

Pretrial Services in Virginia

November 29, 2017



Overview

- Background
- Current Status
- Questions Addressed
- Summary of Findings
- Recommendations

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Background

- During the Regular Session of the 2016 General Assembly, Delegate Todd Gilbert introduced House Bills 774 and 776.
- Both bills were referred to the Crime Commission by the House Courts of Justice Committee.
- In 2016, the Executive Committee authorized a broad review of pretrial services in Virginia.
- Due to the voluminous amount of information, the study was extended an additional year.

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Background

- Members requested staff to examine:
 - Statutory authority governing pretrial services;
 - Whether pretrial services agencies are being overused in supervising low-risk offenders;
 - Use of secured bonds in conjunction with pretrial services;
 - o Placement of indigent defendants on supervision;
 - o Fees associated with pretrial supervision; and,
 - Whether a difference exists between jurisdictions with and without pretrial services.

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Background

- Staff completed the following activities:
 - Collected relevant literature and data;
 - Reviewed pretrial statutes in Virginia;
 - Examined pretrial systems in other states;
 - Conducted informal surveys of judges, regional jails, sheriffs, prosecutors, and defense counsel;
 - Surveyed pretrial services agencies;
 - 88% (28 of 32) of directors responded.
 - o Met with stakeholders; and,
 - Attended local, state, and national trainings.
 - Conducted field visits and court observations.

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Background

- Staff focused the study on the statutory mission of pretrial services agencies and the process by which defendants are investigated, assessed, and placed on pretrial supervision.
- Staff did not examine specific elements of supervision activities or practices once a defendant had been placed on pretrial supervision.

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Background

- This study did not focus on monetary bail.
- A national discussion is occurring in regard to the use of monetary bail, including:
 - The effects on persons who remain in jail on low bonds without the ability or means to post the bond;
 - o Alternatives to detaining, such as pretrial services; and,
 - o Lawsuits challenging certain monetary bail practices.
- A separate study would need to be conducted to fully examine the questions, issues, and policies surrounding monetary bonds and bail reform.

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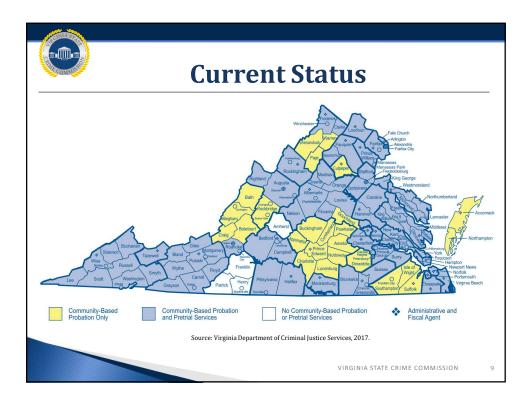
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Current Status

- Pretrial services agencies in Virginia are governed by the Pretrial Services Act.
 - \circ Va. Code § § 19.2-152.2 through 19.2-152.7
- There are currently 32 pretrial agencies serving 74% (99 of 134) of Virginia's localities.
- Pretrial service agencies are <u>locality-based</u>.
 - Any locality may establish or withdraw from the use of a pretrial services agency.
 - Localities receiving state reimbursement for construction of a local correctional facility must establish a pretrial services agency.

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- DCJS prescribes standards and administers grants to localities to appropriate general funds designated to support the Pretrial Services Act.
- Pretrial agencies received the following state funding over the past 3 grant cycles:
 - o FY17: \$10,122,834
 - o FY16: \$9,193,817
 - o FY15: \$9,794,374
- Agencies may also receive local, federal, or other sources of funding.

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- The Governor's proposed budget in FY17-18 included \$1.5M and \$2M, respectively, in additional funding for localities to develop pretrial services in their jurisdictions.
 - Due to the collections shortfall, these amounts were not included in the final budget.
- One of the localities set to receive a portion of this funding, Culpeper County, voted to create a pretrial services agency using local funding.
 - o Implementation begins in January 2018.

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Current Status

- Pretrial services agencies are housed in a variety of manners, including:
 - o 23 with Community Corrections Programs;
 - o 6 with Sheriffs/Jails; and,
 - o 1 each with a Court, ASAP, and as a non-profit.
- Pretrial supervision is <u>not</u> probation.
 - The defendant has not been convicted of a crime and is presumed to be innocent.

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- The primary purpose of pretrial services is to:
 - Provide information to assist judicial officers in making bail determinations; and,
 - Supervise defendants to monitor compliance with bail conditions.
- Pretrial officers are statutorily required to provide a report with recommendations to the court.
 - The information in the report is based upon an interview with the defendant, a review of the defendant's criminal history, verification of community contacts, and completion of a risk assessment.

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Current Status

- Virginia has been a leader in the development and use of a statewide validated risk assessment.
- Virginia's risk assessment instrument has been implemented statewide in Maine, as well as certain localities in the following states:
 - o Alabama
- o Michigan
- California
- North Carolina
- o Florida
- o Ohio
- o Illinois
- o Oregon
- o Louisiana
- South Carolina

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- During the December 2016 Crime Commission meeting, DCJS provided a presentation to members on pretrial services in Virginia.
 - At that time numerous changes were underway to pretrial services across the Commonwealth.
- Since that presentation, changes have been implemented which dramatically impact how pretrial services are being administered.

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Current Status

Changes to pretrial services in 2017 include:

- <u>January</u>: DCJS released revised minimum standards for pretrial services programs.
- <u>May</u>: DCJS hosted a pretrial summit for stakeholders.
- <u>June</u>: Magistrates included pretrial services as part of their regional training program.
- <u>August</u>: District Court judges were given a presentation on pretrial services.

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- In September 2017, the Virginia Pretrial Risk Assessment Instrument – Revised (VPRAI-R) and a newly created supervision tool (Praxis) were implemented statewide.
 - <u>VPRAI-R</u>: a validated instrument with questions that are weighted to generate a risk level score.
 - <u>Praxis</u>: a recommendation tool that determines the supervision level based on the VPRAI-R risk score and the current charge.

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Current Status

- The VPRAI-R is used to identify the likelihood of failure to appear and danger to the community pending trial.
- What is new about the VPRAI-R?
 - Addition of the Praxis tool (supervision matrix);
 - o "Current charge" changed to felony drug, theft or fraud charge;
 - o "History of violence" changed to "two or more violent convictions";
 - o "Employment stability" changed to "unemployed at time of arrest";
 - o Length at residence was removed as a risk factor;
 - Increased from 5 to 6 total risk levels;
 - o Re-validated to ensure race and gender neutrality; and,
 - o Pretrial officers no longer recommend monetary bond amounts.

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VPRAI-R and Praxis hypothetical—Risk factors:

Charges: felony possession of cocaine and petit larceny

- No active supervision;
- Current charge is a felony drug offense;
- No pending charges at time of arrest;
- Prior DUI 1st offense conviction as an adult 5 years ago;
- One prior failure to appear conviction 4 years ago;
- No prior violent convictions;
- Unemployed at time of arrest; and,
- Admits regular marijuana use to the pretrial officer.

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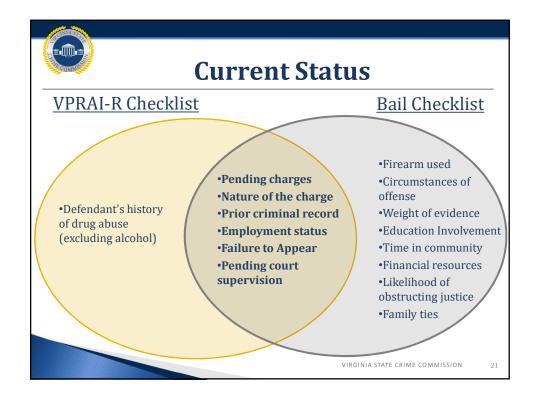


Current Status

VPRAI-R and Praxis hypothetical scenario—Praxis grid:

- Final score on the VPRAI-R is 8 points.
 - o Risk Level 4.
- The Praxis applies to the pending charges.
 - o Recommends release with pretrial supervision.
 - Level II supervision includes:
 - Court date reminder for every court date.
 - Criminal history check before court date.
 - Face-to-face contact every other week.
 - Special conditions compliance verification.

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How are defendants placed on pretrial supervision?

- <u>Direct placement</u>: defendant is placed on pretrial supervision by a judicial officer without the benefit of a pretrial investigation.
- <u>Placement made with benefit of VPRAI-R</u>: defendant is placed on pretrial supervision by the court following an investigation.
 - Investigation: a report that includes a face-to-face interview with the defendant, full criminal history, verification with community contacts, administration of the VPRAI-R, and a bond recommendation.

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Placement and investigation data show:

- The number of investigations have slightly decreased, while placements have steadily increased.
- Most placements are ordered directly by judges or magistrates without the benefit of an investigation.
- Many investigations do not result in a placement.
- The disbursement of total placements by risk level cannot be fully assessed due to the large number that were not recorded.

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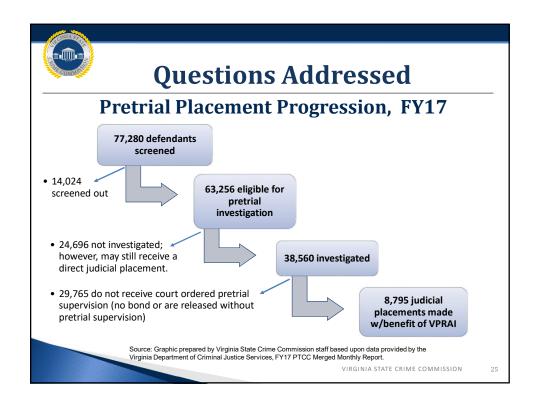
Questions Addressed

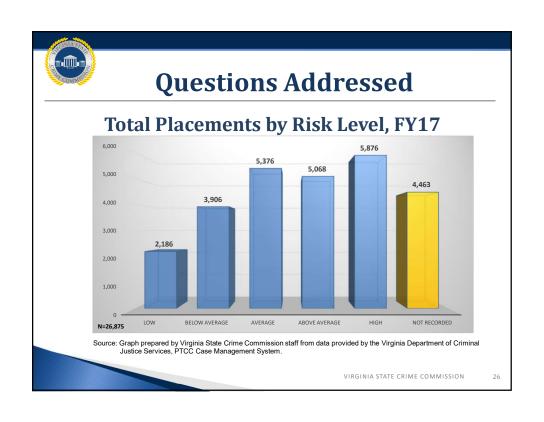
Pretrial Placement Types, FY15-17

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: Table prepared by Virginia State Crime Commission staff from data provided by the Virginia Department of Criminal Justice Services, PTCC Case Management System.

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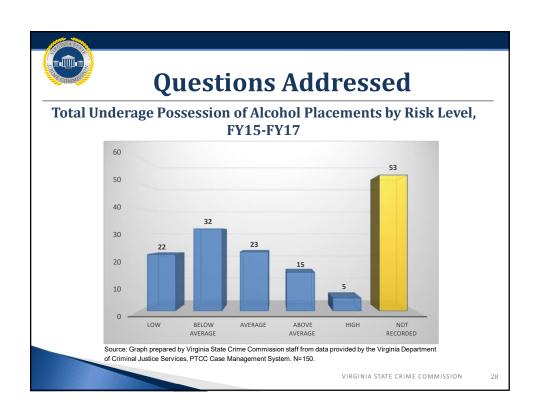


Are pretrial services agencies being overused to supervise defendants for low-level offenses?

- A detailed PTCC case review indicated that very few defendants are on pretrial supervision for common, seemingly minor misdemeanor offenses.
 - Only 0.2% (150 of 74,740) of statewide placements between FY15-FY17 were for underage possession of alcohol.
 - Certain localities were responsible for higher numbers of these placements: Virginia Beach (25), Rockingham (22), Charlottesville (18), and Chesterfield (14).

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The following offenses comprise only 5.8% of pretrial placements across 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: Table prepared by Virginia State Crime Commission staff from data provided by the Virginia Department of Criminal Justice Services PTCC Case Management System. Note: These numbers capture the number of placements where the offense listed is the <u>sole</u> charge.

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Questions Addressed

Important factors regarding placements:

- Research has consistently cited the detrimental impacts of over-supervising low level defendants.¹
- A minor charge does not mean low risk; multiple aggravating factors can be present, such as substance abuse, prior criminal history, FTA, etc.
- The conditions of bond are set by judicial officers.
 - Agencies <u>must</u> supervise these defendants.
 - Pretrial officers cannot add or remove conditions.

¹ See, for example, VanNostrand, M., & Keebler, G. (2009). Pretrial risk assessment in the federal court. U.S. Department of Justice; 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.

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Are defendant's being ordered to post a bond <u>and</u> be under pretrial supervision?

- Most pretrial placements in FY17 also had a secured bond ordered:*
 - o 62% (16,514 of 26,634) secured bond; and,
 - o 38% (10,120 of 26,634) PR/unsecured bond.

Source: Virginia Department of Criminal Justice Services, PTCC Case Management System * Note: 241 cases did not have a bond type recorded in PTCC for FY17.

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Questions Addressed

Are pretrial supervision programs being used to supervise indigent defendants?

- Pretrial agencies do not track whether a defendant has been determined to be indigent.
 - o PTCC does not include a field to capture this data.
 - During courtroom observations by staff, many defendants placed on pretrial supervision also qualified for courtappointed counsel.
- Some pretrial services agencies assist with completion of the financial statement-eligibility determination form for indigent defendants.

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Are defendants charged a pretrial supervision fee?

- DCJS minimum standards for pretrial services <u>prohibit</u> the collection of fees from defendants for the provision of pretrial services.
 - o This includes supervision fees, drug tests, etc.
- Defendants may be responsible for paying other monitoring conditions ordered by the court.

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Questions Addressed

Are defendants charged other fees prior to trial?

- The defendant is responsible for payment of other monitoring services, such as GPS and SCRAM, which can be ordered as a condition of bond.
 - These services can range in cost from \$3-\$15 per day.
 - The availability, vendor, and fees for these services vary across the Commonwealth.
- No statewide regulations exist for the use of these electronic devices on a pretrial basis.

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Are other fees charged to defendants prior to trial?

- While pretrial services agencies do not charge a fee for drug testing, some localities without pretrial services are charging defendants for drug and alcohol testing as a condition of pretrial release.
 - Each drug and alcohol test costs the defendant \$25.
 - Defendants may be required to take multiple drug tests per week until their case is heard, which could last for several months.

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Questions Addressed

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

- There were 67 correctional facilities in May 2017.*
- Of the 67 correctional facilities in May 2017:
 - o 48 serve areas with pretrial services;
 - o 16 serve areas without pretrial services;
 - $\circ\;$ 3 serve areas with and without pretrial services.
- Most jails serve areas providing pretrial services.
- The total pretrial population varied widely from jail-to-jail, ranging from 11%-50%.*

* Source: Compensation Board, LIDS- Average Monthly Population Reports.

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

- While the total statewide jail population has remained fairly steady, the total pretrial population has gradually increased.*
- In May 2017, the most serious offense of the average monthly pretrial population was as follows:
 - o 60% felony offense;
 - o 35% misdemeanor offense; and,
 - 5% ordinance violation.*

* Source: Compensation Board, LIDS- Average Monthly Population Reports

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Questions Addressed

Total Statewide Jail Population and Pretrial Population, Average Monthly Population, 2013-2017

Average Monthly Population	Total Statewide Jail Population	Total Pretrial Population	Percentage Pretrial 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.

Note: Pretrial population figures exclude pretrial probation, parole and ordinance violators.



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

- It is extremely difficult to isolate the independent impact of pretrial services on jail populations.
- Other factors that must be considered include:
 - Population, demographics, and arrest trends of the locality and surrounding localities;
 - o Closure or opening of prisons and jails;
 - Average length of stay and admission rates;
 - Socioeconomic conditions/unemployment rates; and,
 - Seasonal trends.

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Questions Addressed

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

- DCJS tracks appearance rates, public safety rates, and compliance rates to measure success.
- The definitions of these terms are limited, because success is based specifically on the defendant reaching final disposition without any of the following events occurring:
 - o A capias issued for failure to appear;
 - o Bail revoked due to a new arrest or technical violation; or,
 - Defendant removed from supervision by the Court.
- These limited definitions fail to provide a complete picture of the statewide success rates of pretrial services.

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Are statewide success rates available for defendants not on pretrial supervision?

- Staff found that there was no reliable source of statewide aggregate data for such a comparison.
- Tracking failure to appear rates is further complicated by other factors, including:
 - Multiple means by which failure to appear may be charged (*capias*/show cause; failure to appear statute; or, contempt of court); and,
 - Courts may dismiss such charges when a defendant ultimately appears for trial.

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Summary of Findings

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- Overall, broad support exists amongst many stakeholders for the use of pretrial services.
- Staff identified multiple concerns relating to the administration of pretrial programs that need to be addressed.
- Pretrial has been in existence for over 20 years in Virginia, yet confusion remains about what pretrial services are and what role they serve in the criminal justice system.

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Summary of Findings

- Pretrial services agencies are locality-based and therefore practices and resources vary greatly.
 - The overall performance of pretrial services across the Commonwealth is difficult to assess.
 - o First appearance procedures vary significantly by locality.
- Anecdotal evidence exists that some agencies are high functioning while others are not.
 - Virginia Code requires DCJS to establish standards and monitor the compliance of agencies; however no formal auditing or policy review process exists to measure compliance with these standards.

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- A high number of defendants are placed directly on pretrial supervision by judicial officers without an investigation.
 - Magistrates generally do not receive any information from pretrial services agencies.
 - o Information provided to judges varies by locality.
- A high number of investigations are conducted that do not result in pretrial placements.
 - Allocation of resources vary by agency due to factors such as overall funding, staffing, and local practices.

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Summary of Findings

- There are no regular or consistent reviews of pretrial jail populations by pretrial agencies.
 - DCJS minimum standards require each pretrial agency to develop policies and procedures from the initial appearance through adjudication for defendants who remain in jail.
- Based upon survey responses and field visits, the frequency of reviews of the jail population varies greatly by agency.

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- A revised risk assessment and new supervision matrix were implemented statewide in September 2017.
 - o Provides more objective risk scoring factors.
 - o "History of drug abuse" remains subjective.
 - No guidance exists for the use of UNCOPE as a substance use screening tool, which may impact the defendant's risk level on the VPRAI-R.
 - o Affords for the use of differential supervision.
- Staff cannot fully assess the effectiveness and impact of these significant statewide changes.

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Summary of Findings

- DCJS does not use a funding formula to determine disbursement amounts of grant funds to pretrial services agencies.
 - Multiple pretrial services agencies have expressed frustration that funding is not allocated based upon needs.
 - Local agencies consistently noted that staffing issues greatly impact their ability to conduct investigations and manage caseloads.

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- The PTCC case management system is antiquated.
 - Certain data is not readily accessible to individual agencies without the assistance of DCJS.
- During staff analysis of statewide pretrial data, several concerns were identified:
 - o Numerous fields in PTCC are not completed.
 - o Definitions are not consistently applied by agencies.
 - Regular compliance monitoring does not exist to readily identify and correct data entry errors or omissions, which impacts the integrity of the data.

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Summary of Findings

- Staff attended various DCJS trainings on pretrial services and the VPRAI-R and Praxis implementation and had concerns about the uniformity of the instruction provided.
- Staff surveyed pretrial services agencies and found that comments on the quality of training were mixed; however, there was a general agreement that the quality of training has improved in recent years.

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- Recent efforts have been made by DCJS and others to educate stakeholders on the role and purpose of pretrial services agencies, however:
 - Prior to August 2017, there had not been a pretrial presentation to sitting judges in at least 5 years;
 - The last pretrial presentation at a Commonwealth's Attorneys' statewide conference was in April 2013; and,
 - There has not been a pretrial presentation at an IDC statewide conference in at least 5 years.

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Recommendations

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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; and,
- Whether each pretrial services agency is in compliance with standards set forth by DCJS.
 - The report should also include plans to address any non-compliance issues within the agency.

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Recommendations

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 (cont.):

- Requires DCJS to annually assess each individual pretrial agency;
- Requires each individual agency to assess itself;
- Provides transparency on the performance of each agency to the public and local and state officials;
- Makes available insight to pretrial agencies on how other agencies are performing across the state; and,
- Offers a picture of statewide status of pretrial services.

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

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

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Recommendations

Recommendation #3: DCJS should convene a group of stakeholders, including local pretrial directors, pretrial officers, representatives from the Virginia Community Criminal Justice Association (VCCJA), OES, Magistrate Services, CASC, IDC, and any other interested parties, to develop specific recommendations to improve pretrial services.

 A report should be provided to the Crime Commission by November 1, 2018.

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Recommendation #3: The DCJS stakeholder group should examine the following topics, including:

- Providing information at the magistrate level;
- Implementing or developing a static risk assessment instrument to be used at the magistrate level;
- Developing strategies to ensure that investigations are completed and information is provided to the courts;
- Identifying staffing and resource needs of local pretrial agencies, as well as the needs of DCJS to provide adequate support to those local pretrial agencies.

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Recommendations

Recommendation #3: The DCJS stakeholder group should examine the following topics, including:

- Continuing to educate stakeholders on the role, duties, and appropriate uses of pretrial services agencies;
- Reviewing the findings of the needs assessment;
- Developing guidelines for the use of the UNCOPE (substance use screening tool);
- Identify methods to better define and track <u>statewide</u> appearance, public safety, and success rates; and,
- Any other improvements to pretrial services.

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Recommendation #4: DCJS should monitor the implementation of the VPRAI-R 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.

• A report should be provided to the Crime Commission by November 1, 2018.

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Recommendations

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

- The current level funding disbursement method may not reflect the best use of resources.
- A report should be provided to the Crime Commission by November 1, 2018.

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

- Numerous survey respondents noted that the PTCC is antiquated and difficult to navigate.
 - o PTCC was implemented in 2000.
- A report should be provided to the Crime Commission by November 1, 2018.

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Recommendations

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; and,
- Necessary data is entered consistently and uniformly.

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