
[74] *See* Va. Code § 19.2-159 (2018) regarding the determination of indigency.
[75] Virginia Department of Criminal Justice Services. (2017, January 12). Standard § 3.5(A). *Minimum Standards for Pretrial Services*. Available at https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/corrections/dcjs-minimum-standards-pretrial-services.pdf.
[76] Virginia Department of Criminal Justice Services. (2017, January 12). *Minimum Standards for Pretrial Services*. Available at https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/corrections/dcjs-minimum-standards-pretrial-services.pdf.
[77] *See* Va. Code § 19.2-152.2 (2018).
[78] Virginia Department of Criminal Justice Services. (2013, July 1, through 2014, June 30). *Comprehensive Community Corrections Act And Pretrial Services Act Report.* Available at https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/corrections/community-corrections-act-and-pretrial-services-act-report-fy-2014.pdf.
[79] Va. Code § 19.2-152.7 (2018).
[80] 2018 Va. Acts ch. 180, 407.
[81] *See* Hoffman, N.G. *UNCOPE.* Available at http://www.evinceassessment.com/UNCOPE_for_web.pdf.