Virginia State Crime Commission

Sex Offender Task Force Report

This study has been funded in part by a federal Criminal Justice Systems Improvement grant authorized by the Virginia Department of Criminal Justice Services, grant #06-A4923AD04.

VIRGINIA STATE
CRIME COMMISSION

SEX OFFENDER TASK FORCE REPORT

DECEMBER 2005

COMMONWEALTH of VIRGINIA

Virginia State Crime Commission

Senator Kenneth W. Stolle, *Chairman*
Delegate David B. Albo, *Vice Chairman*

Executive Director
Kimberly J. Hamilton

Director of Legal Affairs
G. Stewart Petoe

General Assembly Building, Suite 915
910 Capitol Street
Richmond, Virginia 23219

804-225-4534
Fax: 804-786-7872

December 14, 2005

To: The Honorable Mark Warner, Governor of Virginia
and
Members of the General Assembly

The *Code of Virginia* § 30-156 authorizes the Virginia State Crime Commission to study, report and make recommendations on all areas of public safety and protection. Additionally, the Commission is to study matters "including apprehension, trial and punishment of criminal offenders." Section 30-158(3) provides the Commission the power to "conduct studies and gather information and data in order to accomplish its purposes as set forth in § 30-156. . .and formulate its recommendations to the Governor and the General Assembly."

Under this authority, the Virginia State Crime Commission formed a Sex Offender Task Force, at the written request of Delegate Robert F. McDonnell, to study possible policy changes to improve the registration, commitment and monitoring of sex offenders in Virginia.

Enclosed for your review and consideration is the Sex Offender Task Force Report which has been prepared in response to this request. The Commission received assistance from all affected agencies and gratefully acknowledges their input into this report.

Respectfully submitted,

Senator Kenneth W. Stolle
Chairman

VIRGINIA STATE CRIME COMMISSION MEMBERSHIP

CHAIRMAN
Senator Kenneth W. Stolle

VICE-CHAIRMAN
Delegate David B. Albo

MEMBERS FROM THE HOUSE OF DELEGATES
Delegate Robert B. Bell
Delegate Terry G. Kilgore
Delegate Robert F. McDonnell
Delegate Kenneth R. Melvin
Delegate Brian J. Moran

MEMBERS FROM THE SENATE
Senator Janet D. Howell
Senator Thomas K. Norment, Jr.

GUBERNATORIAL APPOINTMENTS
Mr. Glenn R. Croshaw
Colonel W. Gerald Massengill
The Honorable William G. Petty

OFFICE OF THE ATTORNEY GENERAL
The Honorable Jerry W. Kilgore

VIRGINIA STATE CRIME COMMISSION STAFF

Kimberly J. Hamilton
Executive Director
G. Stewart Petoe
Director of Legal Services
Christina M. Barnes
Legislative Policy Analyst
Stephen W. Bowman
Senior Staff Attorney/Methodologist
Thomas E. Cleator
Staff Attorney
Kristen J. Howard
Legislative Policy Analyst
Jaime H. Hoyle
Senior Staff Attorney
Sylvia A. Reid
Office Manager
Stephen D. Benjamin
Special Counsel

SEX OFFENDER TASK FORCE MEMBERSHIP

CO-CHAIRMEN

Delegate David B. Albo

Delegate Robert F. McDonnell

MEMBERS FROM THE HOUSE OF DELEGATES

Delegate Robert B. Bell

Delegate H. Morgan Griffith

Delegate Phillip A. Hamilton

Delegate Terry G. Kilgore

Delegate Beverly J. Sherwood

STATE AGENCY REPRESENTATIVES

Mr. Gene Johnson
Director, Department of Corrections

The Honorable John Marshall
Secretary of Public Safety

Mr. Robert Mathieson
Chief Deputy Director, Department of Criminal Justice Services

Dr. James Reinhard
Commissioner, Department of Mental Health, Mental Retardation & Substance Abuse Services

Mr. Richard L. Savage, III
Chief Counsel, Attorney General's Office

VIRGINIA ASSOCIATION OF COMMONWEALTH ATTORNEYS

The Honorable Richard E. Trodden
Arlington County

MEMBERS FROM THE SENATE

Senator Janet D. Howell

Senator Kenneth W. Stolle

LAW ENFORCEMENT COMMUNITY

Sheriff Mike Brown
Bedford County Sheriff's Office

Colonel W. Steven Flaherty
Superintendent, Virginia State Police

Colonel W. Gerald Massengill
Interim Director, Department of Game & Inland Fisheries

Deputy Chief Greg Mullin
Virginia Beach Police Department

VIRGINIA CITIZENS

Mr. Paul Martin Andrews

Mr. Glenn R. Croshaw

Ms. Wendy S. McClellan

William J. Stejskal, Ph.D.

SEX OFFENDER TASK FORCE AGENCY STAFF

ADDITIONAL AGENCY STAFF

Mr. Craig M. Burns
Legislative Fiscal Analyst, House Appropriations Committee

Ms. Meredith Farrar-Owens
Deputy Director, Virginia Criminal Sentencing Commission

Ms. Jescey D. French
Senior Attorney, Division of Legislative Services

Mr. Dick Hickman
Deputy Staff Director, Senate Finance Committee

Ms. Robin L. Hulbert
Mental Health Program Director, Virginia Department of Corrections

Captain Robert F. Kemmler
Richmond Division, Virginia State Police

Rick Kern, Ph.D.
Executive Director, Virginia Criminal Sentencing Commission

Ms. Pam Sargent
Deputy Attorney General, Attorney General's Office

Lieutenant Tom Turner
Assistant Criminal Justice Information Systems Officer, Virginia State Police

Steven C. Wolfe, Ph.D.
Director, Sexual Violent Predator Services, Office of Quality Management, Department of Mental Health, Mental Retardation and Substance Abuse Services

TABLE OF CONTENTS

CHAPTER 1:
INTRODUCTION & METHODOLOGY

A. Background 1
B. Methodology 1

CHAPTER 2:
SEX OFFENDER RECIDIVISM

A. Introduction 4
B. Sex Offender Recidivism 8
C. Sentencing Practices and Short-term Recidivism 19

CHAPTER 3:
SEX OFFENDER REGISTRATION

A. History of Sex Offender Registration 22
B. History of Virginia's Sex Offender and Crimes Against Minors Registry 26
C. Court Challenges 29
D. Virginia's Current Sex Offender and Crimes Against Minors Registry Act 31
E. Other States' Registration Requirements 41
F. Profile of Virginia's Sex Offenders 43
G. Problems with Virginia's Sex Offender and Crimes Against Minors Registry 46
H. Proposed Federal Legislation 55

CHAPTER 4:
CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS

A. Background 58
B. Virginia's Sexually Violent Predator Law And Process 59
C. Other States' Laws and Processes for SVP Involuntary Civil Commitment 63
D. Screening and Assessment of SVPs 67
E. Areas to Address in Sex Offender Risk Assessment 70
F. Common Measures Used with Adult Sex Offenders 71
G. Actuarial Measures 73
H. Rapid Risk Assessment of Sex Offender Recidivism Instrument 75
I. Static-99 Instrument 75
J. Profile of Virginia's Civil Commitment Process 77
K. Virginia's Sexually Violent Predator Program 81
L. Court Challenges 84

TABLE OF CONTENTS (CONTINUED)

CHAPTER 5:
RECOMMENDATIONS & COSTS
PART I: RECOMMENDATIONS
A. Enhanced Penalty Recommendations 86
B. Sex Offender Registry Recommendations 87
C. Civil Commitment of Sexually Violent Predators Recommendations 96
PART II: COSTS FOR RECOMMENDATIONS 98

ACKNOWLEDGEMENTS 99

REFERENCES

ATTACHMENTS:
ATTACHMENT 1:
Letter Requesting Establishment of Sex Offender Task Force

ATTACHMENT 2:
Sex Offender Task Force Sub-Committee Membership

ATTACHMENT 3:
Summary of School Notification

ATTACHMENT 4:
Analysis of Other States' SVP Laws

ATTACHMENT 5:
RRASOR and Static-99

ATTACHMENT 6:
Proposed Legislation

ATTACHMENT 7:
Costs for Legislative Proposals

CHAPTER 1:

INTRODUCTION & METHODOLOGY

CHAPTER 1: INTRODUCTION & METHODOLOGY

A. BACKGROUND

Following a series of national incidents involving sex offenders and the deaths of children, in May 2005, Delegate Robert F. McDonnell requested the Virginia State Crime Commission to examine possible policy changes to improve the registration, commitment and monitoring of sex offenders in Virginia. Specifically, the letter requested the Crime Commission appoint a Task Force to study the following issues regarding Virginia's Sex Offender and Crimes Against Minors Registry ("Sex Offender Registry"):

(i) Completeness of records for each violation;
(ii) Compliance with the Registry;
(iii) *Code of Virginia* provisions for notification requirements; and,
(iv) Mechanisms to ensure public and law enforcement notification of locations for all registered offenders *(Attachment 1)*.

Crime Commission Chairman, Senator Kenneth W. Stolle, formed a 23-person statewide Sex Offender Task Force of experts to assist the Commission in examining the study issues. Senator Stolle also appointed Delegate Robert F. McDonnell and Delegate David B. Albo to co-chair the Task Force. The Task Force was composed of legislators from the General Assembly, in addition to, representatives from the victim/witness community, the mental health community, the Office of the Attorney General of Virginia, the Virginia Association of Commonwealth's Attorneys, law enforcement and state agency directors overseeing programs and services impacting sex offenders.

To efficiently handle the magnitude of information, the Sex Offender Task Force divided into two subcommittees: The Sex Offender Civil Commitment and Probation Reform Sub-Committee and the Sex Offender Registry and Sentencing Reform Sub-Committee. The Sub-committees met on September 22, 2005, and the full Sex Offender Task Force convened on four occasions: June 7, 2005; September 22, 2005; October 25, 2005; and, November 30, 2005 (*Attachment 2)*.

B. METHODOLOGY

The Crime Commission, with assistance from the Virginia Criminal Sentencing Commission, utilized multiple research methodologies to address the study mandate. First, staff conducted a statutory review of Virginia's sex offenses and sentencing ranges and practices. Second, staff conducted a literature review of studies related to

the nature of sex offenses and recidivism. Third, with this background, staff conducted a recidivism analysis of released sex offenders from Virginia to determine how they compare with national and international sex offender recidivism rates. Additionally, staff analyzed recidivism rates across the various sex offenses. To conduct these analyses, staff examined sex offenders released from incarceration in Virginia, as well as, those released directly into the Virginia communities without prison or jail time from fiscal year 1998-2000. For each of these released offenders, national and Virginia criminal histories, arrest and conviction data were reviewed.

In addition to a thorough examination of sex offender recidivism in Virginia, staff examined Virginia's Sex Offender Registry. First, Virginia's Sex Offender Registry was analyzed for accuracy, completeness and rate of compliance. To undertake this analysis, the Crime Commission received the Sex Offender Registry database for May 20, 2005 from the Virginia State Police. Second, staff conducted a legal analysis of Sex Offender Registry case law. Third, staff conducted a statutory analysis of Virginia's sex offender registry laws, sex offender registry laws in each of the other 49 states, federal statutes, as well as any pending federal legislation. Fourth, staff formed a Workgroup to help identify problems with Virginia's Sex Offender Registry and website. To assist the Workgroup and identify areas for improvement, staff studied the sex offender registry websites in each of the 49 other states, and specifically looked at the extent of public notification and any additional mandatory information included on each sex offender in each state. Fifth, staff received the Sex Offender Registry public notification database to determine the extent to which schools take advantage of the voluntary automatic receipt of sex offender registration information.

Furthermore, staff analyzed the laws and procedures for the identification and assessment of sex offenders eligible for involuntary civil commitment as Sexually Violent Predators (SVPs). First, staff conducted a literature review of the history and nature of involuntary civil commitment of SVPs, as well as the procedures, instruments and assessment approaches used for the assessment of SVPs. Second, staff conducted a legal analysis of case law related to civil commitment. Third, a statutory analysis of involuntary civil commitment of SVP laws in Virginia and throughout the country was conducted. Fourth, to determine the adequacy of Virginia's involuntary civil commitment process and screening methods for SVPs, staff examined the civil commitment screening results for SVPs from April 1, 2003 to April 1, 2004. Finally, to evaluate the adequacy of the Rapid Risk Assessment for Sex Offender Recidivism instrument (RRASOR) as an assessment tool for determining SVP eligibility, the Crime Commission contracted with two licensed Sex Offender Treatment Providers (SOTPs) to compare actuarial instruments. The SOTPs applied the Static-99 actuarial instrument to 377 sex offender files obtained from the Department of Corrections (DOC) to determine if it was a more appropriate measure with which to determine the potential of sexual offenders to recidivate.

This report will present the data analyses and recommendations of the Task Force which were recommended at its final meeting on November 30, 2005, and approved by the Virginia State Crime Commission at its December 14, 2005 meeting. Chapter Two will present issues related to recidivism. Chapter Three will provide a history of sex offender registries and provide an explanation of the structure of Virginia's Registry and the problems identified by the Task Force. Chapter Four will examine Civil Commitment issues and finally, Chapter Five will present the approved recommendations.

CHAPTER 2:

SEX OFFENDER RECIDIVISM

CHAPTER 2: SEX OFFENDER RECIDIVISM

A. INTRODUCTION

Staff utilized multiple methodologies to study the issues surrounding Virginia's Sex Offender Registry. Before recommendations could be made to improve the adequacy and efficiency of the registration procedures for sex offenders and the involuntary civil commitment process for SVPs, an examination of the mechanisms by which Virginia's penal system handles sex offenders was required. Therefore, staff reviewed the *Code of Virginia* to identify the current offenses, criminal penalties and sentencing practices for serious sex offenses in the Commonwealth. Specifically, staff focused on those sex offenses for which a conviction would require a person to register with the Virginia State Police and be placed on Virginia's Sex Offender Registry.

As Exhibit 1 illustrates, the majority of these sex offenses are classified as felonies. There are two sex offenses, however, sexual battery and attempted sexual battery, which are Class 1 misdemeanor offenses and carry a penalty of 12 months in jail or up to a $2,500 fine, or both.[1]

A Class 6 felony is the lowest level of felony in Virginia and carries a sentence of 1 to 5 years imprisonment; or, 12 months in jail and/or up to a $2,500 fine. There are six Class 6 felony sex offenses in the *Code of Virginia* that would require registration. Increasing in severity, a Class 5 felony offense carries a sentence of 1 to 10 years imprisonment; or, 12 months in jail and/or up to a $2,500 fine. There are six Class 6 felony sex offenses in the *Code of Virginia* that would require registration. Class 4 felony sex offenses that would require registration include the crime of carnal knowledge of a minor between 13 and 15[2] and attempted rape, forcible sodomy or object sexual penetration.[3] Class 4 felonies carry a sentence of 2 to 10 years imprisonment; or, 2 to 10 years imprisonment and up to a $100,000 fine.

Class 3 felonies carry sentences of 5 to 20 years imprisonment; or, 5 to 20 years imprisonment and up to a $100,000 fine. The only Class 3 felony sex offense that would require registration is the crime of entering a dwelling house with the intent to rape. Committing this offense with a weapon raises the penalty to a Class 2 felony. The Class 2 felony sex offenses are outlined in Exhibit 1. A Class 2 felony carries a sentence of 20 years to life imprisonment; or, 20 years to life imprisonment and up to a $100,000 fine.

---

[1] Va. Code Ann. §§ 18.2-67.4; 18.2-67.5(c) (2005).
[2] Va. Code Ann. § 18.2-63 (2005).
[3] Va. Code Ann. § 18.2-67.5(A) (2005).

Exhibit 1

Criminal Penalties for Sex Offenses

	Code of Virginia Section	*Sentence Range*	*Fine*
Misdemeanor Offenses			
Sexual Battery	18.2-67.4	Up to 12 months in jail	Up to $2,500
Attempt to Commit Sexual Battery	18.2-67.5(c)	Up to 12 months in jail	Up to $2,500
Class 6 Felony Offenses			
Crimes Against Nature	18.2-361	1-5 Years or 12 months Jail	Up to $2,500
Taking Indecent Liberties w/ Minor By Person in Custodial or Supervisory Relationship	18.2-370.1	1-5 Years or 12 months Jail	Up to $2,500
Unlawful Filming, Videotaping, or photographing another	18.2-374.1:1	1-5 Years or 12 months Jail	Up to $2,500
Possession of Child Pornography	18.2-386.1	1-5 Years or 12 months Jail	Up to $2,500
Carnal Knowledge of Minor b/t 13 & 15 of Supervisory Relationship	18.2-64.1	1-5 Years or 12 months Jail	Up to $2,500
Attempted Aggravated Sexual Battery	18.2-67.5(B)	1-5 Years or 12 months Jail	Up to $2,500
Class 5 Felony Offenses			
Adultery & Fornication by person forbidden to marry: incest	18.2-366(B)	1-10 or 12 months in Jail	Up to $2,500
Taking Indecent Liberties w/ Minor	18.2-370	1-10 or 12 months in Jail	Up to $2,500
Production, Publication, Sale, Possession w/ intent to Distribute, Financing, etc, of Child Pornography	18.2-374.1	1-10 or 12 months in Jail	Up to $2,500
Unlawful Filming, Videotaping, or photographing another (Subsequent violations)	18.2-374.1:1	1-10 or 12 months in Jail	Up to $2,500
Use of Communications Systems to Facilitate Certain Offenses Involving Children	18.2-374.3(B)(iv)	1-10 or 12 months in Jail	Up to $2,500
Abduction	18.2-47(A)	1-10 or 12 months in Jail	Up to $2,500
Class 2 Felony Offenses			
Abduction of any child under 16 for purposes of concubinage or prostitution	18.2-48(i),(iii)	20-Life	Up to $100,000
Abduction for Immoral Purpose	18.2-48(ii)	20-Life	Up to $100,000
Enter Dwelling House etc. w/ intent to Rape, etc (W/ Weapon)	18.2-90	20-Life	Up to $100,000
Unclassified Felony Offenses			
Aggravated Sexual Battery	18.2-67.3	1-20 Years Imprisonment	Up to $100,000
Rape	18.2-61	5-Life	
Forcible Sodomy	18.2-67.1	5-Life	
Object Sexual Penetration	18.2-67.2	5-Life	

The most serious sex offenses are unclassified felonies and provide for a wide sentencing range. For example, the penalty for aggravated sexual battery is 1 to 20 years imprisonment or, up to a $100,000 fine.[4] The most violent sex offenses of rape, forcible sodomy and object sexual penetration carry a penalty range of five years to life imprisonment.[5]

Once a sex offender is sentenced to the Virginia Department of Corrections (DOC), he is required to spend at least 85% of his sentence in prison.[6] After an offender is released, he remains under the control of the DOC Division of Community Corrections ("Community Corrections)[7] in three instances:

1) if any of his sentence was originally suspended;
2) if he was sentenced prior to the abolition of parole; or,
3) if he is given a period of post-release supervision under the *Code of Virginia* § 19-2-295.2.[8]

As of March 2005, Community Corrections had a total of 49,198 offenders in its supervised population; of this total, 44,688 were on probation and 4,510 were on parole. Within this supervised population, 4% (2,525) were sex offenders; with 1,871 designated as violent sex offenders and 654 as sex offenders.[9]

During FY 2004, 84% of the total offenders released from DOC had probation/parole supervision. This supervision comprises three levels, for all offenders in DOC, not just sex offenders. Level I, the highest level, entails intensive supervision of: violent and sexual offenders; serious problematic offenders; and, court/parole Board sanctioned offenders. Level II provides a mid-range of supervision and contact for lower risk, stable offenders. Finally, Level III provides the minimum level of supervision for the lowest risk offender. Across the three levels of supervision, the conditions and sanctions applied to DOC offenders can include:

---

[4] Va. Code Ann. § 18.2-67.3 (2005).

[5] Va. Code Ann. §§ 18.2-61; 18.2-67.1; 18.2-67.2 (2005). The midpoint sentencing range on the Sentencing Guidelines for forcible sodomy is 12 years, 9 months imprisonment. The midpoint sentencing range for both rape and object sexual penetration is 11 years, 5 months imprisonment. The *Code of Virginia* § 18.2-67.5:3 mandates life imprisonment for a second conviction of rape, forcible sodomy, object sexual penetration, abduction with intent or conspiracy to commit one of the aforementioned crimes.

[6] 1994 Va. Acts Ch. 1. This law applies only to persons sentenced for offenses committed after July 1, 1995.

[7] Periods of post-release supervision are monitored and reviewed by the Virginia Parole Board. If an offender fails to comply with the terms of his supervision, the Parole Board sends the offender back to prison.

[8] During a special session of the 1994 Virginia General Assembly, the *Code of Virginia* was amended to ensure under § 19.2-295.2, that for every felony conviction where there is active time given, a judge is supposed to ensure that there is at least 6 months of suspended time; and, if there is not any suspended time, the judge is supposed to order a period of "post-release supervision" of at least 6 months, or up to 3 years.

[9] A sexually violent predator is a person who has been convicted of a sexually violent offense, as compared to any other sex offense. *Code of Virginia* § 37.2-900 defines a sexually violent offense as (i) a felony conviction under former § 18-54, former § 18.1-44, § 18.2-61, 18.2-67.1, 18.2-67.2; (ii) a conviction under § 18.2-67.3 where the complaining witness is less than 13 years of age; or (iii) a felony conviction under the laws of the Commonwealth for a forcible sexual offense committed prior to July 1, 1981, where the criminal behavior on which the conviction is based is set forth in § 18.2-67.1 or 18.2-67.2, or is set forth in § 18.2-67.3 where the complaining witness is less than 13 years of age.

- inpatient/outpatient substance abuse programs;
- sex offender treatment;
- home electronic monitoring or GPS;
- day reporting program;
- detention and diversion centers;
- intensive supervision;
- targeted activity for offenders, such as requiring the offender to avoid designated areas; and,
- offender specific conditions based on the availability of appropriate community resources and services.[10]

In addition to these conditions and sanctions, there are also two types of electronic monitoring used. The most common form of electronic supervision is Home Electronic Monitoring (HEM) or Radio Frequency (RF) Units. Another form of electronic supervision, Global Positioning Systems (GPS), is utilized on a very limited test basis in the supervision of offenders considered at a very high risk of re-offense. The GPS can be passive or active. Passive GPS tracks, stores and transmits the offender's movements, whereas active GPS tracks and transmits the offender's movements.

As indicated earlier, not all released sex offenders, including sexually violent offenders, fall under the control of Community Corrections. To illustrate, staff analyzed the post-release supervision requirements for a sample of 160 offenders released from DOC since July 1, 2003 for the SVP predicate offenses of rape, forcible sodomy and object sexual penetration. Twenty-three percent (37) of the released predicate offenders had no form of supervised probation or parole:

-Rape	20 offenders;
-Forcible Sodomy	12 offenders; and,
-Object Penetration	5 offenders.

Furthermore, another 11% (18) of the offenders had a post-release supervision requirement of less than three years.

While the DOC has tools in place to monitor all types of criminals released from prison, these programs are limited to those offenders who remain under DOC supervision, which is often for a short period of time. When examined in light of the high recidivism rate for sex offenders, this lack of prolonged supervision highlights why states, including Virginia, have taken additional measures, such as Registry registration requirements and involuntary civil commitment, to further protect the public from sexual offenders.

[10] Jim Camache, Deputy Director, Virginia Department of Corrections, "Monitoring of Sex Offenders." Presentation to the Virginia State Crime Commission Sex Offender Task Force (June 2005).

B. SEX OFFENDER RECIDIVISM

To ascertain the recidivism rate of sex offenders nationally and statewide, Crime Commission staff worked closely with the Virginia Criminal Sentencing Commission (VCSC) to present data to the Task Force to better provide an understanding of the public safety risk sex offenders pose once out of prison. A review of previous studies, concerning recidivism of criminal offenders, found that often the research underestimates the actual rates of crimes, since not all criminal behavior comes to the attention of law enforcement. In particular, measuring the recidivism of sex offenders is particularly difficult as the majority of rapes and other sexual assaults are never reported to law enforcement. A study conducted by the National Victim Center found that 84% of sexual assaults are never officially reported.[11] Additionally, according to data from the U. S. Department of Justice, a national crime victimization survey found that nearly three-quarters of rapes and sexual assaults go unreported.[12] Reasons cited for non-reporting often include personal reasons (the victim knows the offender), fear of reprisal, protecting the offender (who may be a family member), lack of confidentiality, and fear of police bias in favor of the offender.

Even when the crime is reported and an arrest is made, obtaining a conviction may be difficult due to a lack of physical evidence, the very young age of the victim or an unwillingness of the victim to testify. The U.S. Department of Justice estimates that, for every 100 rapes committed, 35 are reported to police, 18 result in an arrest and 14 are prosecuted; of these 14 prosecuted, eight offenders are convicted of a felony and six ultimately receive incarceration.[13] Thus, identifying recidivism using official records seriously underestimates the actual rate at which sex offenders commit new crimes. Reconviction, or worse, re-incarceration are highly diluted measures of sexual offense recidivism.

At the June 7, 2005 meeting, the Sex Offender Task Force requested detailed information regarding the rates at which recent Virginia sex offenders have recidivated or relapsed into criminal behavior. The Task Force specifically asked for the recidivism analysis to identify the differences in recidivism rates across each type of sex crimes. Thus, at the behest of the Task Force, the Sentencing Commission undertook this analysis.

---

[11] National Center for Victims of Crime and Crime Victims Research and Treatment Center 1992.
[12] United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Criminal Victimization 1999: Changes 1998-99 with Trends 1993-99.* (Washington, D.C: 2000).
[13] United States Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, *Sex Offenses and Offenders*. (Washington, D.C.: 1997).

Since 1995, the Sentencing Commission has conducted numerous studies of recidivism with a variety of offender populations. One such study, which examined felony sex offenders convicted in the Commonwealth, was completed in 2000. The Sentencing Commission's recidivism research culminated in the development of a risk assessment instrument for sex offenders that is predictive of their risk for re-offending. This risk assessment instrument has been provided to circuit court judges since 2001 as an additional tool to assist in the sentencing of felony sex offenders. For the most recent study, the Sentencing Commission examined sex offenders released from incarceration in Virginia, as well as, those released directly into the Virginia communities without prison or jail time from fiscal years 1998-2000. All fiscal year releases from prison and jail, as well as those given probation without active incarceration, were identified for the three year period. Selecting these years allowed for a minimum of five years of follow-up for all offenders in the study. Whereas a three-year follow-up may be adequate for general studies of recidivism, numerous reports reviewed by the Sentencing Commission suggest that compared to other offenders, sex offenders recidivate over a longer period of time prior to detection. Thus, for this analysis, sex offenders were tracked for a minimum of five years in the community, up to a maximum of eight years in the community. The average follow-up period was 6.5 years per offender.

Criminal history reports (rap sheets) were requested from the Virginia State Police, including each offender's criminal record in Virginia, other states and the federal system. Recidivism activity for each offender, detailed arrest and conviction data and specific offense information, was recorded and automated for analysis. A total of 2,080 felony sex offenders were studied.[14] A total of 155 sex offenders released during the study period were excluded from the analysis because they were:

- Found to be deceased (33);
- Convicted of prostitution, bestiality, indecent exposure, or bigamy offenses (40); or,
- The exact nature of the offender's conviction offense could not be determined from existing data (82).

Table 1 classifies the 2,080 sex offenders by their original conviction offense. This is the offense for which the offender was incarcerated or placed on probation. The four most serious statutory crimes (rape, forcible sodomy, object sexual penetration, and aggravated sexual battery) accounted for roughly two-thirds of the cases studied. Carnal knowledge and indecent liberties represented an additional 30%; less than 5% of the released offenders had been convicted of the remaining offenses (non-forcible sodomy, kidnapping with intent to defile or for an immoral purpose, and incest).

[14] The analysis also included offenders convicted of kidnapping with the intent to defile or kidnapping for an immoral purpose.

Table 1

Sex Offenders Released from Prison, Jail or Placed on Probation FY 1998 to FY 2000 (N=2,080)

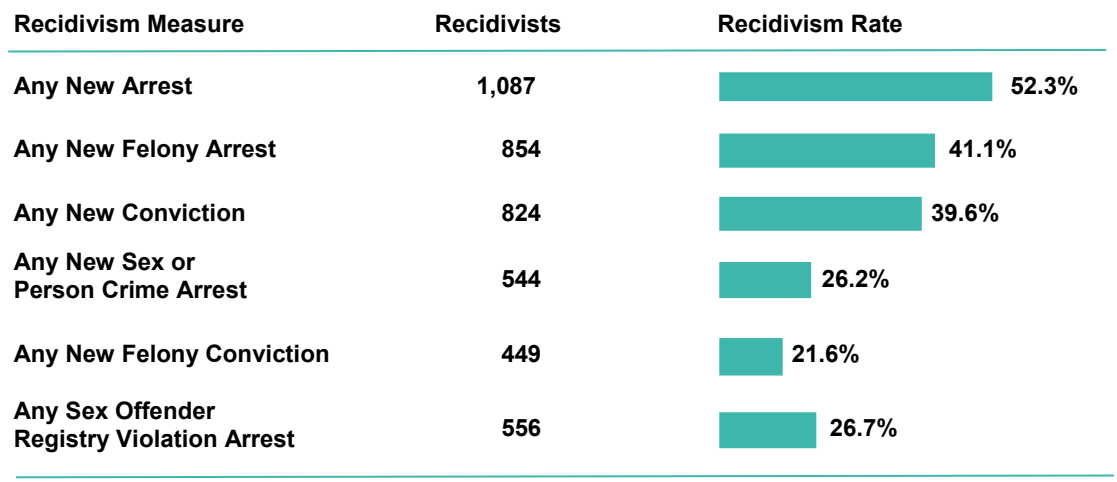
Initial Conviction Offense	Offenders	Percent of Cases
Aggravated Sexual Battery	675	32.5%
Rape	492	23.6
Carnal Knowledge	326	15.7
Indecent Liberties	303	14.6
Forcible Sodomy	156	7.5
Non-forcible Sodomy	64	3.1
Object Sexual Penetration	27	1.3
Kidnap Immoral Purpose	25	1.2
Incest	12	.5

Source: Virginia Criminal Sentencing Commission recidivism analysis, September 2005.

As Figure 1 illustrates, the rates of recidivism for the sample population of sex offenders varied depending on the particular measure of recidivism that was used. The rates ranged from a low of approximately 22% when recidivism is measured as any new felony conviction to a high of approximately 52% when recidivism is defined as any new arrest.

Figure 1

Sex Offender Recidivism Rates



Source: Virginia Criminal Sentencing Commission analysis, September 2005.

Although reconviction rates substantially underestimate sex offender recidivism, a measure based on any new arrest may also be undesirable since it includes non-offense behavior such as probation violations, failure to appear and contempt of court violations. For its previous sex offender recidivism study, the Sentencing Commission measured recidivism as any new arrest for a sex offense or other crime against the person. Using this more precise measure, the recidivism rate for the sample of sex offenders released from FY 1998 to FY 2000 was approximately 26%. Additionally, when analyzing recidivism patterns, the Sentencing Commission also recorded arrests for violations of laws governing Virginia's Sex Offender and Crimes Against Minors Registry. About one in four released sex offenders was arrested during the follow-up period for failing to register or re-register as required by *Code*.

The recidivism measures noted above are not mutually exclusive. That is, an offender could be captured in more than one category. For example, some offenders were arrested for a new sex offense or other crime against a person while others were arrested for violating Registry requirements; some of the released offenders were arrested for both types of offenses following their return to the community. Combining these two measures reveals that nearly 42% of sex offenders were arrested for a new sex offense/ person crime or for Registry violation (Figure 2).

Figure 2

Arrests for a New Sex Offense, Person Crime, or a Violation of the Sex Offender and Crimes Against Minors Registry

Arrested	Cases	Percent of Cases
NO	1,214	58.4%
YES	866	41.6%

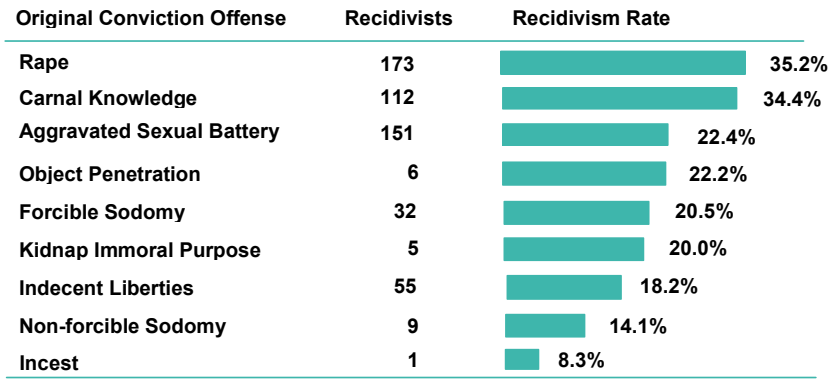
Source: Virginia Criminal Sentencing Commission analysis, September 2005.

It is also worth noting that almost half (42%) of offenders arrested for Registry violations also had at least one arrest for a sex or person crime during the follow-up period. This suggests that, for many released sex offenders, failure to register or re-register is not their only offense behavior.

The Sentencing Commission's recidivism study revealed that patterns of recidivism vary depending on the crime for which the offender was originally convicted. Figure 3 displays sex offender recidivism rates by the original conviction offense. The recidivism rates shown are based on the rate at which offenders were arrested for a new sex offense or other crime against a person. Those initially convicted of rape and carnal knowledge exhibited the highest recidivism, with rates exceeding one-third (35% and 34%, respectively). Those initially convicted of aggravated sexual battery, object sexual penetration, forcible sodomy, and kidnapping to defile or for an immoral purpose demonstrated lower rates of recidivism, between 20% and 23%. Other crime types (indecent liberties and non-forcible sodomy) showed still lower rates, which ranged from 14% to 18%. Incest offenders recorded the lowest recidivism rates (8%); however, only 12 offenders in the study had been convicted of this type of crime. Nonetheless, this finding is consistent with that of other researchers, who have found lower recidivism rates among incest offenders, based on official law enforcement statistics, compared to other types of sex offenders.[15]

Figure 3

Sex Offender Recidivism Rates by Original Conviction Offense



Recidivism is measured as a new arrest for a sex offense or other crime against the person.

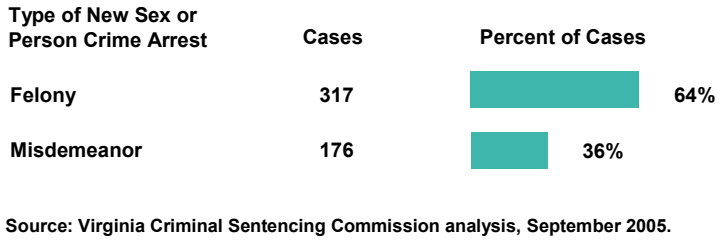
Source: Virginia Criminal Sentencing Commission analysis, September 2005.

The analysis also found that recidivists were more likely to be re-arrested for a felony than a misdemeanor. In fact, two in three recidivists in this study were re-arrested for a felony sex offense or other crime against a person (Figure 4).

[15]Virginia Criminal Sentencing Commission, *Assessing Risk Among Sex Offenders*. (Richmond, VA: 2001)

Figure 4

Sex Offender Recidivists by Type of New Arrest

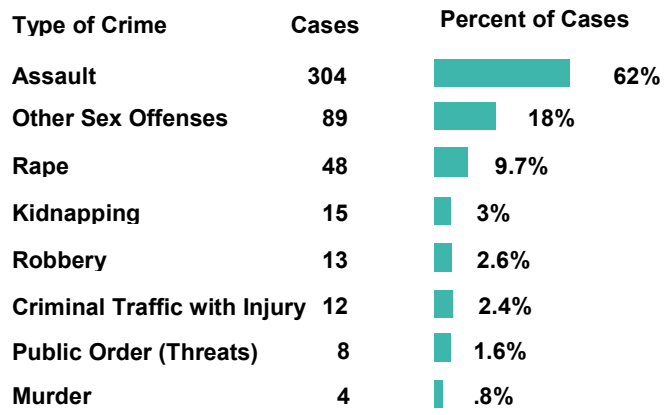


Source: Virginia Criminal Sentencing Commission analysis, September 2005.

The most common type of crime for which recidivists were arrested during the follow-up period was assault. As Figure 5 shows, assault was the most prevalent crime among recidivists overall. Assault offenses (ranging from malicious or unlawful wounding to domestic assault and assault and battery) accounted for nearly two-thirds of the recorded recidivism (62%). Following assaults, arrests for sex offenses other than rape were the most frequent (18%). One in ten recidivists was arrested for a new rape. Other types of person crimes (including kidnapping, robbery, traffic offenses resulting in victim injury, public order crimes involving threats to another, and murder) represented less of the recidivism activity.

Figure 5

Sex Offender Recidivists by Crime Type of New Arrest

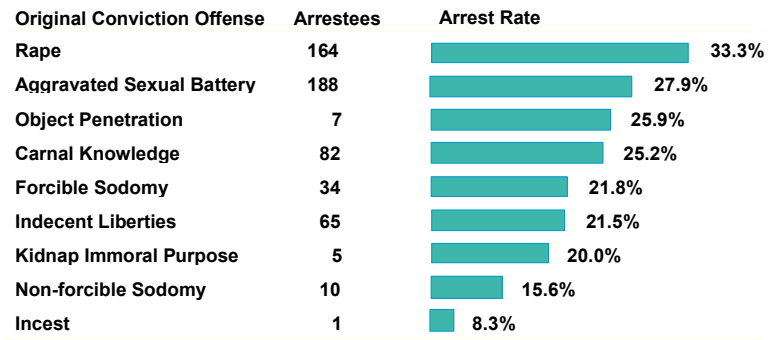


Source: Virginia Criminal Sentencing Commission analysis, September 2005.

As Figure 6 illustrates, of all offenders studied, rapists demonstrated the greatest propensity to be arrested for Registry violations. Approximately one-third of those initially convicted of rape were arrested for failing to register or re-register, as required. Aggravated sexual battery, object sexual penetration, and carnal knowledge had relatively high arrest rates for Registry violations as well, over 25% in each group.

Figure 6

Arrest Rates for Violations of the Sex Offender and Crimes Against Minors Registry by Original Conviction Offense

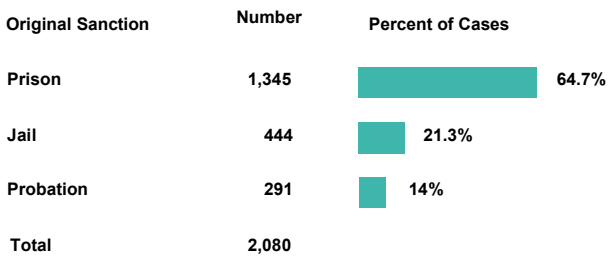


Source: Virginia Criminal Sentencing Commission analysis, September 2005.

A large majority (86%) of sex offenders in the recidivism study were released after serving a term of incarceration. Most of the offenders in the study were released from prison (Figure 7). Nearly two-thirds (65%) of sex offenders returning into the community had served time in a Virginia prison. Some offenders, about one in five (or 21%), received a lesser sanction and served time in a local or regional jail in Virginia. A minority of offenders (14%) were given probation without an active term of incarceration for their original offense.

Figure 7

Released Sex Offenders by Type of Original Sanction



Source: Virginia Criminal Sentencing Commission analysis, September 2005.

The recidivism analysis also found sex offenders who had served time in prison exhibited the highest rate of recidivism following return to the community. Offenders released from prison recidivated at the highest rate, 28%, as shown in Figure 8. Offenders who had been sentenced to serve jail time for the original offense had a slightly lower recidivism rate of 25%. Offenders sentenced to probation without an active term of incarceration recidivated at the lowest rate, 19%.

Figure 8

Sex Offender Recidivism Rates by Type of Original Sanction

Original Sanction	Recidivists	Recidivism Rate
Prison	377	28.0%
Jail	112	25.2%
Probation	55	18.9%
Total	544	

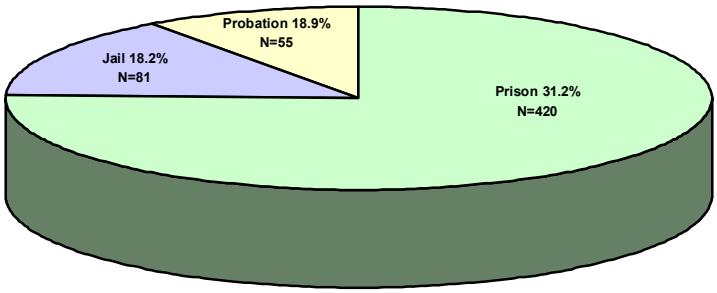
Recidivism is measured as a new arrest for a sex offense or other crime against the person.

Source: Virginia Criminal Sentencing Commission analysis, September 2005.

Additionally, offenders who had been released from prison also had the highest re-arrest rate for Registry violations, approximately 31% (Figure 9). This rate is substantially higher than the violation rates for offenders given jail time and those given probation without incarceration. Offenders released from jail and those sentenced to probation exhibited Registry violation arrest rates of 18% and 19%, respectively.

Figure 9

Arrest Rates for Violations of the Sex Offender and Crimes Against Minors Registry by Original Type of Sanction

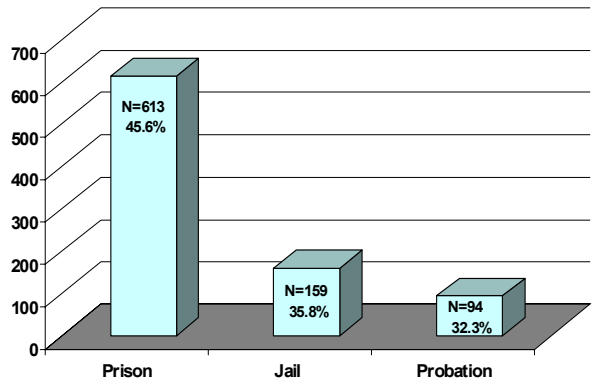


Source: Virginia Criminal Sentencing analysis, September 2005.

When arrests for a new sex offense/person crime and Registry violations are combined, the recidivism patterns of prison releasees are more startling. Almost half of sex offenders released from prison were arrested for a new sex/person crime, or Registry violation after leaving prison (Figure 10). Nearly 36% of jail releases were subsequently arrested for a sex offense/person crime or a Registry violation. At 32%, those who received probation in lieu or prison or jail were the least likely to be arrested, based on this combined measure.

Figure 10

Arrests for a New Sex Offense, Person Crime or Registry Violation

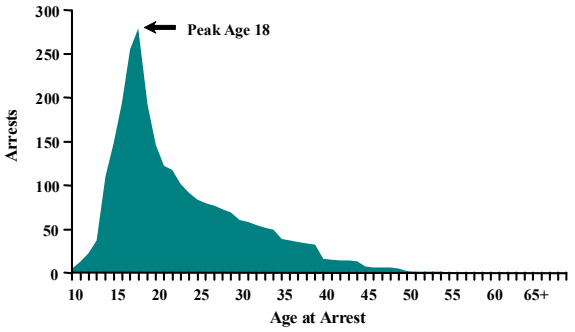


Source: Virginia Criminal Sentencing analysis, September 2005.

Criminologists often have found that age is highly correlated with repeat offending. For most crimes, particularly violent crimes, offenders tend to age out of their criminal careers by their mid to late 20's, when recidivism rates drop off markedly. For example, Figure 11 displays the age distribution for person arrested for robbery in Virginia. The peak age of robbery arrestees is 18. Robbery arrests decline sharply with increasing age and are practically nonexistent after age 45.

Figure 11

Age Distribution of Robbery Arrestees in Virginia



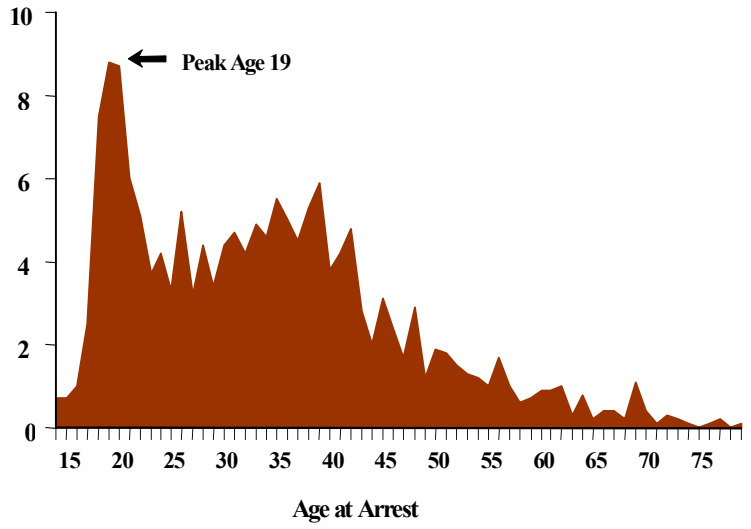
Source: Virginia Criminal Sentencing Commission analysis, September 2005.

Sex offenders, however, differ from offenders who commit other types of crimes. There is evidence suggesting that sex offenders remain at-risk for re-offending longer than other criminal groups. Hanson (2001) studied rapists, child molesters, and offenders convicted of incest, finding that in each of these groups recidivism began to decline at age 25 but did not approach zero until ages 60 to 70. In particular, child molesters maintained their risk longer than offenders in the other two groups.

For this study, the Sentencing Commission examined the age distribution for persons arrested (and subsequently convicted) for felony sex offenses in Virginia. Seen in Figure 12, this age distribution looks very different than that for robbery. Although the peak age at arrest is virtually the same for both groups, arrests for felony sex offenses do not decline as rapidly with advancing age. While the number of arrests for felony sex offenses peaks at age 19, the number of persons arrested for felony offenses remains fairly level from age 22 through 42. The number of sex offense arrests does not drop off until offenders reach their mid to late 40's. These data support the Sentencing Commission's previous research, which found that sex offenders remain criminally active until much later in life compared to other offenders.

Figure 12

Age Distribution of Arrestees for Felony Sex Offenses in Virginia



Source: Virginia Criminal Sentencing Commission analysis, September 2005.

The recidivism study conducted by the Sentencing Commission for the Sex Offender Task Force found further evidence that sex offenders are at risk for re-offending even into middle age. As shown in Figure 13, the youngest sex offenders recidivated at the highest rates during the study period (nearly 37%). However, released sex offenders between the ages of 25 and 34 recidivated nearly as often (nearly 32%). The recidivism rate remained fairly high (at 23%) for offenders released between the ages of 35 to 46. Only for offenders who were age 46 or older when released were recidivism rates markedly lower. For this oldest age group, the recidivism rate was 13%.

Figure 13

Sex Offender Recidivism Rates by Age at Release or Probation Placement

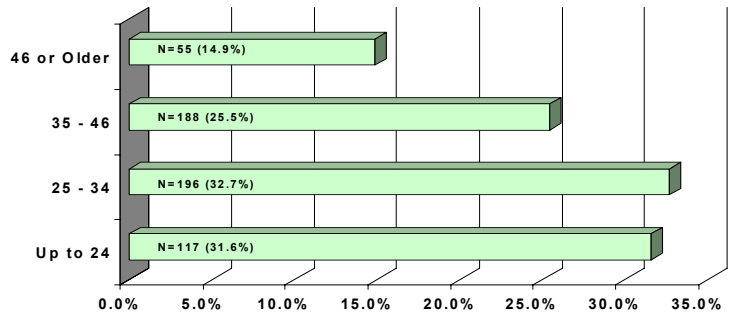
Age	Recidivists	Recidivism Rate
Up to 24	135	36.5%
25 - 34	190	31.7%
35 - 46	170	23.1%
46 or Older	48	13%

Source: Virginia Criminal Sentencing Commission analysis, September 2005.

The Sentencing Commission's analysis also revealed that the younger the sex offender when released in the community, the more likely he is to be arrested for violating Registry requirements. Figure 14 shows that offenders 34 and under had higher arrest rates associated with Registry violations than older offenders. For example, nearly 33% of offenders who were 25 to 34 years of age at release were arrested for a Registry violation compared to 26% for offenders who were 35 to 45 when released. As with the recidivism rates for sex offenses and other person crimes shown above, released sex offenders who were 46 or more were by far the least likely to be arrested for failing to register or re-register as required (rate of 15%).

Figure 14

Arrest Rates for Violations of the Sex Offender and Crimes Against Minors Registry by Age at Release or Probation Placement



Source: Virginia Criminal Sentencing Commission analysis, September 2005.

When examining arrests for Registry violations, the Sentencing Commission found that it was not unusual for offenders to incur more than one arrest for failing to register or re-register. Of the 556 offenders with Registry violations, 238 (almost 43%) were arrested more than once for such a violation following release into the community (Figure 15). A few sex offenders in the study have been arrested ten or more times for Registry violations.

C. SENTENCING PRACTICES AND SHORT-TERM RECIDIVISM

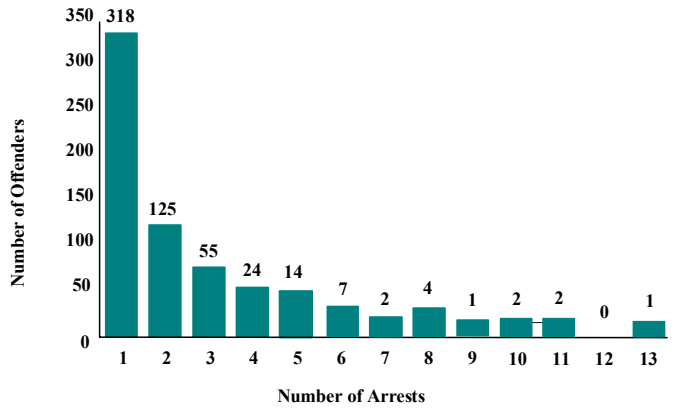
To determine the extent of short-term recidivism, as well as the adequacy and impact of Virginia's criminal penalties for the most serious sex offenses, staff reviewed the National Crime Information Center (NCIC) records for a sample of 378 offenders convicted of a Sexually Violent Predator (SVP) predicate offense that were released from the DOC since July 1, 2003. Staff found that within this sample of 378 SVP eligible sex offenders released from DOC since July 1, 2003:

- 55 (15%) were re-arrested and charged with at least one felony sex crime;
- 72 (19%) were re-arrested for one or more other felony crimes;
- 62 (16%) were re-arrested for one or more misdemeanor crimes; and,
- 47 (12%) were arrested for a violation of the Sex Offender and Crimes Against Minors Registry (Sex Offender Registry).

Additionally, 12 offenders were arrested for 2 or more felony sex offenses.

Figure 15

Number of Arrests Per Offender for Violations of the Sex Offender and Crimes Against Minors Registry



Source: Virginia Criminal Sentencing Commission analysis, September 2005.

Upon review of a sample of 160 released Department of Correction's sex offenders, and to further illustrate the nature of the sex offender in Virginia and highlight the sentencing practices for serious sex offenses in the Commonwealth, the Task Force was provided analyses of 3 violent sex offenders who have recidivated since the Sexually Violent Predator Act was passed in 2003. As Exhibit 2 illustrates, each of these offenders recidivated multiple times after having served prison sentences for serious felony sex offenses.

Offender #1 had originally been convicted of rape. Since July 1, 2003, Offender #1 had been arrested for 6 felony sex offenses and 6 other felony offenses, including failure to register. As of October 30, 2005, this offender has been convicted of two of these felony sex offenses and one felony count of failure to register. For the conviction of Possession/Transport of a Firearm by a Convicted Felon he was sentenced to 5 years imposed. For the rape conviction, he was sentenced to 50 years imposed, with 40 years suspended. Finally, for the conviction for Failure to Register, he was sentenced to 6 months imposed.

Offender #2 was sentenced to DOC for two counts of the predicate offense of aggravated sexual battery, where he received a sentence of 20 years, with 14 years suspended. Since July 1, 2003, this offender has been arrested for 15 felony offenses, including 4 offenses for Failure to Register, and 2 misdemeanor offenses. However, as of October 2003, the National Criminal Information Center (NCIC) records do not indicate any convictions for these offenses.

Offender #3 was sentenced to DOC for the predicate offense of rape, where he received a 15 year sentence, with 10 years, 11 months suspended. Since July 1, 2003, this offender has been arrested for 7 felony sex offenses, 1 misdemeanor offense, and one felony charge of failure to register. As of October 30, 2005, this offender had been convicted of one count of aggravated sexual battery and given a 10 year sentence, with 8 years suspended.

In spite of the nature of the crimes and the high recidivism rate, these sex offenders outlined in Exhibit 2 are representative of the sentencing practices in Virginia. After serving time in prison, once any suspended time is depleted, the offender is no longer under the control of the DOC Community Corrections Division, and is a free citizen. The Commonwealth has no constitutional or legal right to ensure that he remains compliant with the law. The released sex offender is in the same position as any other citizen of the United States. The State, except under limited circumstances, cannot impede on the person's freedom in order to prevent a crime.

Exhibit 2

Offender 1

Predicate Offense: Felony Rape: 6 years, 1 year suspended

Arrests: 6 Felony Sex Offenses and 6 Other Felony Offenses since 07/01/03:

- January 7, 2004 — Rape
- July 23, 2004 — Rape, Forcible Sodomy, Abduction and Kidnapping, Possession/transport of a firearm by a convicted felon, and 3 charges of use of a firearm in commission of a felony
- September 29, 2004 — Failure to Register
- October 8, 2004 — Rape, Abduction to extort money for immoral purposes, and Forcible Sodomy

Convictions: Felony Poss./Transport Firearm by a Convicted Felon: 5 years imposed; Felony Rape: 50 years imposed, 40 years suspended; and, Felony Failure to Register: 6 months imposed

---

Offender 2

Predicate Offenses: 2 counts Felony Aggravated Sexual Battery: 20 years, 14 years suspended

Arrests: 15 Felony Offenses and 2 Misdemeanor Offenses since 07/01/03:

- July 25, 2003 — Trespassing, Breaking and Entering with Intent to Commit a Felony, Grand Larceny and Possession of Burglary Tools
- August 11, 2004 — Possession of a Controlled Substance
- October 24, 2004 — Possession of Burglary Tools, Wearing a Mask in a Public Place, Grand Larceny, Destruction of Property, Breaking and Entering with Intent to Commit a Felony
- October 29, 2004 — 4 Counts of Failure to Register
- November 5, 2004 — Revocation of Suspended Sentence and Probation
- May 13, 2005 — Manufacture, Sale, Possession of Controlled Substance and Contempt of Court

Convictions: NCIC records do not indicate any convictions for these offenses

---

Offender 3

Predicate Offense: Felony Rape: 15 years, 10 years, 11 months suspended

Arrests: 7 Felony Sex Offenses and 1 Misdemeanor Offense since 07/01/03:

- July 29, 2003 — 7 charges of Rape
- August 31, 2004 — Revocation of Suspended Sentence and Probation
- October 22, 2004 — Failure to Register

Convictions: Felony Aggravated Sexual Battery: 10 years, 8 years suspended

CHAPTER 3:

SEX OFFENDER REGISTRATION

CHAPTER THREE: SEX OFFENDER REGISTRATION

Once a sex offender is released from the Virginia Department of Corrections (DOC), he will either be designated a sexually violent predator, with possible civil commitment to the Virginia Center for Behavioral Rehabilitation (VCBR), or he will be released into the community and be required to register under Virginia's Sex Offender and Crimes Against Minors Act, a civil act. In order to assess the adequacy of Virginia's Sex Offender Registry laws and procedures, staff conducted a review of federal and state sex offender registration laws, as well as a thorough examination of relevant case law.

A. HISTORY OF SEX OFFENDER REGISTRATION

Since 1994, there have been three federal laws which have mandated states to establish Sex Offender Registries: the Jacob Wetterling Act, Megan's Law and the Pam Lynchner Act. Each of these federal laws, which will be discussed in this chapter, has influenced the system of monitoring and registration of sex offenders that Virginia has established.

1. JACOB WETTERLING ACT

In 1989, 11-year-old Jacob Wetterling was abducted near his home in St. Joseph, Minnesota. Police later learned that halfway houses in St. Joseph housed released sex offenders, but Minnesota law enforcement had no list of sex offenders to aid in their efforts to solve Jacob's case and Jacob is still missing today. In response to this tragedy, Jacob's parents formed the Jacob Wetterling Foundation and pushed Minnesota legislators to enact sex offender registration in 1991.

In reaction to the growing national trend, as part of the Federal Violent Crime Control and Law Enforcement Act of 1994, Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act[16] ("Jacob Wetterling Act"). This law requires states to implement a sex offender and crimes against children registry. The federal government gave the states three years to implement the provisions of the act or they would receive a ten percent reduction in Federal Byrne grant funds for law enforcement.

Specifically, provisions of the Jacob Wetterling Act required persons convicted of a criminal offense against a minor or a sexually violent offense, and persons deemed to be sexually violent predators, to register a current address with state law enforcement. The Act listed a range of offenses that are considered the base level of

[16] 42 U.S.C. § 14071 (2005).

criminal offenses against a minor, but discretion was left to the individual states to exceed those offenses outlined in the Act. At a minimum, states must require a person to register if he/she commits the following crimes against minors:

- kidnapping of a minor (except by a parent);
- false imprisonment of a minor (except by a parent);
- criminal sexual conduct toward a minor;
- solicitation of a minor to engage in sexual conduct;
- use of a minor in a sexual performance;
- solicitation of a minor to practice prostitution;
- any conduct that by its nature is a sexual offense against a minor; or,
- an attempt to commit any of the above offenses.

The Jacob Wetterling Act defined a "sexually violent offense" to be any criminal offense in a range of offenses specified by State law which is comparable to or which exceeds the range of offenses encompassed by aggravated sexual abuse or sexual abuse,[17] which is the Federal definition of rape, or an offense that has as its elements engaging in physical contact with the intent to commit a rape. Finally, the Act described a "sexually violent predator" as one who was inflicted with a "mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent crimes."

The Jacob Wetterling Act required states to inform released convicts of their duty to register and reregister upon any change in status and obtain fingerprints and a photograph if they had not previously been collected in connection with the offense triggering registration. Each state was also required to obtain the name of the sex offender, identifying personal information, anticipated future residence, offense history, and documentation of any treatment received for the mental abnormality or personality disorder of the person.[18] Additionally, states were mandated to ensure that the registration information was made promptly available to state law enforcement and law enforcement in the locality where the sex offender was to reside upon release from incarceration.[19] The Act also required states to verify the addresses annually for sex offenders[20] and every 90 days for sexually violent predators.[21] Sex offenders under the Jacob Wetterling Act had to continue to register for ten years after their release from prison.[22] However, sexually violent predators were required to register until a determination had been made that the person no longer suffers from a mental abnormality or personality disorder that would make the person likely to engage in a predatory sexually violent offense.[23]

---

[17] 18 U.S.C. § 2241; 18 U.S.C. § 2242.
[18] 42 U.S.C. § 14071(b)(1)(B) (1994).
[19] 42 U.S.C. § 14071(b)(2) (1994).
[20] 42 U.S.C. § 14071(b)(3)(A) (1994).
[21] 42 U.S.C. § 14071 (b)(3)(B) (1994).
[22] 42 U.S.C. § 14071(b)(6)(A) (1994).
[23] 42 U.S.C. § 14071(b)(6)(B) (1994).

The Jacob Wetterling Act mandated that the data collected for registration purposes remain undisclosed to the public. Only law enforcement and government agencies under certain circumstances could get access to registration information.[24] However, this mandate was changed by the enactment of Megan's Law in 1996.

2. MEGAN'S LAW

The lack of public notification within the 1994 version of the Jacob Wetterling Act was highlighted when 7-year-old Megan Kanka was brutally raped and murdered by a convicted sex offender living on her street in New Jersey. Megan's family, along with the rest of the community, lobbied for New Jersey to provide the public, not just law enforcement, with information regarding released sex offenders in their community. New Jersey responded with the passage of the first Megan's Law which provided specific mandates for active community notification to ensure that the community was aware of the presence of convicted sex offenders posing a risk to public safety. Under New Jersey's law, if a convicted sex offender was determined to pose a moderate risk of re-offending, law enforcement would notify schools and community groups likely to encounter that offender. If an offender was determined to pose a high risk of re-offending, then law enforcement would notify not only schools and community groups but also members of the public, such as neighbors likely to encounter the offender.

The passage of New Jersey's Megan's Law eventually led Congress to pass the federal version of Megan's Law in 1996. Contrary to New Jersey's law, the federal version was limited in scope and gave broad discretion to states to create their own policies for public notification. Specifically, Megan's Law amended the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act of 1994 to allow the information collected under a State registration program to be disclosed for any purpose permitted under the laws of the State.[25] It also required the designated State law enforcement agency and any authorized local law enforcement agency to release relevant information that is necessary to protect the public concerning a specific person required to register, except that the identity of a victim of an offense that requires registration shall not be released.[26]

3. PAM LYNCHNER ACT

Along with the passage of Megan's Law, Congress continued to strengthen the impact of the Jacob Wetterling Act with the passage of the Pam Lychner Sexual Offender Tracking and Identification Act of 1996 ("Pam Lychner Act").[27] This legislation was initiated in response to the experience of Pam Lychner, a Houston real

[24] 42 U.S.C. § 14071(d) (1994).
[25] H.R. 2137, 104th Cong. (1996).
[26] Id.
[27] S. 1675, 104th Cong. (1996).

estate agent who was preparing to show a vacant house to a prospective buyer. Waiting in the house was a twice-convicted felon who brutally assaulted her. She survived the attack and lobbied for tougher sentences for violent criminals. She helped draft this federal legislation that established a national database to track sex offenders.[28]

Specifically, the Pam Lychner Act established a national database at the Federal Bureau of Investigation (FBI) to track the whereabouts and movement of each person convicted of a criminal offense against a minor; each person convicted of a sexually violent offense; and, sexually violent predators.[29] It mandated that each person required to register, who resides in a State that has not established a minimally sufficient sexual offender registration program, shall register with the FBI for inclusion in the database.[30] This act also amended the Jacob Wetterling Act to require lifetime registration for a person who has one or more prior convictions for a crime against a minor or a sexually violent offense; been convicted of an aggravated offense of a crime against a minor or a sexually violent offense; or, has been determined to be a sexually violent predator.[31]

4. ADDITIONAL AMENDMENTS TO THE JACOB WETTERLING ACT OF 1994

Provisions contained in Section 115 of the General Provisions of Title I of the Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act (CJSA) of 1998 also amended the requirements of the Jacob Wetterling Act.[32] Whereas the original Jacob Wetterling Act required a specific address verification procedure be used, these amendments allowed states greater discretion in the procedures to be used to conduct periodic verification of registrants' addresses.[33] Supplemental to the requirement that sex offenders register in their state of residence, the CJSA amendments also required sex offenders to register in the states in which they worked or attended school and required federal and military sex offenders to register in their state of residence.[34] Additionally, the 1998 amendments required states to participate in the National Sex Offender Registry (NSOR) in order to establish that a state has a "minimally sufficient" sex offender registration program as defined by the Pam

[28] "Background Information on the Act and Its Amendments," available at http://www.ojp.usdoj.gov/BJA/what/2a2jwactbackground.html.
[29] S. 1675, 104th Cong. (1996).
[30] S. 1675, 104th Cong. (1996).
[31] Id.
[32] "Overview and History of the Jacob Wetterling Act," available at http://www.ojp.usdoj.gov/BJAwhat/2a1wacthistory.html.
[33] "Sex Offender Registration: Policy Overview and Comprehensive Practices," Center for Sex Offender Management (October 1999).
[34] Id.

Lychner Act.[35] For states without a "minimally sufficient" program, the FBI would assume responsibility for registering sex offenders.[36]

Finally, in 2000, Congress passed the Campus Sex Crimes Prevention Act which amended the Jacob Wetterling Act by mandating sex offenders to provide, as part of their registration requirements, notice of each institution of higher learning in the State at which that person was employed, carried on a vocation, or was enrolled as a student.[37] These amendments also required states to have procedures in place to promptly make this information available to law enforcement in the jurisdiction where the institutions of higher learning were located.[38]

B. HISTORY OF VIRGINIA'S SEX OFFENDER AND CRIMES AGAINST MINORS REGISTRY

In 1994, the Virginia General Assembly began requiring the registration of persons who had committed certain sex offenses.[39] Specifically, this legislation required adults, and juveniles tried and convicted in circuit courts, who had been convicted of specified felony sexual offenses on or after July 1, 1994, or on parole or supervision on that date for specified offenses committed before that date to be registered in a sexual offender registry maintained by the Department of State Police (State Police).[40] Persons convicted in other states of substantially similar offenses who move into Virginia would be required to register within 30 days of establishing a residence in Virginia.[41] All persons required to register were also mandated to keep the registry updated with any changes of address or change of name.[42] Any knowing failure to register or update the register, as well as knowingly providing materially false information to the registry, would be punishable as Class 1 misdemeanors.[43]

Additionally, this initial legislation required clerks to make the report of the conviction, with limited information on the offender and the offense, within 30 days.[44] The State Police were also required to establish regulations governing the expungement of records for individuals who had died, been pardoned or whose conviction was reversed.[45] This statute allowed a person to petition the circuit court to have

---

[35] Id.
[36] Id.
[37] "Overview and History of the Jacob Wetterling Act," available at http://www.ojp.usdoj.gov/BJAwhat/2a1wacthistory.html.
[38] "Campus Sex Crimes Prevention Act" available at http://www.securityoncampus.org/congress/cscpa
[39] 1994 Va. Acts ch. 362.
[40] Id.
[41] Id.
[42] Id.
[43] Id.
[44] 1994 Va. Acts Ch. 362.
[45] Id.

information expunged from the registry, as long as the offender was no longer a risk to public safety. Registry information was to be removed, in any event, after 15 years from the offender's release from confinement or parole.[46]

This legislation also provided for Sex Offender Registry information to be disseminated, upon request only, to authorized officers and employees of: (i) a criminal justice agency, (ii) a public school division, (iii) a private, denominational or parochial school or, (iv) a child welfare agency or a small family day-care home.[47] Any further dissemination of Registry information, for unauthorized purposes, constituted a Class 1 misdemeanor.[48]

Additional changes were made to the Sex Offender Registry during the 1996 Session of the Virginia General Assembly. Specifically, legislation was passed that required the State Police to notify the chief local law enforcement officer whenever a person registered or re-registered[49] and required the State Police to make registry information available to local law enforcement agencies via the Virginia Criminal Information Network (VCIN).[50]

More significant changes were also made to the Sex Offender Registry during the 1997 Session of the Virginia General Assembly with the implementation of the Jacob Wetterling Act. This legislation was passed to bring Virginia into compliance with the federal Jacob Wetterling Act. In doing so, this legislation added offenses for which registration is required and imposed more stringent registration requirements on offenders.[51] Specifically, the 1997 legislation defined a "sexually violent offense" for the first time and required persons convicted of the most serious sexual offenses of rape, forcible sodomy, object sexual penetration and aggravated sexual battery to re-register every 90 days for the duration of their natural life unless they were found to no longer pose a danger to others.[52] The Registry also had to include a separate indication that a person had been convicted of a sexually violent offense. Other sex offenders required to register would also be required to re-register annually for a period of ten years.[53] It also required fingerprints and photographs as registration requirements.[54] Additionally, this statute shortened the time frame for registration upon release from confinement from 30 days to ten days. This statute created the crime of failure to register as a Class 6 felony for serious sex offenders and a Class 1 misdemeanor for sex offenders.[55]

---

[46] Id.
[47] Id.
[48] Id.
[49] 1996 Va. Acts Ch. 542.
[50] 1996 Va., Acts Ch. 262.
[51] 1997 Va. Acts Ch. 747.
[52] Id.
[53] Id.
[54] Id.
[55] Id.

The 1997 Session of the Virginia General Assembly also passed legislation expanding access to the Sex Offender Registry to allow those individuals seeking child-minding[56] or day-care services[57] to perform an employment or volunteer check on a specific person with that person's permission and made unauthorized dissemination of registry information punishable as a Class 1 misdemeanor.[58]

Megan's Law was incorporated into Virginia law during the 1998 Session of the Virginia General Assembly. Specifically, this legislation added to the list of offenses requiring registration: marital sexual assault; aggravated sexual battery; entering of a dwelling with the intent to commit rape; attempts to commit registry offenses involving minors; or attempts to commit sexually violent offenses.[59] Furthermore, this legislation references the statute which governs attempted rape, forcible sodomy or object sexual penetration to the list of sexually violent offenses.[60] It also allows persons convicted of two offenses for which registration is required to be treated as sexually violent offenders for registry purposes.[61]

Most notably, this legislation required the State Police to develop an Internet-accessible web page for public access to Sex Offender Registry information. This access was limited to sexually violent offenders.[62] For other sex offenders, subject to registration, individual-specific requests could be made to the State Police.[63] However, under this statute the State Police were required to establish an automatic notification system which would allow certain entities providing care services to children to receive notice whenever any category of sex offender moved into the zip code, or contiguous zip code, area in which the entity is located.[64]

Further amendments to the Sex Offender Registry included the requirement that any Virginia resident or person convicted in Virginia of a violation of the Mann Act to register in Virginia. The Mann Act outlaws interstate commerce or travel in interstate commerce for the purpose of engaging in certain illegal sexual acts.[65] Additionally, the Sex Offender Registry was amended to add a provision that registrants who are enrolled or employed by an institution of higher education indicate the name of the institution on

---

[56] The term "child-minding services" as provided in this legislation was defined as the provision of temporary custodial care or supervisory services for the minor child of another.
[57] The term "day-care services" as provided in this legislation was defined as the provision of supplementary care and protection during a part of the day for the minor child of another.
[58] 1997 Va. Acts Ch. 672.
[59] 1998 Va. Acts Ch. 785.
[60] Id.
[61] Id.
[62] 1998 Va. Acts Ch. 785.Id.
[63] Id.
[64] 1998 Va. Acts Ch. 785.
[65] 1999 Va. Acts Ch. 801.

their registration form and that the State Police must notify the chief law-enforcement officer of the institution of the person's registration.[66]

C. COURT CHALLENGES

In 2003, the United States Supreme Court upheld the constitutionality of sex offender registration laws in two decisions. In the first case, *Smith v. Doe*, the Court held that the Alaska Sex Offender Registration Act was non-punitive and therefore, any retroactive application did not violate the ex post facto clause.[67] In making this determination, the Court had to first ascertain whether the legislature meant the statute to establish civil proceedings.[68] If the statute was intended to impose punishment, or if the statutory scheme is so punitive in effect, then it would clearly violate the ex post facto clause.

The Court made the determination that the Alaskan legislature intended to establish a civil statutory scheme for the registration of sex offenders. The Court based this determination on the Legislature's expressed intent within the statute itself to establish a civil mechanism. Additionally, the Court found that although the Alaska Constitution lists the need for protecting the public as a purpose of criminal administration, where a legislative restriction is an incident of the State's power to protect the health and safety of its citizens it will be considered as evidencing intent to exercise its regulatory power.[69] The Court also determined that the location of the Act within the criminal procedure code did not transform the Act into a punitive one. This finding was buttressed by the fact that, other than the duty to register, the statute mandates no procedures.[70] Instead, the statute vests the authority to promulgate regulations with the Department of Public Safety, an agency charged with enforcement of both criminal and civil regulatory laws. The Court found that by contemplating distinctly civil procedures the legislature clearly intended the Act to be civil in nature.[71]

After establishing that the Alaska legislature created a civil statute, the Court analyzed whether the effect of this statute was punitive, so as to violate the ex post facto clause. The Court found that the public notification of sex offender information via the Internet does create a stigma for the sex offenders. However, the dissemination

---

[66] 2003 Va. Acts Ch. 584.
[67] *Smith v. Doe*, 538 U.S. 84 (2003).
[68] *Smith* 538 U.S. at 92, (citing *Kansas v. Hendricks*, 521 U.S. 346, 361, 117 S.Ct. 2072, 138 L.Ed.2d 501 (1997)).
[69] *Smith* 538 U.S. at 93.
[70] *Smith* 538 U.S. at 96.
[71] Id.

of truthful information about a criminal record, which is public already, in the furtherance of a legitimate governmental objective, is not punishment.[72]

The Court in *Smith* found that the Act did not create an affirmative disability or restraint on the sex offender as to violate the ex post facto clause. Specifically, the Act imposes no physical restraint and the obligations are less harsh than the sanctions for occupational debarment which have been held to be non-punitive. This decision turned in part on the fact that the record had no evidence that the Act had led to substantial occupational or housing disadvantages for former sex offenders that would not have otherwise occurred through background checks.[73] For instance, the Act does not restrain the activities sex offenders may pursue, such as changing jobs or residences. In fact, unlike probationers or parolees, sex offenders under this Act are free to live and work as other citizens with no supervision.[74] Although they have to notify the State of a change in status and are subject to criminal proceedings for failure to comply, any prosecution is separate from the offender's original offense.[75] Therefore, the Court found that the registration requirements are not punitive in nature and do not violate the ex post facto clause.

In *Connecticut Department of Safety v. Doe*,[76] the Court held that the Department of Public Safety could post sex offender information on the Internet without violating the Due Process Clause of the 14the Amendment. Specifically, the Court held that the even if the public notification provisions deprived sex offenders of a liberty interest, the Due Process Clause did not entitle offenders to a hearing to determine whether they were currently dangerous before inclusion on the website.[77] This holding turned in part on the fact that the registry and notification requirement in the Connecticut statute was based on the previous conviction, not an indication of current dangerousness.[78] The offender's previous conviction already included a procedurally safeguarded opportunity to contest the facts of the alleged crime.[79] Therefore, even if the offender could establish that he is not dangerous, it is a moot point because the statute ensures that the registry information of all sex offenders, dangerous or not, must be publicly disclosed.[80] The Court determined that this statute did not violate procedural due process, but left open the door for substantive due process challenges.[81]

---

[72] *Smith* 538 U.S. at 98-99.
[73] *Smith* 538 U.S. at 100.
[74] *Smith* 538 U.S. at 101.
[75] *Smith* 538 U.S. at 102.
[76] *Connecticut v. Doe,* 538 U.S. 1 (2003).
[77] *Connecticut* 538 U.S. at 2.
[78] *Connecticut* 538 U.S. at 4.

[79] *Connecticut* 538 U.S. at 2.
[80] *Connecticut* 538 U.S. at 7.
[81] *Connecticut* 538 U.S. at 8.

D. VIRGINIA'S CURRENT SEX OFFENDER AND CRIMES AGAINST MINORS REGISTRY ACT

The stated purpose of the current version of Virginia's Sex Offender and Crimes Against Minors Registry Act (the Act) is to assist the efforts of law enforcement agencies and others to protect their communities and families from repeat offenders and to protect children from becoming victims of criminal offenders by helping to prevent these offenders from working directly with children.[82] To accomplish this purpose, the Act mandates that every person convicted on or after July 1, 1994 of an offense set forth in *Code of Virginia* § 9.1-902 shall register and re-register with the Virginia State Police. The offenses requiring registration under the Act are:

- Sexual Offenses;
- Violent Sexual Offenses;
- Murder of a child; and,
- Any person required to register in any other state's sex offender registry.[83]

Exhibit 3 details the sexual offenses for which offenders must register as either Sexual Offenders or Violent Sexual Offenders.

Additionally, a juvenile may be required to register if the court, in its discretion, or upon the motion of the attorney for the Commonwealth, finds that a juvenile: (i) was over the age of 13 at the time of offense, (ii) was tried as a juvenile, (iii) adjudicated delinquent of an enumerated offense; and, (iv) the circumstances of the offense warrant registration.[84] A juvenile offense requiring registration is determined by:

- The degree to which the delinquent act was committed with the use of force, threat or intimidation;
- The age and maturity of the complaining witness and of the offender;
- The difference in the ages of the complaining witness and offender;
- The nature of the relationship between the complaining witness and the offender;
- The offender's prior criminal history; and,
- Any other aggravating or mitigating factors relevant to the case.[85]

1. REGISTRATION PROCEDURES AND REQUIREMENTS

The Virginia Sex Offender Act specifies that every person convicted of an offense for which registration is required shall be required upon conviction to register and re-register with the State Police.[86] The court shall order the person to provide to

[82] Va. Code Ann. § 9.1-900 (2005).
[83] Va. Code Ann. § 9.1-902 (2005).
[84] Id.
[85] Id.
[86] Va. Code Ann. § 9.1-903 (2005).

Exhibit 3

Sex Offender Registry Offenses

Persons convicted in other jurisdictions of substantially similar laws must register in Virginia as though the conviction was for a virginia offence. Also, persons required to register as a sex offender in the state of conviction must also register in Virginia if not otherwise required to under the Act. The following list contains the specific section of the Code of Virginia and the literal offense for which registration as a Sex Offender is required.

***1. "Sexually Violent Offense" means a Violation or Attempted Violation of:**	Section
Charge	
Attempts to commit noncapital felonies	18.2-26
Abduction for Immoral Purpose	18.2-48(ii)
Rape	18.2-61
Forcible Sodomy	18.2-67.1
Object Sexual Penetration	18-2-67.2
Aggravated Sexual Battery	18.2-67.3
Attempt Rape, Forcible Sodomy Object Sexual Penetration	18.2.67.5 (A) (B)
Sexual Battery where the perpetrator is 18 years of age or older and the victim is under the age of 6	18.2-67.4
Taking Indecent Liberties with Minor	18.2-370
Taking Indecent Liberties with Minor by Person in Custodial or Supervisory Relationship	18.2-370.1
OR	
A SECOND or subsequent conviction, where the individual was at liberty between such convictions, of the follow:	
Carnal Knowledge of Minor between 13-15	18.2-63
Carnal knowledge of Minor between 13-15 of Supervisory Relationship	18.2-64.1
Marital Sexual Assault	18.2-67.2:1
Enter Dwelling House etc. with intent to Rape	18.2-90
OR	
A SECOND or subsequent conviction, where the individual was at liberty between such convictions, and where the victim is a minor or is physically helpless or mentally incapacitated as defined in 18.2-67.10, a violation or attempted violation of:	
Abduction	18.2-47(A)
Abduction of any Child under 16 for the Purposes of Concubinage or Prostitution	18.2-48 (i) (iii)
Sexual Battery	18.2-67.4
Attempted Sexual Battery	18.2-67.5 (C)
Crimes against nature (Sodomy)	18.2-361
Adultery & Fornication by Person Forbidden to Marry: Incest	18.2-366
Production, Publication, Sale, Possession with intent to Distribute, Financing, etc. of Child Pornography	18.2-374.1

2. "Sexual Offenses" means a Violation or Attempted Violation of:	Section
Charge	
Murder (Victim is a Minor)*	18.2-31,18.2-32
Carnal Knowledge of Minor between 13-15	18.2-63
Carnal Knowledge of Minor between 13-15 Supervisory Relationship	18.2-64.1
Marital Sexual Assault	18.2.67.2:1
Sexual Battery (3 or more convictions)	18.2-67.4
Attempted Sexual Battery (3 or more convictions)	18.2-67.5 (C)
Enter Dwelling House etc. with intent to Rape	18.2-90
Production, Publication, Sale, Possession with intent to Distribute, Financing, etc. of Child Pornography	18.2-374.1
Possession of Child Pornography (2 or more convictions)	18.2-386.1
Unlawful Filming, Videotaping, or Photographing another (3 or more convictions)	18.2-374.1:1(D)
Chapter 117 (18 U.S.C. 2421 et seq.) of Title 18 of the *United States Code*	
OR	
Where the victim is a minor or is physically helpless or mentally incapacitated as defined in 18.2-67.10, a violation or attempted violation of:	
Abduction	18.2-47 (A)
Abduction of any Child under 16 for the Purposes of Concubinage or Prostitution	18.2-48 (i) (iii)
Sexual Battery	18.2-67.4
Attempted Sexual Battery	18.2-67.5 (C)
Crimes against nature (Sodomy)	18.2-361
Adultery & Fornication by Person Forbidden to Marry: Incest	18.2-366
Use of Communication Systems to Facilitate Certain Offenses Involving Children	18.2-374.3(B) (iv)
* These offenses are included in the Public Notification database.	

the local law enforcement agency of the county or city where the offender physically resides all the information required by the State Police for inclusion in the registry.[87] The court shall also remand the person to the custody of the local law-enforcement agency for the purpose of obtaining the person's fingerprints and photographs of a type

[87] Id.

and kind specified by the State Police for inclusion in the Registry.[88] Exhibit 4 is an example of the State Police Form 236 used for registration and re-registration of sex offenders. The local law enforcement shall then forward to State Police all the necessary registration information within seven days of the date of sentencing.[89]

Every person required to be registered must register within ten days of the date of release from confinement in a state, local or juvenile facility; or a state civil commitment program for sexually violent predators.[90] If a sentence of confinement is not imposed, the person must register within ten days of suspension of the sentence, or in the case of a juvenile, the disposition.[91] The local law-enforcement agency shall obtain two sets of fingerprints, proof of residence, and two photographs as specified by the State Police.[92] At that time, the law enforcement agency must advise the person of his duties regarding re-registration.[93] Additionally, when an offender changes his residence within the Commonwealth, the individual must register in person to the local law enforcement agency where the offender now resides within ten days.[94] At that time, the individual shall present one form of Virginia state government-issued photo-identification that contains the individual's complete name, gender, date of birth and complete new address.[95] If the offender moves out of the Commonwealth, the offender must register in person with the local law enforcement agency where he previously registered within ten days prior to his change of address.[96] Whenever a person subject to registration changes residence to another state, the State Police shall notify the designated law enforcement agency of that state.[97] A probation or parole officer must notify the State Police within ten days of learning of the change of residence of one of his probationers or parolees.[98]

In addition to these other registration requirements an offender must indicate on the registration and re-registration form, the name and location of the institution attended by or employing the registrant and whether such institution is within or outside of the Commonwealth.[99] Furthermore, the offender must notify the local law enforcement agency in person within ten days of any change in enrollment or employment status with an institution of higher learning.[100] The local law-enforcement

---

[88] Id.
[89] Id.
[90] Id.
[91] Id.
[92] Id.
[93] Id.
[94] Id.
[95] Id.
[96] Va. Code Ann. § 9.1-905 (2005).
[97] Id.
[98] Va. Code Ann. § 9.1-903 (2005).
[99] Va. Code Ann. § 9.1-906 (2005).
[100] Va. Code Ann. § 9.1-906 (2005).

agency shall promptly forward to the State Police all necessary registration or re-registration information received. Upon receipt of all the registration and re-registration information from the local law enforcement, the State Police shall then notify the chief law-enforcement officer of the locality listed as the person's address on the registration and re-registration.[101]

Under the Sex Offender Registry Act, non-residents entering Virginia are required to register and reregister in Virginia if they are required to register in their state of residence or they would be required to register under the laws of the Commonwealth.[102] Such non-resident offenders must, within ten days of accepting employment or enrolling in school in the Commonwealth, be required to register and reregister in person with the local law-enforcement agency where their employment or school is located.[103] Additionally, a non-resident must register within ten days of entering the Commonwealth for an extended visit.[104]

The Registry shall include conviction data received from the courts, including the disposition records for juveniles in the Circuit Courts.[105] The Registry shall also include a separate indication that a person has been convicted of a sexually violent offense. The State Police shall forthwith transmit the appropriate information as required by the FBI for inclusion in the National Sex Offender Registry.[106]

The duration of the registration requirement remains for a violent offender's lifetime.[107] Sexual offenders, however, are required to register and re-register for a period of ten years from the date of their initial registration.[108] Any period of confinement in a federal, state or local correctional facility, hospital or any other institution or facility during the ten year period shall toll the registration period and the duty to reregister shall be extended.[109] Persons confined in a federal, state or local correctional facility shall not be required to re-register until released from custody.[110] Violent Offenders must register and re-register every 90 days from the date of registration.[111] Sexual offenders must register and re-register annually from the date of registration.[112] The re-registration procedure begins when the State Police mail a

---

[101] Id.
[102] Va. Code Ann. § 9.1-905 (2005).
[103] Id.
[104] Id.
[105] Va. Code Ann. § 9.1-911 (2005).
[106] Va. Code Ann. § 9.1-911 (2005).
[107] Va. Code Ann. § 9.1-908 (2005).
[108] Id.
[109] Id.
[110] Id.
[111] Va. Code Ann. § 9.1-904 (2005).
[112] Id.

certified (SP-236) letter to the address that was listed on the offender's last registration. The offender will sign the form and provide both thumbprints on the form. Once completed, the form must be mailed to the State Police on or before the re-registration deadline date on the letter.

Exhibit 4

Sex Offender Registration Form

SP-236 (REV. 7-2001)

RECORD COMPLETE CONVICTION DATA AND FITTS REGISTRANT'S PHOTOGRAPH ON THE REVERSE SIDE OF THIS DOCUMENT

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF STATE POLICE
SEX OFFENDER AND CRIMES AGAINST MINORS REGISTRATION FORM

5759

Distribution
Page 1 Instructions
Page 2 State Police
Page 3 Agency Copy
Page 4 Offender's Copy

AGENCY NAME	AGENCY/DOC ADDRESS (INCLUDE PROBATION/PAROLE DISTRICT #)
Deep Meadow Corr. Center	State Farm, Virginia 23160

OFFENDER'S TENTATIVE RELEASE DATES FROM:		
DEPT. CORRECTIONS CUSTODY	DISCHARGE FROM PAROLE/PROBATION	OFFICIAL'S SIGNATURE
PED 5/8/2002	MPRD. 1/16/2004	David C. Turner/LPC

OFFENDER INFORMATION

LAST NAME	MAIDEN	FIRST	MIDDLE	HT	WT	HAIR	EYES	SEX	RACE
Merriweather	N/A	Walter	Alan	5'4	200	Black	Blue	M	W

ALIASES USED	SSN	DOB MM	DD	YYYY
None	225-62-2854	10	11	1914

PHYSICAL HOME STREET ADDRESS	STATE	ZIP CODE
Deep Meadow Corr. Center State Farm	Virginia	23160

SIGNATURE OF PERSON REGISTERING	SID NUMBER	FBI NUMBER	INMATE NUMBER	DATE SUBMITTED
[signature]			298457	3/20/02

1. R. THUMB	2. R. INDEX	3. R. MIDDLE	4. R. RING	5. R. LITTLE

6. L. THUMB	7. L. INDEX	8. L. MIDDLE	9. L. RING	10. L. LITTLE

LEFT FOUR FINGERS TAKEN SIMULTANEOUSLY | L. THUMB | R. THUMB | RIGHT FOUR FINGERS TAKEN SIMULTANEOUSLY

ADDITIONAL OFFENDER INFORMATION:

EMPLOYER'S NAME: _____

EMPLOYER'S PHYSICAL ADDRESS: _____

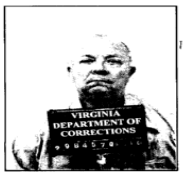
CITY: _____ **ZIP CODE:** _____

NONRESIDENT OF VIRGINIA - PURPOSE OF REGISTERING: (Check all which apply)
☐ Employment ☐ Volunteering Services
☐ School Student ☐ Vocation

SCHOOL NAME: _____

SCHOOL'S PHYSICAL ADDRESS _____ ZIP CODE _____

AFFIX PHOTO HERE



DATE OF MUG SHOT: _____

*** LIST VIRGINIA CONVICTION(S) INFORMATION**

DATE CONVICTED	CONVICTED OF	CODE SECTION	SENTENCING COURT	COURT CASE NUMBER
12-3-93	Aggravated Sexual Battery	18.2-67.3	Newport News C.C.	

*** LIST OUT OF STATE CONVICTION(S) INFORMATION**

DATE CONVICTED	STATE IN WHICH CONVICTED	CONVICTED OF	CODE SECTION	SENTENCING COURT	COURT CASE NUMBER

***NOTE: RECORD CONVICTION DATA WHETHER IT OCCURRED ON, OR AFTER JULY 1, 1994.**

2. RELIEF FROM REGISTRATION REQUIREMENTS

A sexually violent offender may petition the court in which he was convicted for relief from the requirement to re-register. However, this right does not exist until the expiration of three years from the date upon which the duty to register as a sexually violent offender is imposed.[113] After the petition is filed, the Court shall hold a hearing on the petition, upon notice to the attorney of the Commonwealth, to determine whether the person suffers from a mental abnormality or a personality disorder that makes the person a menace to the health and safety of others or significantly impairs his ability to control his sexual behavior.[114] Prior to the hearing the court shall order a comprehensive assessment of the applicant by a panel of three certified sex offender treatment providers.[115] The report of the assessment shall be filed with the court prior to the hearing. If the results of the hearing are positive, then the offender will no longer be required to re-register every 90 days, but will be required to register annually from the date of his initial registration.[116] Simultaneously, the offender would be removed from the Internet registry.[117] If the petition is denied, the offender must wait three years from the date on which the previous petition was filed to again petition for relief from the registration requirements.[118]

Additionally, the duly appointed guardian of a person convicted of an offense that requires registration or re-registration as a violent sexual offender or sexual offender may petition the court in which the person was convicted for relief from the requirement to reregister.[119] The registration requirement may be relieved if, due to a physical condition, the person is incapable of both re-offending and registering.[120] Specifically, the court shall hold a hearing on the petition, on notice to the attorney for the Commonwealth, to determine whether the person suffers from a physical condition that makes the person no longer a menace to the health and safety of others and incapable of re-registering.[121] Prior to the hearing the court shall order a comprehensive assessment of the applicant by at least two licensed physicians other than the person's primary care physician.[122] A report of the assessment shall be filed with the court prior to the hearing. If the court finds by clear and convincing evidence that the person is not capable of re-offending, the petition shall be granted and the duty to reregister shall be terminated.[123] If the petition is granted, the court shall promptly notify the State Police of the order terminating the duty to register and the State Police

[113] Va. Code Ann. § 9.1-909 (2005).
[114] Id.
[115] Id.
[116] Id.
[117] Id.
[118] Id.
[119] Id.
[120] Id.
[121] Id.
[122] Id.
[123] Id.

shall remove any Registry information on the offender from the Internet[124]. If the petition is denied the duty to re-register shall continue, but an appeal from the denial of a petition shall be made to the Supreme Court of Virginia.[125] Another petition for relief pursuant to this subsection may not be filed for three years from the date the on which any previous petition for such relief was denied.[126]

After a person has been relieved from the re-registration requirements, if at any time the person's physical condition changes so that he becomes capable of re-offending or reregistering, the attorney for the Commonwealth shall file a petition with the Circuit Court in the jurisdiction where the person resides and the court shall hold a hearing. If the petition is granted, the duty to re-register shall commence from the date of the court's order.[127]

3. REMOVAL FROM SEX OFFENDER REGISTRY

Any person required to register, other than a person who has been convicted of (i) any sexually violent offense, (ii) two or more offenses for which registration is required, or, (iii) marital rape may petition the Circuit Court in which he was convicted or the Circuit Court in the jurisdiction where he then resides for removal of his name and all identifiers from the Registry.[128] A petition may not be filed earlier than ten years after the date of the initial registration.[129] The court will hold a hearing on the petition at which the applicant and any interested persons may present witnesses and other evidence.[130] If after such hearing, the court is satisfied that such person no longer poses a risk to public safety, the court shall grant the petition.[131] The State Police shall remove from the Registry the name and all identifying information upon receipt of an order granting a petition. In the event the petition is not granted, the person shall wait at least 24 months from the date of the denial to file a new petition for removal from the Registry.[132]

4. PENALTIES

If an offender fails to register or re-register as required, the State Police shall promptly investigate.[133] If there is probable cause to believe a violation has occurred,

---

[124] Id.
[125] Id.
[126] Id.
[127] Va. Code Ann. § 9.1-909 (2005).
[128] Va. Code Ann. § 9.1-910 (2005).
[129] Id.
[130] Id.
[131] Id.
[132] Id.
[133] Va. Code Ann. § 9.1-907 (2005).

in the jurisdiction in which the person last registered or reregistered, the State Police may obtain a warrant charging a Violent Offender with a felony and a Sexual Offender a misdemeanor Failure to Register.[134] Subsequently, the officer will forward to the jurisdiction, together with the warrant, an affidavit signed by the custodian of the records that such person failed to comply with the duty to register or re-register.[135] Such affidavit shall be admitted into evidence as prima facie evidence of the failure to comply with the duty to register or re-register.[136] Finally, the State Police is required to promptly notify the local law enforcement agency of the jurisdiction of the person's last known residence as shown in the records of the State Police.[137]

State Police investigations and arrests rarely result in incarceration. However, a Crime Commission analysis of a sample of 682 Virginia State Police SP 102 investigation files for offenders violating the registry in 2004 found that 538 were one-time offenders and 144 were repeat violators. The 682 investigations yielded 179 arrests. Of the 179 arrests, documentation revealed that prosecution was declined in 133 cases, 20 of which involved persons previously arrested for registry violations.

In addition to violations for failure to register, the Act also penalizes any person who uses Sex Offender Registry information for an unauthorized purpose. It is also unlawful to use the information contained in or derived from the Registry for the purpose of intimidating or harassing another. Such acts constitute Class 1 misdemeanors.

5. PUBLIC NOTIFICATION AND DISSEMINATION OF SEX OFFENDER REGISTRY INFORMATION

The State Police shall make Registry information available upon request to criminal justice agencies, including local law enforcement agencies, through the Virginia Criminal Information Network (VCIN). Registry information should be used for the screening of current or prospective employees or volunteers or otherwise for the protection of the public in general and children in particular.[138] Information regarding a specific person shall be disseminated upon receipt of an official request that may be submitted directly to the State Police or to the State Police through a local law-enforcement agency.[139] The request must include:

- a statement of the reason for the request;
- the name and address of the person requesting the information; and,

[134] Id.
[135] Id.
[136] Id.
[137] Va. Code Ann. § 9.1-907 (2005).
[138] Va. Code Ann. § 9.1-912 (2005).
[139] Id.

- the name, address, and if known the social security number, of the person about whom information is sought.[140]

The search has a $15.00 charge and will provide if the person named in the request is classified as a sexual offender and/or a violent sexual offender.[141] In calendar year 2004, there were 137,553 inquiries conducted against the SOR for employment or licensure purposes.

In addition to having the authority to make specific requests for sex offender information, certain entities are eligible to receive automatic electronic notification from State Police of sex offenders who move into their zip code or contiguous zip code.[142] This notification includes information on both sex offenders and violent sex offenders.[143] The entities eligible to receive this information include:

- Any school;
- Day-care service and child-minding service; and,
- Any state-regulated or state-licensed child day center;
- Child day program;
- Children's residential facility;
- Family day home; or,
- Foster home.[144]

If the entity does not have the capability of receiving electronic notice, the State Police will mail notices of all registrations and re-registrations of sex offenders located in the area or a contiguous zip code.

Additionally, violent sex offender information is available to the public by means of the Internet at www.virginiatrooper.org.[145] Information on other sex offenders is not available to the public, except by specific request, as mentioned earlier. The information provided by the website for violent sex offenders includes:

- The offender's name;
- All aliases that he/she used or under which he may have been known;
- The date and locality of the conviction;
- Brief description of the offense;
- Current address; and,
- Photograph.[146]

---

[140] Id.
[141] Id.
[142] Va. Code Ann. § 9.1-914 (2005).
[143] Id.
[144] Va. Code Ann. § 9.1-914 (2005).
[145] Va. Code Ann. § 9.1-913 (2005).
[146] Id.

The Sex Offender Registry website provides information specifying if the offender may be wanted for failure to reregister. The website is secure and is updated daily. Any information that is known to be inaccurate is removed from the Internet.

6. LIMITATIONS ON SEX OFFENDERS

The *Code of Virginia* § 18.2-370.2 prohibits proximity to children for persons who have committed a violation or attempted violation of the following and where the victim is a minor:

- *Code of Virginia* § 18.2-47(A) (Abduction and Kidnapping);
- *Code of Virginia* § 18.2-48(i) or (iii) (Abduction (i) extort or (iii) prostitution under 16);
- *Code of Virginia* § 18.2-361 (Crimes against nature (sodomy)); and,
- *Code of Virginia* § 18.2-366 (Incest).

Proximity to children is also limited for persons who have committed a violation or attempted violation of:

- *Code of Virginia* § 18.2-61 (Rape, victim under 13);
- *Code of Virginia* § 18.2-63 (Carnal Knowledge – victim between 13 and 15);
- *Code of Virginia* § 18.2-64.1 (Carnal Knowledge – victim between 13 and 15; Supervisory relationship);
- *Code of Virginia* § 18.2-67.1(A)(1) (Forcible sodomy – victim under 13);
- *Code of Virginia* § 18.2-67.2(A)(1) (Object sexual penetration – victim under 13);
- *Code of Virginia* § 18.2-67.3(A)(1) (Aggravated sexual battery – victim under 13) or Va. Code §18.2-67.3(A)(3)(a) (Aggravated sexual battery – victim between 13 and 15);
- *Code of Virginia* § 18.2-370 (Indecent liberties);
- *Code of Virginia* § 18.2-370.1 (Indecent liberties; supervisory relationship);
- *Code of Virginia* § 18.2-371(ii) (Causing child to be delinquent/abused – consensual sex with child above 15);
- *Code of Virginia* § 18.2-374.1 (Production, distribution, financing etc. of Child Pornography);
- *Code of Virginia* § 18.2-374.1:1 (Possession of child pornography); or,
- *Code of Virginia* § 18.2-379 (Employing or permitting minor to assist in offense under Chapter 8).

Conviction for one of these offenses, as part of the sentence, prohibits the offender from loitering within 1,000 feet of the premises of any place he knows or has reason to know is a primary, secondary or high school. A violation of this statute is a Class 6 felony.

E. OTHER STATES' REGISTRATION REQUIREMENTS

After thoroughly reviewing the registration requirements under the Virginia Sex Offender and Crimes Against Minors Registry Act, staff analyzed the Sex Offender Registry statutes in the other 49 states. Staff also administered structured questionnaires to state law enforcement representatives to further ascertain requirements and clarify statutory provisions. In some states, however, the information gathering processes are not uniform, but vary from locality to locality. Additionally, in some states, there are differences between statutory requirements and the actual practices by law enforcement. The Crime Commission's statutory analysis examined, among other factors, the following:

- Time frames for notification to registry upon release from prison and/or jail;
- Time frames for re-registration (verification);
- Circumstances requiring re-registration;
- Penalties for failure to comply with registry requirements;
- Mandated registry information; and,
- Eligibility and requirements for juvenile offenders.

1. RELEASE FROM INCARCERATION

Virginia sex offenders are required to register with Virginia State Police or a local law enforcement agency within ten days of release from prison or jail. As Table 2 shows, the majority of the other 49 states have shorter time frames than does Virginia for the required registration of sex offenders when released from incarceration.

Table 2

Other State Timeframes for Notification

Time Frame	Number of States
Prior to Release	4 (8%)
Day of Release	3 (6%)
1-3 Days	12 (25%)
5-7 Days	6 (12%)
10 Days	20 (41%)
More than 14 Days	4 (8%)

Source: Virginia State Crime Commission graphic and analysis, December 2005.

2. RE-REGISTRATION OF SEX OFFENDERS

Violent sex offenders are required to register every three months in Virginia. Non-violent sex offenders are required to re-register once a year. The majority of the other 49 states have the same time frames for violent sex offender re-registration (Table 3). Almost all, 44 states (90%) in total, require re-registration of non-violent sex offenders once a year.

Table 3 Other State Timeframes for Re-Registration	
Time Frame	**Number of States**
Every 90 Days	44 states (90%)
Semi-Annually	2 states (4%)
Annually	2 states (4%)
Every 60 days	1 state (2%)
Source: Virginia State Crime Commission graphic and analysis, December 2005.	

Virginia also requires an offender to re-register upon a change of address or a change in status of enrollment in a school. Each of the other 49 states includes change of address as a factor requiring sex offender re-registration. Additional criteria requiring re-registration included:

Change of school	33 states (67%);
Change of job	32 states (65%);
Name change	33 states (67%); and,
Change of telephone number	15 states (31%).

Additionally, ten states require re-registration when there is a change in any information contained in the initial registration.

3. PENALTIES FOR FAILURE TO COMPLY WITH REGISTRY REQUIREMENTS

Virginia penalizes failure to register as a Class 1 misdemeanor for sex offenders and a Class 6 felony for sexually violent offenders. Virginia also does not require mandatory jail time for first time violations, nor increase the penalties for subsequent registration violations. In 41 of the other 49 states (84%), the penalty for not complying with the initial registration requirements can be a felony. Twelve states (25%) have higher penalties for more serious and higher risk offenders who fail to register. Four states (8%) have mandatory jail time for first time violations. Twenty states (41%) have increased penalties for subsequent registration violations.

4. MANDATED REGISTRY INFORMATION

Virginia mandates that the Sex Offender Registry include the person's name, all aliases that he has used or under which he may have been known, the date and locality of the conviction for which registration is required, his fingerprints and a photograph of a type and kind specified by the State Police, his date of birth, social security number, current physical and mailing address and a description of the offense or offenses for

which he was convicted. The registration shall also include the locality of the conviction and a description of the offense or offenses for previous convictions that would require registration.[147] In contrast:

-21 states (43%) require DNA samples for everyone who is on the registry;

-24 states (49%) require information on the vehicle or vehicles the registrant regularly drives;

-40 states (82%) require information on the registrant's employer;

-42 states (86%) require information if the registrant is enrolled in or works at a school; and,

-4 states (8%) require registrants, who are in school, to specifically notify the school administration of their status.

5. REGISTRATION OF JUVENILE SEX OFFENDERS

In 47 states (96%), juveniles who are tried and convicted as *adults* are placed on the registry as if they were adults. In 29 states (59%), juveniles tried as juveniles can be registered as sex offenders. In 14 states (29%), juveniles potentially remain on the registry for a shorter length of time than adults. In a number of states, however, the registry information for juveniles is not public, or has more restricted access than information on the registry for adults.

F. PROFILE OF VIRGINIA'S SEX OFFENDERS

In April 2005, staff examined the status of 218 sex offenders on the Sex Offenders and Crimes Against Minors Registry database. The registration indicated that this sample of offenders resided in zip codes contiguous to the Capitol in Richmond, Virginia. Review of the registry data for the 218 offenders found that 30 offenders were not in compliance with the registry, 11 offenders had missing photographs and nine offenders had unclear photographs.

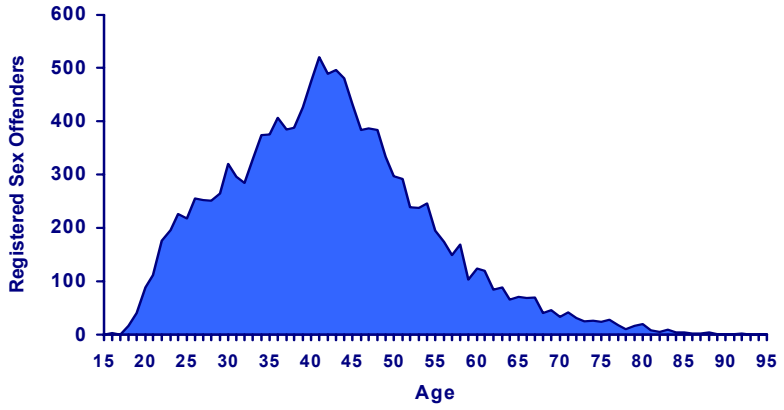
To better understand the nature of the total records in the registry, the Crime Commission received the Sex Offenders and Crimes Against Minors Registry database for May 20, 2005, from the Virginia State Police for preliminary analysis. At this point in time there were a total of 13,265 sex offenders on the Registry. The majority of the offenders (10,919, or 82%) are classified as Violent Sex Offenders and 18%

[147] Va. Code Ann. § 9.1-903 (2005).

(2,334) are classified as Sex Offenders.[148] As Figure 16 illustrates, the peak age of the registered sex offenders is 41 years old.

Figure 16

Registered Sex Offenders by Age

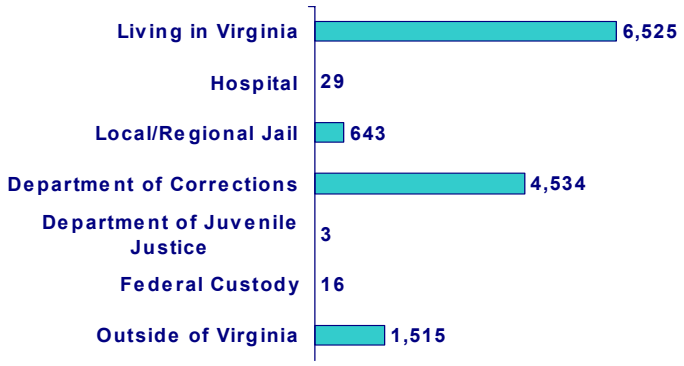


Source: Virginia Criminal Sentencing graphic and analysis, June 2005.

Figure 17 illustrates that of the 13,265 registered sex offenders in Virginia, the majority (49.2%) indicated on their registration a Virginia residence, whereas 11.4% indicated an out of state residence. The .2% of registered sex offenders listed as being located in a hospital also includes mental health facilities, nursing homes and the VCBR for civilly committed sex offenders.

Figure 17

Virginia Sex Offender Residences



Sources: Virginia Criminal Sentencing Commission analysis, June 2005.

[148] Twelve offenders were not classified.

Of the 6,525 registered sex offenders living in Virginia, the largest percentage (31%) is located in Virginia State Police Division 5 (Tidewater); as Table 4 shows, registered sex offenders are spread evenly among the other State Police Divisions.

Table 4

Registered Sex Offenders by State Police Divisions

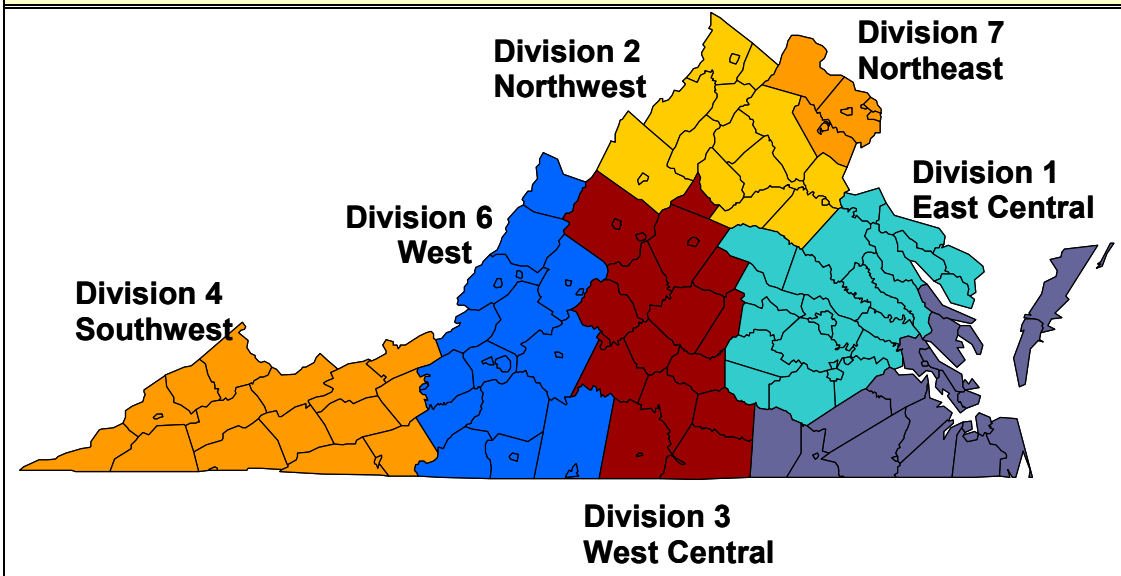
State Police Division	Offenders	Percentage
Division 1: East Central	1,063	16.3%
Division 2: Northwest	669	10.3%
Division 3: West Central	681	10.4%
Division 4: Southwest	528	8.1%
Division 5: Tidewater	2,023	31.0%
Division 6: West	771	11.8%
Division 7: Northeast	790	12.1%
TOTAL	**6,525**	**100%**

Source: Virginia Criminal Sentencing Commission analysis, June 2005.

According to the Registry data analyzed, as of May 20, 2005, a total of 6,023 (92.3%) of sex offenders, living in Virginia, were in compliance with the registration requirements. However, 567 of these registered sex offenders were not in compliance because the re-registration cards had not been mailed back by the due date. The number of offenders not in compliance was split between sexually violent offenders (5.9%) and sex offenders (2.9%). In addition, 605 of the 13,265 registered sex offenders did not have the required photograph.

Figure 18

State Police Divisions



Source: Virginia Criminal Sentencing Commission analysis, June 2005.

Finally, after determining that many states mandate that DNA be required as of part their Registry requirements, staff decided to identify how many sex offenders in our Registry do not have their corresponding DNA on file. In 1990 the General Assembly enacted §19.2-310.2 *Code of Virginia* which requires sex offenders convicted of a felony to submit a DNA sample upon conviction. At the request of the Sex Offender Task Force, in June 2005 the Crime Commission submitted to the Department of Forensic Science (DFS) the list of the 13,265 registered sex offenders to match for their profiles in the Virginia DNA data bank.

A review of the sex offender registry requirements for the other 49 states found that 21 (43%) require submission of a DNA profile as a sex offender registry requirement. The (DFS) review found profiles for 10,116 (76%) offenders in the data bank; profiles for 3,149 (24%) could not be matched with personally identifying information. Seventy percent of the missing offender profiles were in five offense categories:

- 688 (22%) persons convicted of aggravated sexual battery;
- 554 (18%) persons convicted of rape;
- 355 (11%) persons convicted of indecent liberties;
- 342 (11%) persons convicted of carnal knowledge; and,
- 244 (8%) persons convicted of forcible sodomy.

However, it should be noted that the sex offender DNA profiles could be missing due to out of state registrations and registrations required for offenses that occurred prior to the statutory requirement for DNA submission.

G. PROBLEMS WITH VIRGINIA'S SEX OFFENDER AND CRIMES AGAINST MINORS REGISTRY

After analyzing the profile of the registered sex offenders, staff formed a Workgroup to help identify specific problems with Virginia's Sex Offender Registry and website. Parents for Megan's law, a national child advocacy and Megan's Law watchdog agency, conducts annual surveys to evaluate each state on:

- the community level accessibility of sex offender registration information,
- the extent of information available, and
- participation in civil commitment laws.

The Workgroup reviewed the most recent survey to determine potential elements of Virginia's Registry that merited improvement. The most recent survey was released April 2005 and it identified 551,987 registered sex offenders nationwide. Additionally, states were assigned a letter grade based upon the results of the 10 question survey. Virginia, while doing better than most states, received a "C" on this national assessment.[149]

[149] Parents for Megan's Law, "National Megan's Law Report Card", http://parentsformeganslaw.com.

The Workgroup also took a number of additional steps to examine potential areas for improvement to the website. First, the Workgroup examined other state registry websites to assess how Virginia compared, and to identify specific measures that could be implemented to improve Virginia's website. The Workgroup examined the format of Virginia's Registry, including:

-types of information provided;
-search engines available to the public; and,
-the ability of the public to immediately contact both the central office and the field division offices of the State Police to provide information.

Exhibits 5 and 6 illustrate the Virginia State Police sex offender registry website homepage and an example of offender information in Fall 2005.

The Workgroup found that Virginia currently does not mandate information on a sex offender's work address. Providing a work address would give the public a more complete picture of the offender and allow them to better assess their risk and take safety precautions. Mandating work information would also aid law enforcement in the monitoring of sex offenders. Additionally, Virginia does not include a link to e-mail offender specific information to the State Police field division offices. Providing this link would allow the public to assist law enforcement in the apprehension of sex offenders who are not in compliance with the Registry and would help to ensure that the Registry maintained accurate and up-to-date information.

The Workgroup also determined that Virginia does not differentiate between sexual offenders convicted of offenses involving children versus adults. A differentiation on the website would again allow the public to better assess whether a specific sex offender is more of a risk to an individual family. Having this specific information would allow the public to better protect themselves against dangerous sex offenders. The Registry would also become a better tool for the public if the website gave more detail in its notice that an offender is out of compliance with the registry. As it currently stands, the website only puts in bold red font that an individual offender has failed to register. It also states that the person may be wanted. The Workgroup determined that this statement lacked clarity. The public would be better served if the website indicated the degree of the offender's non-compliance with the Registry. Specifically, the website should indicate three different categories of non-compliance: (i) mail delay; (ii) active investigation; and, (iii) warrant on file.

Exhibit 5

Virginia State Police Sex Offender Website Homepage 2005

Sex Offender and Crimes Against Minors Registry Home Page

The Sex Offender and Crimes Against Minors Registry program is statutorily provided through Chapter 9, of Title 9.1 of the Code of Virginia.

Background
Statutes
Community Notification Registration
Registered Organization Search Request
Search the Public Notification Database

The registry, including the Public Notification Database, is based on the Virginia General Assembly's decision to facilitate access to publicly-available information about persons convicted of specified violent and sexual offenses. The Virginia State Police has not considered or assessed the specific risk of reoffense with regard to any individual prior to his or her inclusion within this registry, and has made no determination that any individual included in the registry is currently dangerous. The main purpose of providing this data on the internet is to make the information more easily available and accessible, not to warn about any specific individual.

Adult individuals found within the registry are included solely by virtue of their conviction record and applicable state law. Effective July 1, 2005, juveniles over the age of 13 at the time of offense, who are tried as a juvenile and are adjudicated delinquent, are also included within the registry if the trial Court determined that the circumstances of the offense require offender registration and ordered the juvenile to register pursuant to 9.1-902 (C) *of the Code of Virginia*.

If you believe the information contained on this site is inaccurate or incomplete, please contact the Sex Offender and Crimes Against Minors Registry or call (804) 323-2153.

5,840,079 visitors since December 29, 1998

E-mail comments, suggestions and questions to Virginia State Police

Exhibit 6

Example: Sex Offender Registry Profile 2005

Virginia State Police

Home Search Site Map

Sex Offender Individual Record

Date of Initial Registration: February 6, 2002

Date of Reregistration: November 8, 2005

Name
ROBERT P BOOKER

Aliases

- None Reported -

Physical Characteristics

Sex M
Race B
Age 69
Height 5 ft. 09 in.
Eyes BRO
Weight 198
Hair BLK

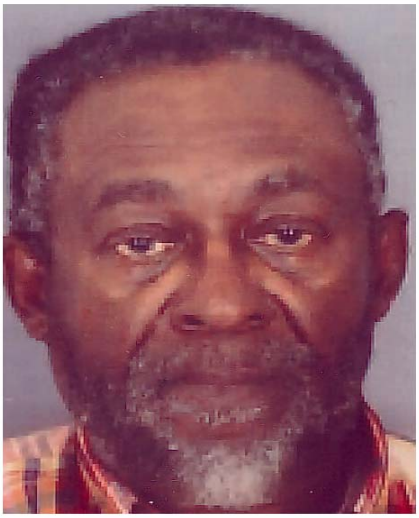


Photo Date: April 19, 2005

Address Information

Home
ROBERT P BOOKER
4612 HILLBROOK AVE
RICHMOND , VA. 23231

Work
Not Reported

Sex Offender Conviction Record

Court Case Number	CR9900297400	Date of Conviction	February 16, 2000	State Convicted in	VA
Sentencing Court	HENRICO CIRCUIT				
Statute	OBJECT SEXUAL PENETRATION				
Court Case Number	CR9900297300	Date of Conviction	February 16, 2000	State Convicted in	VA
Sentencing Court	HENRICO CIRCUIT				
Statute	OBJECT SEXUAL PENETRATION				
Court Case Number	CR9900297600	Date of Conviction	February 16, 2000	State Convicted in	VA
Sentencing Court	HENRICO CIRCUIT				
Statute	AGGRAVATED SEXUAL BATTERY				
Court Case Number	CR9900297500	Date of Conviction	February 16, 2000	State Convicted in	VA

The Workgroup conducted a preliminary analysis of the on-line registries for 47 authorized websites of other states and found additional types of information not included in Virginia's registry:

- 21 states differentiate between types of offenders;
- 15 states have information about the age, minor status and/or gender of the victims;
- 13 states list the last date of verification of offender information;
- 14 states include scars, marks and tattoos; and,
- 4 states have information on vehicle registrations.

Analysis of the other state Registries also found some states provide for the following:

- the address/phone number of supervising probation office or supervision site,
- whether the offender wears corrective glasses/lenses;
- the last known place of study;
- the anticipated release date from prison or jail;
- maps illustrating the offender's work and/or home addresses;
- multiple pictures of each offender; and,
- a "most wanted" listing of non-compliant offenders.

Exhibit 7 provides an illustration of the proposed State Police Sex Offender Website Homepage, Exhibit 8 illustrates a new proto-type for an offender profile and Exhibit 9 an illustration of the new mapping features recommended by the Workgroup.

The Workgroup also analyzed the *Code of Virginia* to identify any areas that fail to provide adequate and efficient monitoring of sex offenders. The Workgroup identified *Code of Virginia* § 9.1-914 as potentially problematic. This statute provides automatic notification to certain child minding entities, upon request, when a sex offender registers or re-registers in their locality. Currently, the notifications are voluntary. There is no requirement for public schools or public school divisions to receive the information nor is there a statutory requirement that the schools divisions have a dissemination plan for the information. The Virginia State Police has notified school divisions in the state as to the availability of the information.

To assess the degree to which schools take advantage of this automatic notification, staff obtained a list of all public schools and public school divisions that have requested Sex Offender Registry information to determine the extent to which schools are being notified of sex offenders in their locality. Specifically, the Sex Offender Registry database, as of August 9, 2005, was correlated with the Department of Education's list of public schools and school divisions to determine statewide notification. According to the Virginia Department of Education, there are 132 school

divisions in Virginia encompassing 1,818 elementary, middle, high and combined schools. Sixty-nine percent (91 of 132) of the school divisions have requested sex offender notification from the VSP. Thirty-one percent (41) have not requested notification *(see Attachment 3)*. The 41 divisions not requesting notification encompass 616 schools; however, individual schools in 28 of these 41 divisions have requested the information on their own. Thus, of the 616 schools in a non-requesting division, 47% (290) have received the information on their own. (Thirteen non-requesting school divisions have no schools receiving sex offender information).

This leaves 326 schools that do not receive notification of sex offenders registered in their locality. The majority of the schools not receiving notification are elementary schools:

- 201 (62%) elementary schools;
- 63 (19%) middle schools;
- 57 (17%) high schools; and,
- 5 (2%) combined schools.

Finally, the Workgroup reviewed proposed federal legislation that would impact Virginia Sex Offender Registry and procedures. One of the provisions of the Children's Safety Act of 2005, explained below, will be the requirement that there be a national registry with information regarding all sex offenders in each state. Currently, Virginia has only those offenders designated as a Sexually Violent Offender on the internet website.[150] Additionally, *Code of Virginia* § 9.1-914 currently requires community notification to certain child minding entities who "provide supplemental care and protection during a part of the day for a minor child of another." Thus, while parents with full custodial care cannot receive information on all sex offenders, grandparents, aunts/uncles and siblings can receive information on all sex offenders if they watch a family member's child. It should be noted that in 1998 when the legislation was first introduced to establish Virginia's internet registry, the Virginia State Police sought to have the Registry include all sex offenders.

[150] Of the approximately 13,265 offenders on Virginia's registry, 82% are violent offenders.

Exhibit 7

Proposed State Police Sex Offender Registry Homepage

Sex Offender and Crimes Against Minors Registry Home Page

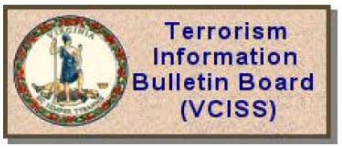
- SOR Home
- Search the Public Notification Database
- Background
- Statutes
- Register for Community Notification
- Registered Organization Search Request
- Contact Us

The Sex Offender and Crimes Against Minors Registry program is statutorily provided through Chapter 9, of Title 9.1 of the Code of Virginia.

The registry, including the Public Notification Database, is based on the Virginia General Assembly's decision to facilitate access to publicly-available information about persons convicted of specified violent and sexual offenses. The Virginia State Police has not considered or assessed the specific risk of re-offense with regard to any individual prior to his or her inclusion within this registry, and has made no determination that any individual included in the registry is currently dangerous. The main purpose of providing this data on the internet is to make the information more easily available and accessible, not to warn about any specific individual.

Adult individuals found within the registry are included solely by virtue of their conviction record and applicable state law. Effective July 1, 2005, juveniles over the age of 13 at the time of offense, who are tried as a juvenile and are adjudicated delinquent, are also included within the registry if the trial Court determined that the circumstances of the offense require offender registration and ordered the juvenile to register pursuant to 9.1-902(C) *of the Code of Virginia*.

If you believe the information contained on this site is inaccurate or incomplete, please contact the Sex Offender and Crimes Against Minors Registry or call (804) 323-2153.



VSP Terrorist Tip Hotline
1-877-4VA-TIPS

Nationwide Threat Level
ELEVATED

National Sex Offender Public Registry

Exhibit 8

Proposed State Police Sex Offender Profile

Virginia State Police

virginia.gov

Sex Offender Individual Record

- SOR Home
- Search the Public Notification Database
- Background
- Statutes
- Register for Community Notification
- Registered Organization Search Request
- Contact Us

Date of Initial Registration: March 21, 2001
Date of Reregistration: Individual has Failed to Reregister

An Arrest warrant has been issued for this individual. If you have information concerning the whereabouts of this individual, contact VSP Chesapeake, at 1-800-582-8350.

Photo Date: September 29, 2004
CLICK HERE TO VIEW MORE PHOTOS

Name	GEORGE L. BROWN
Aliases	(None)
Sex	Male
Race	Black
Age	51
Height	5 Ft. 6 In.
Weight	185 lbs.
Hair	Black
Eyes	Brown
Scars/Marks/Tattoos	None
Corrective Lenses	No
Supervision	Probation & Parole

Address Information

Home	Work
530 ASHLEY AVENUE SUFFOLK , VA. 23434	NOT REPORTED

Sex Offender Conviction Record

Court Case Number	Sentencing Court	Code Section	Statute	Date of Conviction	State Convicted In	Victim
	SUFFOLK CIRCUIT	18.2-67.3	AGGRAVATED SEXUAL BATTERY	February 23, 2001	VA	Female Over 18

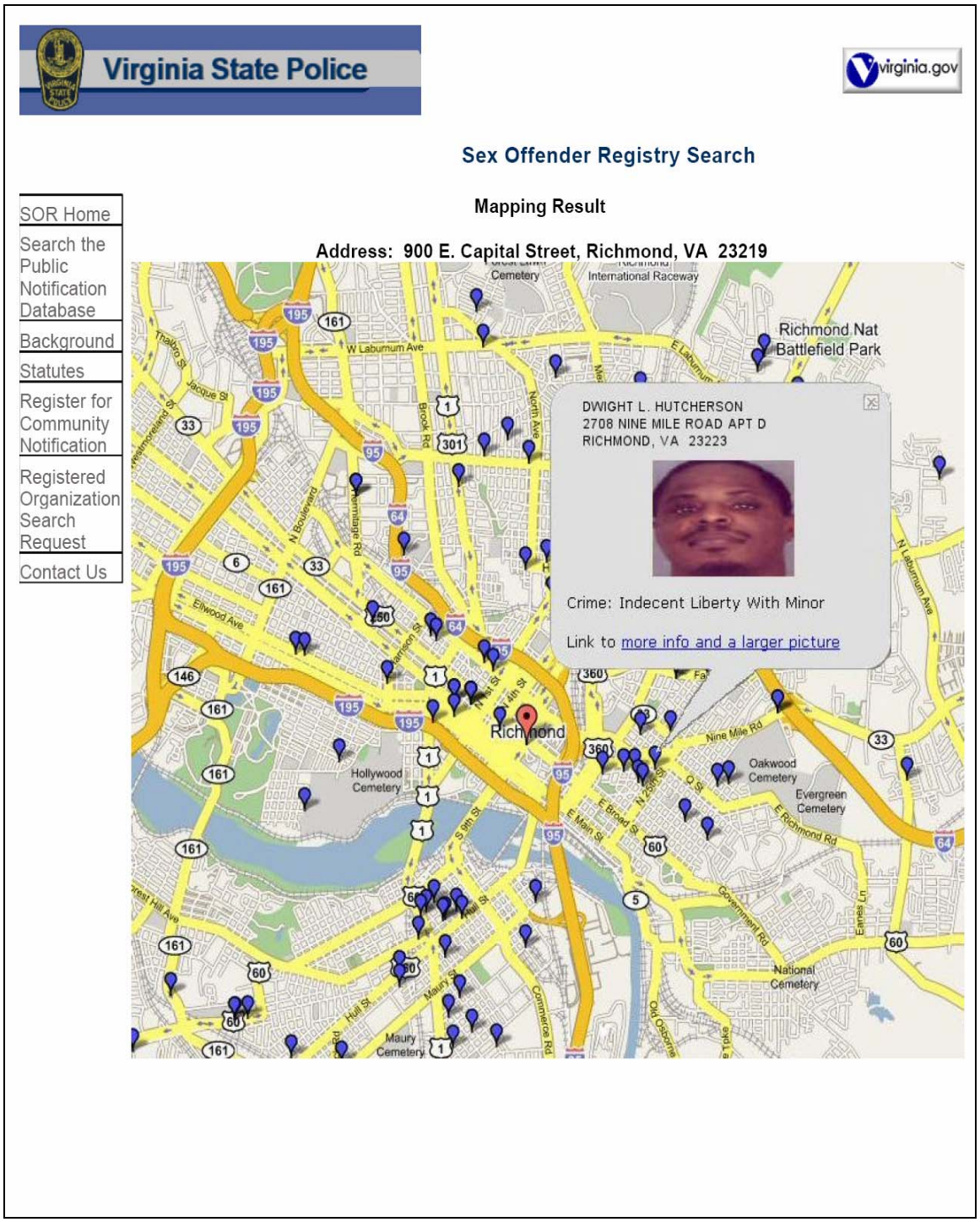
Unlawful use of the information for purposes of intimidation or harassing another is prohibited and willful violation shall be punishable as a Class 1 misdemeanor.

NOTE: Data contained in the registration may be primarily based on information furnished by the convicted Sex Offender, therefore, the Virginia Department of State Police cannot guarantee the accuracy of the record. To obtain further information pertaining to the registration process click here.

Email VSP

Exhibit 9

Proposed State Police Sex Offender Profile Mapping



H. PROPOSED FEDERAL LEGISLATION

As of November 2005, there were two pending, notable pieces of Federal legislation to improve the registration, commitment and monitoring of sex offenders, as well as enhance the criminal penalties for sex offenses:

- H.R. 3132: The Children's Safety Act of 2005 (Sensenbrenner); and,
- H.R. 1505: The Jessica Lunsford Act (Brown-Waite).The Children's Safety Act passed the House, but the Jessica Lunsford Act remains in Congressional subcommittees.

1. THE CHILDREN'S SAFETY ACT OF 2005

If enacted, the Children's Safety Act would provide new requirements for sex offender registration and notification. Specifically, these new requirements would include:

- Each state, territory, and federally recognized Indian tribe to maintain a sex offender registry;
- Each sex offender to register in the jurisdictions where the offender resides, is an employee, and is a student; and,
- Requires the Attorney General to:
  - (1) Maintain a National Sex Offender Registry at the FBI;
  - (2) Establish a Sex Offender Management Assistance program; and,
  - (3) Authorize sex offender apprehension grants.
- National website containing information about all sex offenders in all states;
- Changes in registry information immediately, electronically transmitted to all states;
- Law enforcement notification of schools, child welfare agencies, youth-serving organizations, etc. regarding presence of sex offender in area; and,
- Requires DNA samples from federal arrestees and detainees.

Additionally, the Act would require:

- Lifetime registration for offenders with felony convictions;
- Juveniles who commit sex crimes against children must register;
- Persons convicted in foreign countries for crimes against children must register;
- Persons convicted of possession of child pornography must register; and,
- Registration must include license plate/vehicle information and DNA sample.

As for the timelines for notification, the Children's Safety Act would require offenders to complete initial registration before release from prison, not after. It would also enforce monthly verification by mail for certain high-risk offenders. Additionally it would require offenders to notify law enforcement within five days of changes in registry information and for felony offenders to verify registry information in person every six months.

The Children's Safety Act also provides increased penalties for federal crimes; including, increased penalties for violent crimes against persons under age 18 that would mandate death or life imprisonment if the crime results in the death of a person under that age. Furthermore, the Act would increase penalties for violent crimes against persons under age 12 to include death or life imprisonment (with a mandatory minimum term of 30 years) if the crime results in the death of a person under that age. It also increases penalties for sexual offenses against children. For instance, Aggravated Sexual Abuse of Children results in imprisonment of mandatory 30 years to life. This crime entails:

- Crossing state line w/ intent to engage in sex act w/ person under 12; and,
- Knowingly engaging in sex act w/ person under 12 or rendering by force, threat or other means engages in sex act w/ another person between 12 and 16 (and it is at least four years younger than person so engaging).

It also increases the penalty for Abusive Sexual Contact with Children. A conviction for this crime would result in a mandatory ten years imprisonment to 25 years if the sexual contact had been a sex act in violation of Aggravated Sexual Abuse with Children. Activities relating to the Sexual Exploitation of Children would result in imprisonment of mandatory 25 years to life for a 1st offense and life for a second or subsequent conviction. Activities relating to material constituting or containing child pornography would result in mandatory 25 years to life for a first offense and life for a second or subsequent conviction. Finally, the Act increases penalties for other sexual offenses against children and raises the failure to register penalty to a felony.

2. THE FEDERAL JESSICA LUNSFORD ACT

The Jessica Lunsford Act would again amend the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act. This new Act would establish an address verification process that would entail the State mailing a non-forwardable verification form at least twice a year to the last known address of the person required to register as a sexually violent offender. This verification form must be returned within ten days after receipt and failure to return the form within the period allowed must be punishable in the same manner as a failure to register. Additionally, the Jessica Lunsford Act would require a State prison officer, the court, or another

responsible officer or official, if a person required to register is released from prison or placed on parole, supervised release or probation, to:

(1) Notify the agency responsible for supervising the person that such person is required to register; and,
(2) Provide that agency with the registration information relating to that person.

The Jessica Lunsford Act also would provide increased monitoring of sex offenders. Specifically it mandates that a person required to register who has two or more convictions for failing to register or failing to keep such registration current shall, upon release from imprisonment, be required to wear a location-transmitting device at all times for not less than five years (ten years if the person is a sexually violent predator). It also requires the State to frequently monitor the information.

3. FLORIDA'S JESSICA LUNSFORD ACT

It should also be noted that another Jessica Lunsford Act passed prior to the introduction of the pending federal legislation. [151] The State of Florida's Jessica Lunsford Act contained provisions which raised the degree of seriousness for the offense of lewd and lascivious molestation of a child 12 years or younger, committed by someone 18 years or older. This crime will now be considered a life felony.[152] Such an offense would require a split sentence with a mandatory term of imprisonment of 25 years and the offender must remain on electronic monitoring for the remainder of his natural life. Additionally, a conviction for this crime would also require electronic monitoring for any person who is conditionally released for a crime committed on or after September 1, 2005, when the victim was 15 years or younger.

[151] House Bill 1877 (2005).
[152] House Bill 1877 (2005).

CHAPTER 4:

CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS

CHAPTER 4: CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS

A. BACKGROUND

Since 1880, civil commitment has been part of the legal tradition in the United States. At that time, the New Hampshire Supreme Court summarized the common law of civil commitment as follows: "It is lawful to seize and restrain any person incapable of controlling his own actions, whose being at large endangers the safety of others."[153] A civilly committed person's duration of confinement depends wholly on his continuing illness and dangerousness.[154] The United States Supreme Court has since upheld civil commitment so long as it is "pursuant to proper procedures and evidentiary standards."[155]

Civil commitment can apply to any person whose mental illness poses a threat to the public safety. However, certain sex offenders can be civilly committed as well. The involuntary civil commitment of sex offenders began in the 1930s when states enacted laws to divert "sex psychopaths" from the criminal justice system to the mental health system.[156] At that time, society recognized that sex offenders commit felonious crimes, but their compulsive, repetitive, driven behavior indicates a mental abnormality that would be better served by the mental health system.[157] These early sex offender civil commitment statutes provided for institutionalization in lieu of prison.[158]

These statutes fell out of favor until the country experienced an increasing trend of reported sexual assaults. For example, in 1990, the FBI reported that the increase in rapes was four times faster than any other crime and that while there were 683,000 rapes reported, the actual number of rapes committed was estimated to be over two million.[159] The National Victim Center reported that of the 12 million women who have reported being raped, 61% were under the age of 18 and 30% were under the age of 11.[160] These statistics prompted various states throughout the country to adopt legislation, termed Sexually Violent Predator Commitments (SVP), designed to identify

---

[153] Pfaffenroth, Peter C. "The Need for Coherence: States' Civil Commitment of Sex Offenders in the Wake of *Kansas v. Crane*." Stanford Law Review Vol. 55:2229 (June 2003).
[154] Jones v. United States, 463 U.S. 354, 368 (1983).
[155] Id.
[156] Raquel Blacher, Historical Perspective of the "Sex Psychopath" Statute: From the Revolutionary Era to the Present Federal Crime Bill, 46 Mercer L. Rev. 889, 897 (1995).
[157] Id.
[158] Id.
[159] Schwartz, B.K. Characteristics and Typologies of Sex Offenders. In B.K. Schwartz and H.R. Cellini (Eds.), *The Sex Offender: Corrections, Treatment, and Legal Practice.* (Kingston, NJ. 1995a).
[160] Id.

high risk offenders being released from prison who are likely to engage in sexually violent acts in the future and to provide treatment in a secure setting.[161] These laws differ from the previous civil commitment statutes because they provide for institutionalization in addition to a prison term, thus meeting the community protection needs as well as the sex offender treatment needs. In general, these laws identify a SVP as a person who has been convicted of a sexually violent offense and that because of a mental abnormality or personality disorder the person finds it difficult to control his predatory behavior, making him likely to engage in sexually violent acts and dictating that the offender remain in treatment until he or she is no longer likely to commit an act of sexual violence.[162] Due to the significant impact on potential victims, the offender, and the substantial cost to society for the assessment and treatment of these individuals, it is imperative that the evaluation process and the definitional terms for the SVP commitment continue to evolve as research uncovers new realities.

B. VIRGINIA'S SEXUALLY VIOLENT PREDATOR LAW AND PROCESS

VIRGINIA'S SEXUALLY VIOLENT PREDATOR LAW

Virginia allows for the involuntary civil commitment of Sexually Violent Predators (SVPs). The *Code of Virginia* § 37.2–900 defines a SVP as any person who: (i) has been convicted of a sexually violent offense, or has been charged with a sexually violent offense and is unrestorably incompetent to stand trial; and, (ii) because of mental abnormality or personality disorder, finds it difficult to control his predatory behavior which makes him likely to engage in sexually violent acts. This *Code* section provides a specific definition for "sexually violent offense":

- A felony conviction under:
  - Former § 18-54 or 18.1-44 (Rape),
  - § 18.2-61 (Rape),
  - § 18.2-67.1 (Forcible sodomy), or
  - § 18.2-67.2 (Object sexual penetration);
- A conviction under § 18.2-67.3 (Aggravated sexual battery), where the victim is less than 13 years of age; or,
- A felony conviction under Virginia law for a forcible sexual offense committed prior to July 1, 1981, where the criminal behavior of the conviction is set forth in:
  - § 18.2-67.1 (Forcible Sodomy),
  - § 18.2-67.2 (Object Sexual Penetration), or
  - § 18.2-67.3 (Aggravated sexual battery) where the victim is less than 13 years of age.

[161] *Kansas v. Hendricks,* 531 U.S. 346 (1997).
[162] *Hendricks*, p. 95-9075.

Virginia has established a screening and assessment process for identifying those individuals who could be declared a SVP. To first identify these individuals, the Director of the Department of Corrections (DOC) has established a database of prisoners in his custody who are either incarcerated for sexually violent offenses, or will serve concurrent or consecutive time for other offenses, in addition to time for a sexually violent offense.[163] The DOC then applies the Rapid Risk Assessment for Sexual Offender Recidivism (RRASOR) on these individuals.[164] The RRASOR is an actuarial instrument designed to predict sexual offender recidivism. It considers four factors in making this prediction: (i) the number of prior sex offenses; (ii) the offender's current age; (iii) the gender of the offender's victims; and, (iv) the offender's familial relationship to the victim.[165] The RRASOR yields a score ranging from zero to five, with the corresponding recidivism rate, over a ten year period, ranging from 6.5 to 73.1%. The RRASOR was not developed to provide a comprehensive assessment of all the factors relevant to the prediction of sexual offender recidivism, but as a tool to screen offenders into relative risk levels.[166]

The DOC conducts monthly reviews of its sex offender database to identify prisoners scheduled for release within ten months who receive a score of four or more on the RRASOR or comparable instrument score.[167] The DOC then forwards the names of such prisoners, their scheduled date of release, and a copy of their file to the Commitment Review Committee (CRC) for assessment.[168] The CRC was established by the Director of DOC to screen, evaluate, and make recommendations regarding prisoners in DOC custody for the purposes of determining whether they are potential candidates for SVP designation.[169] The CRC has 90 days to complete the assessment that includes:

- Mental health exam, including personal interview;
- Consideration of RRASOR, or comparable instrument score; and,
- Review of:
    - Prisoner's institutional history and treatment record,
    - Prisoner's criminal background, and,
    - Other relevant factors.[170]

---

[163] Va. Code Ann. § 37.2-903 (2005).
[164] Under the *Code of Virginia* § 37.2-903, the DOC has the right to use other comparable, validated instruments, but to date has not done so.
[165] See Attachment 4.
[166] U.S. Department of Justice, Office of Justice Programs, Center for Sex Offender Management, *Components of Supervision: Specialized Approaches to Managing Sex Offenders*. (2005).
[167] Va. Code Ann. § 37.2-903 (2005).
[168] Id.
[169] Id.
[170] Va. Code Ann. § 37.2-904 (2005).

Following the assessment, the CRC shall recommend to the Office of the Attorney General of Virginia (OAG) that such prisoner either: (i) be committed to the Virginia Center for Behavioral Rehabilitation (VCBR) as a SVP; (ii) be placed in a conditional release program as a less restrictive alternative; or, (iii) not be committed because he does not meet the definition of a SVP.[171] The CRC shall recommend that a prisoner enter a conditional release program if it finds:

- Prisoner does not need inpatient hospitalization, but needs outpatient treatment and monitoring to prevent his condition from deteriorating;
- Appropriate outpatient supervision and treatment are reasonably available;
- There is significant reason to believe that prisoner would comply with conditions; and,
- Conditional release will not present an undue risk to public safety.[172]

Upon receipt of the CRC recommendation, the OAG shall have 90 days to conduct a review of the referred prisoner or defendant and file a petition with the circuit court for the civil commitment of such prisoner as a SVP.[173] Alternatively, the OAG can notify the DOC Director and Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) that no petition for commitment will be filed.[174] In making its determination, the OAG is authorized to possess, copy and use presentence reports, postsentence reports and victim impact statements for all lawful purposes.[175] Additionally, in making this determination to civilly commit a prisoner, the OAG shall review:

- CRC recommendation and reasoning;
- Results of mental health exam conducted by licensed psychiatrist or clinical psychologist designated by DMHMRSAS;
- Prisoner's institutional history and treatment record;
- Prisoner's criminal offense history;
- Other relevant factors; and,
- Any mental health evaluation conducted by court order.[176]

Upon filing the petition, the circuit court shall have a hearing to determine if probable cause exists to believe the identified offender is a SVP. If no probable cause exists, the petition will be dismissed and the offender will be remanded to DOC to await his scheduled release. If the court determines that probable cause exists, within 90 days after the probable cause hearing, the court shall conduct a trial.[177] Throughout

[171] Id.
[172] Id.
[173] Va. Code Ann. § 37.2-905 (2005).
[174] Id.
[175] Id.
[176] Id.
[177] Va. Code Ann. § 37.2-906 (2005).

the process, the respondent is guaranteed the following rights:

- Representation by counsel;
- Receive adequate notice of proceedings;
- Remain silent or testify;
- Be present during hearing or trial;
- Present evidence and to cross-examine witnesses;
- View and copy all petitions and reports in court file;
- Assistance of experts; and,
- Trial by jury determining by clear and convincing evidence that respondent is a SVP.[178]

If the court or jury does not find, by clear and convincing evidence, that the person is a SVP, the court shall remand the person to DOC custody until his release date. If court or jury finds, by clear and convincing evidence, the person to be a SVP, the court shall then determine whether the person shall be fully committed or placed on conditional release.[179] If the court determines that full commitment is not warranted, it shall conduct a hearing on alternatives. The court shall place the committed person on conditional release if it finds that:

- The person does not need inpatient hospitalization, but needs outpatient treatment or monitoring to prevent his condition from deteriorating;
- Appropriate outpatient supervision and treatment are reasonably available;
- There is significant reason to believe that the committed person would comply with conditions; and,
- Conditional release will not present an undue risk to public safety.[180]

If the person meets the criteria for conditional release, the judge shall order outpatient treatment, day or night treatment in a hospital, outpatient involuntary treatment with anti-psychotic medication or, any other appropriate treatments.[181]

However, if the court finds that alternatives to involuntary confinement and treatment have been investigated and deemed unsuitable, and there is no less restrictive alternative to institutional confinement and treatment, the judge shall by written order and specific findings so certify and order that the person be committed to the DMHMRSAS custody.[182] A civilly committed SVP will remain in the DMHMRSAS custody until such time as the person's mental abnormality or personality disorder has so changed that the person will not present undue risk to public safety.[183]

---

[178] Va. Code Ann. § 37.2-901. (2005).
[179] Va. Code Ann. § 37.2-908. (2005).
[180] Va. Code Ann. § 37.2-912. (2005).
[181] Va. Code Ann. § 37.2-908. (2005).
[182] Id.
[183] Va. Code Ann. § 37.2-909. (2005).

To assess the continued need for inpatient hospitalization, the committing court shall conduct a hearing 12 months after the initial date of commitment.[184] This assessment hearing shall be conducted yearly for five years and at biennial intervals thereafter.[185] Prior to the hearing, the Commissioner of DMHMRSAS shall provide the court with a report reevaluating the committed person's condition and recommending treatment. The burden of proof at this hearing shall be upon the Commonwealth to prove by clear and convincing evidence that the person remains a SVP.[186] However, the Commissioner may petition the committing court for conditional or unconditional release at any time he believes the person is no longer a SVP in need of treatment and secure confinement.[187] Additionally, the committing court may modify the conditions of release or remove conditions upon a petition of DMHHRSAS, a supervising parole or probation officer, the OAG, or a person on conditional release, or upon its own motion based on the DMHMRSAS reports.[188] But, a person on conditional release may petition for modification or release only annually, commencing six months after the conditional release order issued.[189]

C. OTHER STATES' LAWS AND PROCESSES FOR SVP INVOLUNTARY CIVIL COMMITMENT

Besides Virginia, 15 other states have statutes providing for the civil commitment of Sexually Violent Predators (SVPs).[190] Each of the 16 states, including Virginia, defines a SVP as a person who has committed a sexually violent offense and who suffers from a mental or personality disorder that makes him likely to engage in sexually violent acts. Specifically, 14 states, including Virginia, require a person to be convicted of a sexually violent offense in order to meet the definition of a SVP.[191] Of these 14, three states also allow a person to be identified as a SVP if he was charged with a sexually violent offense.[192] The remaining two states, Minnesota and Missouri, do not base the definition of a SVP on a specific conviction or charge of a sexually violent offense, but only require the person to have engaged in sexually predatory conduct.[193]

---

[184] Va. Code Ann. § 37.2-910. (2005).
[185] Id.
[186] Va. Code Ann. § 37.2-910. (2005).
[187] Va. Code Ann. § 37.2-911. (2005).
[188] Va. Code Ann. § 37.2-914. (2005).
[189] Id.
[190] These states include: Arizona, California, Florida, Kansas, Illinois, Iowa, Massachusetts, Minnesota, Missouri, New Jersey, North Dakota, South Carolina, Texas, Washington and Wisconsin. *See Attachment 5.*
[191] These states include: Arizona, California, Florida, Kansas, Illinois, Iowa, Massachusetts, Missouri, New Jersey, South Carolina, Texas, Washington and Wisconsin.
[192] These three states are Kansas, Iowa and Washington.
[193] Minn. Stat. Ann. § 253.B.02 (2005); Mo. Rev. Stat. § 632.480 (2005).

In addition to the prerequisite that there be a conviction, charge or sexually predatory conduct before a person is a SVP, further analysis of the various SVP definitions reveals that:

- Six states allow the determination of a SVP to be made based on a finding of not guilty by reason of insanity for a sexually violent offense;[194]
- Four states, including Virginia, allow the determination of a SVP to be made based on a person being charged with a sexually violent offense but found incompetent to stand trial;[195]
- Five states specify that a SVP can be a person adjudicated delinquent of a sexually violent offense;[196]
- One state, California, specifies that a person must have been convicted of a sexually violent offense against two or more victims before classification as a SVP;[197] and,
- One state, Texas, specifies that a person must be a repeat sexually violent offender to be classified as a SVP.[198]

Massachusetts includes in its definition of a SVP, a person previously adjudicated by a court and whose misconduct in sexual matters indicates a general lack of power to control sexual impulses, as evidenced by repetitive or impulsive sexual misconduct by either violence against any victim, or aggression against any victim under 16, who is likely to attack or otherwise inflict injury on such victims because of uncontrolled desires.[199] Finally, Missouri includes in its definition of a SVP, a person who has pled guilty to a sexually violent offense.[200]

Turning to how states define a sexually violent offense for purposes of civil commitment, all 16 states include the offenses of rape, forcible sodomy, object sexual penetration and aggravated sexual battery as a sexually violent offense. Only four states limit the predicate crime of aggravated sexual battery to a victim of a certain age. These states include:

Florida	16 yrs. of age;
Massachusetts	14 yrs. of age;
Texas	17 yrs. of age; and
Virginia	13 yrs. of age.[201]

[194] These six states include: Arizona, Illinois, Missouri, New Jersey, Texas and Wisconsin.
[195] These states include: Arizona, Massachusetts and New Jersey.
[196] These states include: Illinois, Massachusetts, New Jersey, Texas and Wisconsin.
[197] Cal. Welfare and Institutions *Code* § 6600. (2005).
[198] A repeat sexually violent offender has been convicted of more than one sexually violent offense and a sentence is imposed for at least one of those offenses.
[199] Tex Health & Safety *Code* Ann. § 841.002 (2005).
[200] Mass. Gen. Laws Ch. 123A, § 1 (2005).
[201] Mo. Rev. Stat. § 632.480 (2005).

As Figure Table 5 indicates, all 15 states (not including Virginia), include other sexual offenses in their definition of a sexually violent offense.

Table 5

Other States' Offenses Defining SVP Eligibility

Offense	Number of States
Incest	9 (56%)
Sexual Battery	12 (75%)
Carnal Knowledge	14 (88%)
Continuous Sex Abuse of a Child	2 (13%)
Taking Indecent Liberties with a Child	6 (38%)
Indecent Exposure	1 (6%)
Exploitation of a Child	3 (19%)

Source: Virginia State Crime Commission analysis, September 2005.

Additionally, most of the other states also include an attempt, solicitation, facilitation and/or conspiracy to commit one of their enumerated sexually violent offenses:

- 13 states (81%) attempts of predicate offenses;
- 8 states (50%) solicitation of predicate offenses;
- 2 (13%) facilitation of predicate offenses; and,
- 11 (69%) conspiracy to commit a predicate offense.

Eleven states also include non-sexual crimes in their definition of a sexually violent offense, if the offense is determined to be sexually motivated.[202] Table 6 presents a profile of the additional offenses included by the other states. Only Florida and New Jersey include non-sexual crimes, such as murder, kidnapping of a child and false imprisonment of a child, in their definition of a sexually violent offense, if the offense was committed while the person was engaged in a sexual offense.[203] Many states also include a comparable offense committed under a former law of the jurisdiction or under a current law in another jurisdiction. Eight states allow for potential SVP commitment if the offense occurred in another state[204] and seven states allow for potential commitment if the offense was committed under a former law of the state.[205]

[202] These states include: Arizona, Florida, Kansas, Illinois, Iowa, Minnesota, New Jersey, South Carolina, Texas, Washington and Wisconsin.
[203] Fla. Stat. Ann. §394.912 (2005); N.J. Stat. Ann. § 30:4-27.26 (2005).
[204] These states include: Arizona, Florida, Kansas, Iowa, Massachussets, New Jersey, South Carolina and Texas.
[205] These states include: Arizona, Florida, Kansas, Iowa, New Jersey, South Carolina and Texas.

Table 6 **Other States' Non-Sexual Offenses Included in SVP Eligibility**	
Offense	**Number of States**
Any Crime	5
Murder	6
Assault	5
Aggravated Assault	3
Robbery	1
Burglary	6
Kidnapping	6
False Imprisonment	4
Arson	1
Harassment and Stalking	1
Child Endangerment	1
Terroristic Threats	1
Assault on a Child	2

Source: Virginia State Crime Commission analysis, September 2005.

States vary in the processes they use for identifying, screening and assessing sex offenders who may be SVPs. For instance, similar to Virginia, three other states initially identify the offender, while he is in custody, based on a combination of the predicate offense and an assessment or evaluation.[206] If the offender is captured in this initial screening, the offender's file is then sent to a team of evaluators for further assessment. Finally, if this threshold is met, the offender's file is sent to the appropriate prosecuting entity for a petition to be filed in court. Six states also follow this initial process of screening the offenders while they are in custody, based on a combination of the predicate offense and an assessment. However, these states do not have a two-step assessment process and conduct no further evaluation to identify potential SVPs.[207] If the threshold is met, and they believe the offender meets the definition of a SVP, the offender's file is sent to the appropriate prosecuting entity for a petition to be filed in court.

On the other hand, five states base the initial screening only on the type of offense committed.[208] In other words, every person who commits a sexually violent offense is identified and sent to a team for further evaluation and assessment. If the threshold is met, and they believe the offender meets the definition of an SVP, the offender's file is sent to the appropriate prosecuting entity for a petition to be filed in court.

[206] These states include: Arizona, California and Missouri.
[207] Illinois, Massachusetts, New Jersey, North Dakota, Washington and Wisconsin.
[208] Florida, Iowa, Kansas, South Carolina and Texas.

Virginia is the only state to specify in statute a specific risk assessment instrument by name (the RRASOR) to be used to initially screen and identify potential SVPs.[209] Another instrument, the Static-99, is regularly used in 15 states at some point in the civil commitment SVP identification process. The Static-99 is used in Virginia, but only in some cases where independent contract assessors use the Static-99 after the initial RRASOR screen to prepare the evaluation reports for the CRC. Massachusetts is the only state that does not use risk assessment instruments. The state evaluators are not permitted to use actuarial instruments because the Massachusetts DOC opposes the use of actuarials. However, the independent evaluators hired by the defense in Massachusetts are allowed and do use them.[210]

Once the initial screening takes place, all states require a court determination before someone is declared a SVP. Unlike Virginia, ten of the 16 states provide for another mental health evaluation after probable cause has been established.[211] After probable cause is established, four states require the SVP determination to be made by a judge,[212] and Massachusetts requires the SVP determination be made by a jury.[213] The other 11 states, including Virginia, allow the SVP determination to be made either by a judge or by a jury.[214] Eleven states specify the standard of proof for a SVP determination to be "beyond a reasonable doubt"[215] and five states, including Virginia, specify the standard of proof to be by "clear and convincing evidence."[216]

Twelve states, including Virginia, have conditional release laws.[217] All states with conditional release laws for SVPs allow the imposition of any conditions the court deems appropriate.

D. SCREENING AND ASSESSMENT OF SVPS

States base their civil commitment of SVPs on the nature of the crimes committed, the high recidivism rate and the subsequent risk that SVPs pose to public safety. Therefore all civil commitment proceedings involve a risk assessment.

---

[209] Doren, Dennis M., *SVP Evaluators' Risk Assessment Usage*. (August 2004).
[210] Doren, Dennis M., *SVP Evaluators' Risk Assessment Usage*. (August 2004).Id.
[211] These states include: Arizona, Illinois, Kansas, Massachusetts, Missouri, New Jersey, North Dakota, South Carolina, Washington and Wisconsin.
[212] These states include: Florida, Minnesota, New Jersey and North Dakota.
[213] Massachusetts
[214] These states include: Arizona, California, Illinois, Iowa, Kansas, Missouri, South Carolina, Texas, Virginia, Washington and Wisconsin.
[215] These states include: Arizona, California, Illinois, Iowa, Kansas, Massachusetts, Missouri, South Carolina, Texas, Washington and Wisconsin.
[216] These states include: Florida, Minnesota, New Jersey, North Dakota and Virginia.
[217] Arizona, California, Illinois, Iowa, Kansas, Massachusetts, New Jersey, North Dakota, Texas, Virginia, Washington and Wisconsin.

The prediction of future violence has long been a topic of interest for researchers.[218] Studies have consistently demonstrated that empirical or actuarial techniques more accurately identify individuals who are likely to commit future violence than do clinical judgments.[219] An actuarial assessment computes the probability of recidivism based on individual risk factors that have been demonstrated to correlate significantly with recidivism. Because actuarial assessments are derived from statistical measures, these risk assessments limit the potential for rater bias.[220] Risk assessments express risk in terms of the likelihood an individual will re-offend based on known risk factors such as actuarial recidivism rates, social supports, and access to services, rather than rendering the dichotomous decision of "yes" or "no".[221] There are essentially four methods for approaching risk assessment: (i) Clinical judgment; (ii) Empirically guided clinical judgment; (iii) Actuarial assessment; and, (iv) Clinically adjusted actuarial assessment.[222] A more detailed discussion of the four methods for approaching risk assessment follows.

1. CLINICAL JUDGMENT

The pure clinical judgment approach involves a clinician making a risk prediction based on their past experiences with the disorder, training, and belief systems. Scientifically based risk factors are typically of secondary importance or not used at all. Studies that show a positive correlation are often small. In fact, many studies have shown that clinicians are incorrect in their predictions two or three times more often than they are correct.[223] Clinical judgment is more accurate when the predictions are made over small time intervals (hours or days) and in atypical situations such as violence in a patient experiencing psychotic symptoms that are encouraging him or her to assault others.[224] These symptoms, also known as "thought control override symptoms," typically involve auditory hallucinations or paranoid delusions that encourage the individual to engage in violent acts despite the person's characteristic, nonviolent demeanor.[225]

2. EMPIRICALLY GUIDED CLINICAL JUDGMENT

This method involves the person rating a subject on a list of risk factors that have been determined through research to be predictive and subsequently forming a risk

---

[218] Monahan, J., *Predicting Violent Behavior: An Assessment of Clinical Techniques*. (Beverly Hills, CA: 1981).
[219] Webster, C.D., Harris, G.T., Rice, M.E., Cormier, C., & Quinsey, V.L., *The Violence Prediction Scheme.* (University of Toronto: 1994); Hanson & Morton-Bourgon, (2004).
[220] Quinsey, V.L., Harris, G.T., Rice, M.E., & Cormier, C.A., American Psychological Association, *Violent Offenders: Appraising and Managing Risk.* (Washington, D.C.: 2001).
[221] Quinsey et al., 2001; Hanson & Morton-Bourgan, 2004.
[222] Hanson, K.R., *Risk Assessment.* (2000); Hanson & Morton-Bourgan, 2004.
[223] Monahan, 1981.
[224] Id.
[225] Monahan, J. & Steadman, H.J. *Violence and Mental Disorder.* (Chicago: 1994).

opinion based on an observed combination of those factors.[226] The advantage of this method is that it takes into account all known risk factors, regardless of the strength of the correlation. Because the factors are not weighted with respect to the overall contribution toward recidivism, all factors are equally as important. For example: An offender may not demonstrate any of the known risk factors for sexually abusing a child. However, he may tell the clinician that he in fact has a child at his home and describe his plan and intent to victimize the child. While the offender may not have any of the "known" risk factors that have been researched, a person using the empirically guided clinical judgment approach would consider this person a "high risk" to offend. The disadvantages of this method are that the accuracy for making the predictions is questionable and it is difficult to determine risk across raters because there are no easily defined scoring criteria.[227] These disadvantages make this method difficult to research and difficult to train others to have consistently reliable and valid scoring criteria.

3. ACTUARIAL PREDICTION

Pure actuarial prediction uses risk factors that have been shown through research to predict risk.[228] These risk factors are weighted based on their overall contribution to the recidivism of a given behavior. This technique provides explicit directions for scoring the measure and provides probability over an established time period. Because of the aforementioned features, actuarial measures are desirable due to their ease in scoring and interpretation, their reliability and validity, and the fact that they divulge observed rates of reoffense. Actuarial assessments are particularly useful as screening devices when a more detailed evaluation will result following a finding of a significant risk. A disadvantage of the actuarial measure is that it cannot account for "all" risk factors.[229] Because sex offenders are a heterogeneous population and human beings are unique, it is unlikely that there will be time when an accurate assessment will occur 100% of the time. Even genetic testing in the medical field has an error rate.

4. CLINICALLY ADJUSTED ACTUARIAL PREDICTION

The clinically adjusted actuarial approach to risk assessment uses actuarial measures to "ground" the evaluation but adjusts the final prediction based on circumstances that mitigate prediction, such as treatment success or lack of treatment success.[230] The advantage of this approach is that it considers all available information

---

[226] Boer, D.P., Hart, S.D., Kropp, P.R., & Webster, C.D., The British Columbia Institute Against Family Violence, *Manual For the Sexual Violence Risk-20.* (Vancouver, B.C.: 1997).
[227] Hanson, 2000.
[228] Quinsey et al., 2001.
[229] Doren, 2002.
[230] Doren, 2002; Hanson, 2000.

for the purposes of making an informed decision. The clinician is able to use measures that describe known reoffense rates but is also able to consider factors that allow for a change in those rates over time. The disadvantage of this technique is that a clinician could improperly weight his decision based on a particular bias.[231] This would result in an inaccurate conclusion. This method of risk assessment appears most appropriate for situations that involve a complete psychosexual risk assessment involving all mediums of data (e.g., testing data, a clinical interview, a records review, etc.).

E. AREAS TO ADDRESS IN SEX OFFENDER RISK ASSESSMENT

Research has identified criminongenic needs and deviant sexual interest as at least two of the well established domains for the assessment of sex offender risk.[232] Criminogenic needs evaluate a person's beliefs and social systems that are supportive of criminal behaviors and deviant sexual pursuits.[233] Deviant sexual interest includes measurements of physical arousal to deviant stimuli or cognitive interest in deviant pursuits.[234] Within these domains are specific risk factors that have been shown through research to predict the likelihood of onset, continuity, or escalation of violence. These risk factors may be divided into two classifications known as static and dynamic.[235]

1. STATIC RISK FACTORS

Static risk factors are those characteristics of an offender that have been identified through research and are generally seen as unchangeable. Static risk factors may include: gender, age, legal history, and sexual offending history, among others. Because they are stable, static risk factors are easily researched. This type of risk factor has been the most robust in terms of being successful at predicting risk. The disadvantage of these types of risk factors is that an individual's risk level is also static. Despite successful treatment endeavors, a person's risk cannot change.

---

[231] Quinsey et al., 2001.
[232] Prentky, R.A., Knight, R.A., & Lee, A.F., Journal of Consulting and Clinical Psychology, *Risk Factors Associated with Recidivism Among Extrafamilial Child Molesters.* (1999).
[233] Bonta, J., Law, M., & Hanson, K.R., Psychological Bulletin, *The prediction of criminal and violent recidivism among mentally disordered offenders: A meta-analysis.* (1998) p. 123, 123-142.
[234] Abel, G.G., Becker, J.V., Cunningham-Rathner, J., Mittelman, M., & Rouleau, J.L., Bulletin of the American Academy of Psychiatry and the Law, *Multiple paraphilic diagnoses among sex offenders*. (1988). p., 16, 153-168., Pithers, W.D. & Laws, D.R., Phallometric assessment, *The sex offender: Corrections, treatment, and legal practice.* (In B.K. Schwartz & H. Cellini (Eds.) (Kingston, N.J.: 1995).
[235] Hanson, K.R. & Morton-Bourgon, K., *Predictors of Sexual Recidivism: An updated meta-analysis.* (Solicitor General of Canada: 2004).

2. DYNAMIC RISK FACTORS

A dynamic risk factor is an identified characteristic of an offender that correlates with recidivism but may change over time due to some form of intervention. There are two types of dynamic risk factors, frequently called "acute" and "chronic." An acute dynamic risk factor is a behavior that occurs impulsively or without notice. An example of this might be suddenly drinking alcohol (after previously abstaining), after being terminated from employment, or after the break-up of a relationship. The premise behind this type of risk factor is that the offender did not plan for the situation to occur. A chronic dynamic risk factor is a risk factor that the person is aware of and is attempting to resolve the symptoms of on a daily basis. Examples of this type of risk factor include: chronic personality traits, significant mental illness, or impaired social skills. Overall, dynamic risk factors may be changed over time to decrease or increase the individual's risk. Because they may be ameliorated or re-appear without notice, measures of dynamic risk are less stable, more difficult to measure, and more difficult to research.

F. COMMON MEASURES USED WITH ADULT SEX OFFENDERS

While clinicians throughout the world use a vast number of measures to assess sex offenders, a brief list of common measures is listed below. Four of these instruments measure deviant sexual interests: Abel Assessment of Sexual Interest, the Penile Plethysmograph, the Sexual Adjustment Inventory and the Multiphasic Sex Inventory-2. Several instruments are also used to measure psychological symptoms when gauging the potential of sex offender recidivism and danger to themselves and others. These include: Hare Psychopathy Checklist-Revised2, Minnesota Multiphasic Personality Inventory-2, Millon Clinical Multiaxial Inventory-III, Trauma Symptom Checklist and State Trait Anger Expression Inventory. A discussion of each of these measures follows.

1. ABEL ASSESSMENT OF SEXUAL INTEREST

The Abel Assessment of Sexual Interest (AASI) uses a questionnaire of sexual interests and visual slides shown on a computer to measure a person's sexual interest. A combination of the results of the questionnaire and the offender's visual reaction time are used to compare his or her interest with a normative sample of similar sex offenders. It is normed for males and females, adolescents and adults.

2. PENILE PLETHYSMOGRAPH

The Penile Plethysmograph (PPG) measures sexual arousal by placing a strain gauge on the offender's penis and having him view various stimuli. It measures sexual

arousal directly, by calculating the offender's percent of maximum arousal to the different types stimuli produced. It is typically used with adult males. Occasionally, the PPG is used with older adolescent males.

3. SEXUAL ADJUSTMENT INVENTORY

The Sexual Adjustment Inventory (SAI) is a self-report measure that the offender completes himself. The offender answers questions regarding sexual interest, sexual behavior, criminal behavior, substance abuse, and judgment and, compares his or her answers to a sample of offenders that are similar. A version of the SAI exists for males and females, adults and adolescents.

4. MULTIPHASIC SEX INVENTORY-2

The Multiphasic Sex Inventory-2 (MSI-2) is another self-report measure that the offender completes himself and compares his sexual interest to a group of similar offenders. A report is generated by the company that describes the offender's sexual history and interest. There is a version for males and females, adults and adolescents.

5. HARE PSYCHOPATHY CHECKLIST-REVISED2

The Hare Psychopathy Checklist-Revised2 (PCL-R2) is a psychological test that measures an offender's level of psychopathy. It rates 20 items with a score of 0, 1, or 2 which are subsequently summed for a total score. The PCL-R2 also contains two subcategories called Factor 1 and Factor 2. The Factor 1 category includes characteristics that are generally associated with psychopathy such as superficial charm and a lack of remorse. Factor 2 characteristics are more similar to criminal behaviors such as impulsivity and an unstable lifestyle. The total score, the Factor 1 score, and the Factor 2 score are subsequently added up and compared to a sample of prison inmates or forensic psychiatric patients. A version of the PCL-R2 exists for males and females, adults and adolescents.

6. MINNESOTA MULTIPHASIC PERSONALITY INVENTORY-2

The Minnesota Multiphasic Personality Inventory-2 (MMPI-2) is a measure of psychopathology. With this instrument, an offender completes an extensive self-report questionnaire and the results are scored and compared with a similar population, in terms of age and gender. The test yields information related to the offender's overall psychological functioning and divulges insights into characteristics one might expect of the offender. A version of the MMPI-2 exists for males and females, adults and adolescents.

7. MILLON CLINICAL MULTIAXIAL INVENTORY-III

The Millon Clinical Multiaxial Inventory-III (MCMI-III) is a self report measure that evaluates a person's overall characterological traits. It compares the offender to a sample group of similar age and gender. The results yield the offender's personality characteristics that assist the clinician in developing hypotheses regarding future levels of functioning. A version of the MCMI-III exists for males and females, adults and adolescents.

8. TRAUMA SYMPTOM CHECKLIST

The Trauma Symptom Checklist (TSC) is a self-report measure that evaluates an offender's level of trauma experienced from the past. It compares the offender with a group of people who have experienced trauma and determines current symptoms that may be a focus of treatment in an effort to reduce future impairments. Versions of the TSC exist that may be used with males and females, adults and adolescents.

9. STATE TRAIT ANGER EXPRESSION INVENTORY

The State Trait Anger Expression Inventory (STAXI) is a self-report measure that evaluates the manner in which the offender will tend to express his or her anger. It gives the clinician information about the offender to help determine the manner in which he will react to situations that require coping skills to deal with conflict. A version of the STAXI exists for males and females, adults and adolescents.

While the previous measures are important and necessary when conducting a comprehensive psychosexual evaluation, they are not screening measures. The aforementioned measures require extensive training and a great deal of time to administer, while the actuarial measures are easily used and interpreted to provide a quick review of risk.

G. ACTUARIAL MEASURES

As stated earlier, actuarial measures compute the probability of recidivism based on individual risk factors that have been demonstrated to correlate significantly with recidivism. Because actuarial assessments are derived from statistical measures, these risk assessments limit the potential for rater bias.[236] Risk assessments express risk in

[236] Quinsey, V.L., Harris, G.T., Rice, M.E., & Cormier, C.A., American Psychological Association, *Violent Offenders: Appraising and Managing Risk.* (Washington, D.C.: 2001).

terms of the likelihood an individual will re-offend based on known risk factors. There are several actuarial measures often used in assisting in the diagnosis of SVPs; these include: level of service inventory, violence risk appraisal guide, sex offender risk appraisal guide, and the Minnesota Sex Offender Screening Tool Revised. A brief discussion of each of these measures follows.

1. LEVEL OF SERVICE INVENTORY

The Level of Service Inventory (LSI) is completed by the clinician based on the offender's history. Based on the endorsed items, the offender is compared to a sample of similar age and gender. The results are used to determine the offender's risk of recidivism for general criminal behavior. It focuses on criminogenic needs and gives recommendations for treatment and risk. It may be used with adult and adolescent males.

2. VIOLENCE RISK APPRAISAL GUIDE

The Violence Risk Appraisal Guide (VRAG) is an actuarial measure that evaluates the offender's history and level of psychopathy and generates a recidivism rate for violent behavior over seven and ten year periods based on the obtained score. Because sex offenses were considered violent, they were included in the sample. The VRAG may only be used with adult males.

3. SEX OFFENDER RISK APPRAISAL GUIDE

The Sex Offender Risk Appraisal Guide (SORAG) was developed by the same authors as the VRAG. It is essentially the same measure but contains a few additional items such as deviant sexual interest and a history of sexual offending. It essentially predicts sexual reoffense at the same rate as the VRAG. It may only be used with adult males.

4. MINNESOTA SEX OFFENDER SCREENING TOOL-REVISED

The Minnesota Sex Offender Screening Tool-Revised (MnSOST-R) is an actuarial measure that evaluates the offender's history. There are a couple of more dynamic items such as a history of sex offender and substance abuse treatment. Overall, most items are static. It predicts re-arrest for a sexual offense. It may only be used with adult male offenders.

H. RAPID RISK ASSESSMENT OF SEX OFFENDER RECIDIVISM INSTRUMENT

The Rapid Risk Assessment of Sex Offender Recidivism (RRASOR) was the first and most widely used actuarial tool for sex offender recidivism *(See Attachment 4)*. It was initially developed in 1997 by Karl Hanson and was used extensively throughout the world as a reliable and valid method of sex offender risk prediction. The author developed the scale by conducting a literature review of previous studies that identified risk factors that appeared to correlate with sexual reoffense. He then applied those risk factors to a sample of sex offenders from the United States, Canada, and the United Kingdom to determine if they predicted recidivism. The findings of that study indicated that only four, static items (prior sex offenses, age at release, victim gender, and relationship to the victim) were able to predict recidivism as a cumulative scale. The resulting measure yielded a probability estimate for sexual reconviction over five and ten years. Research has also shown that it correlates specifically with deviant sexual interest but not as well with violent recidivism.[237] Table 7 demonstrates recidivism rates based on obtained scores with the RRASOR instrument.

Table 7

Recidivism Rates Associated with RRASOR Scores

RRASOR Score	Sample Size	5 year sexual recidivism rate	10 year sexual recidivism rate
0	527	.04	.06
1	806	.07	.11
2	742	.14	.21
3	326	.24	.36
4	139	.32	.48
5	52	.49	.73

Source: Virginia State Crime Commission graphic, September 2005.

Overall, the RRASOR is a reliable and valid measure of sexual recidivism that has specific scoring rules and gives recidivism estimates. While it correlates well with deviant sexual interest, it does not correlate as well with violence prediction. It appears to be a better predictor of offenses against children than offenses against adults and adolescents.

I. STATIC-99 INSTRUMENT

The Static-99 was also created by Karl Hanson in conjunction with David Thornton in 1999 and revised in 2003 *(See Attachment 4)*. The Static-99 is an evolution in risk assessment that combined two instruments for enhanced predictive accuracy. The two instruments were the RRASOR created by Karl Hanson and the Structured Anchored Clinical Judgment-Minimum (SACJ-Min) developed by David Thornton. The authors

[237] Doren, 2002.

applied the instrument to a sample of released sex offenders from the United States, Canada, and the United Kingdom and found that a combination of ten static items predicted sexual reconviction robustly across multiple settings. Those ten items include: Victim gender; relationship of victim; stranger victim; prior sex offenses; age; prior sentencing dates; prior convictions for non-contact sex offenses; index non-sexual violence; prior non-sexual violence; and, having a cohabitating relationship for at least two years. As with the RRASOR, the Static-99 provides explicit scoring rules (the revision in 2003 provided very detailed guidelines) and contains all static variables. Unlike the RRASOR, the Static-99 provides sexual reconviction rates for five, ten, AND fifteen years, has ten items instead of four, correlates with both sexual recidivism and violent recidivism, and appears to predict offenses against children and adults equally well. In a 2004 study, Hanson and Morton-Bourgan substantiated the reliability and validity of the Static-99 on a sample of 31,216 released sex offenders from the United States, Canada, the United Kingdom, Austria, Sweden, Australia, France, the Netherlands, and Denmark. Within that same sample, the authors found an average recidivism rate for sexual offenses at 13.7%, for violent, nonsexual offenses at 25.0%, and for any recidivism at 36.9% over a six year period. Table 8 demonstrates the observed sexual recidivism rates for the Static-99.

Table 8

Recidivism Rates Associated with Static-99 Scores

Static-99 Score	5 year Sexual Recidivism Rate	10 year Sexual Recidivism Rate	15 year Sexual Recidivism Rate	5 year Violent Recidivism Rate	10 year Violent Recidivism Rate	15 year Violent Recidivism Rate
0	.05	.11	.13	.06	.12	.15
1	.06	.07	.07	.11	.17	.18
2	.09	.13	.16	.17	.25	.30
3	.12	.14	.19	.22	.27	.34
4	.26	.31	.36	.36	.44	.52
5	.33	.38	.40	.42	.48	.52
6	.39	.45	.52	.44	.51	.59

Source: Virginia State Crime Commission graphic, September 2005.

The recidivism rates represented by the previous table demonstrate that those offenders who score a "4" or above on the Static-99 are two to four times more likely than the average sex offender in the sample to re-offend sexually or violently. When translating the Static-99 scores into risk categories, one should use the following descriptors:

Score= 0-1 Low Risk;
Score= 2-3 Moderate Low Risk;
Score= 4-5 Moderate High Risk; and,
Score= 6+ High Risk.

J. PROFILE OF VIRGINIA'S CIVIL COMMITMENT PROCESS

To determine the adequacy and proficiency of Virginia Involuntary Civil Commitment Process and screening methods for Sexually Violent Predators (SVPs), staff first examined the civil commitment reviews for SVPs from April 1, 2003 through April 1, 2004. Staff found that 927 offenders have been reviewed by DOC for one of the four predicate crimes for eligibility as a SVP. Specifically, the DOC has administered the RRASOR to 921 males. The DOC did not administer the RRASOR to the 6 females who had committed a predicate sex offense because the RRASOR does not measure female risks. As Table 9 illustrates, 93% (865) of sex offenders with a predicate crime, did not qualify for review by the CRC due to their RRASOR scores (1 lowest to 5 highest).

Table 9

RRASOR Scores for Predicate Offenders

RRASOR Score	Number of Offenders
0	167
1	371
2	232
3	95
4	46
5	10

Source: Virginia Department of Corrections analysis, June 2005.

As of March 31, 2005, the OAG had received 56 cases for consideration for filing a petition for potential SVPs. The OAG filed petitions in 41 cases (73%); and did not file petitions in 12 cases. At the time of the analysis, there was one case where a probable cause hearing was pending and there were 14 cases where probable cause had been established and the trial was pending. Of the 21 cases where the trials are completed, three had consent orders in lieu of trial and 18 were found to be SVPs. Of the 18 cases where the respondent was found to be a SVP, 14 were civilly committed and four were placed on conditional release. Eleven cases were currently on appeal either by the OAG or the offender.

Because carnal knowledge is currently not a predicate offense eligible for SVP consideration, staff from the DOC and the Crime Commission analyzed records for the 58 DOC sex offenders with convictions of carnal knowledge, scheduled to be released from July 1, 2006 to December 31, 2008, to determine the age differentials between the victims and the offenders. *Code of Virginia* § 18.2-63 defines Carnal Knowledge as:

"Any person carnally knows, without the use of force, a child thirteen years of age or older but under fifteen years of age, such person shall be guilty of a Class 4 felony.

However, if such child is thirteen years of age or older but less than fifteen years of age and consents to sexual intercourse and the accused is a minor and such consenting child is three years or more the accused's junior, the accused shall be guilty of a Class 6 felony. If such consenting child is less than three years the accused's junior, the accused shall be guilty of a Class 4 misdemeanor."

As Table 10 shows, of the 58 sex offender cases, information concerning the victim and offender ages was available in 46 cases; in the 12 cases where the victim's age was not available, the average age of the sex offender was 32 years. In 42 of the 46 cases where both the age of the victim and the offender is known, the age differential is more than five years. The average age of the victims of carnal knowledge was 13 years and the average age of the sex offenders convicted of carnal knowledge was 29 years.

Finally, to evaluate the adequacy of the RRASOR as an assessment tool for determining SVPs, the Crime Commission contracted with two licensed sex offender treatment providers to apply the Static-99 instrument to 377 sex offender files obtained from the DOC. [238] Of these 377 files, 297 were offenders with current SVP predicate crimes, who had received a RRASOR since the enactment and funding of the SVP law. The remaining 80 DOC offenders had been convicted of aggravated sexual battery with a victim over the age of 13 and were not eligible for a SVP designation.

Table 10

Analysis of Carnal Knowledge Case Files

Difference Between Victim and Offender Ages	Average Age of Sex Offender	Total Cases
5 years and Under	19	4
6-10 Years	21	15
11-15 Years	26	11
16-20 Years	33	5
21-25 Years	37	6
26 Years and Over	44	5
Totals	29 Years	46

Source: Virginia Department of Corrections analysis, June 2005.

[238] The Sex Offender Treatment Providers with whom the Crime Commission contracted were: Glenn Rex Miller, JR., Ph.D, CSOTP, CSAC and Carla M. Zarrella, M.S., LCSW.

Of the 377 total files reviewed by the sex offender treatment providers and Crime Commission staff for application of the Static-99:

- 77% (290) were scored with a high level of accuracy;
- 9% (34) were scored with a reasonable level of accuracy and could have been higher with additional information; and,
- 14% (53) did not contain enough information to accurately apply the Static-99.[239]

Thus, 324 offender files were analyzed via the Static-99 risk assessment instrument: 253 were offenders with a predicate offense, and 71 were offenders with the offense of aggravated sexual battery with a victim over the age of 13. As Table 11 illustrates, the largest proportion of offenders in the sample were sex offenders having scored a two on the RRASOR instrument.

Table 11

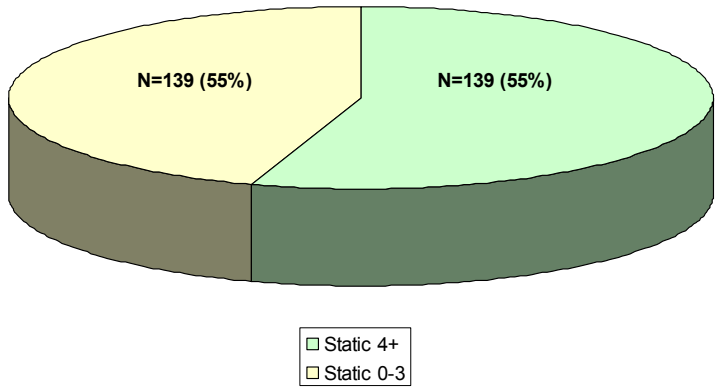
RRASOR Scores for Static-99 Sample

RRASOR SCORE	Number of Offenders	Percentage of Sample
0	10	2.7%
1	90	23.9%
2	183	48.5%
3	81	21.5%
4	11	2.9%
5	2	.5%

As Figure 19 illustrates, 55% of the 253 DOC sex offenders in the study sample with a predicate crime had a moderate-high level Static-99 risk score (four or higher).

Figure 19

Analysis of the Static-99



Source: Virginia State Crime Commission analysis, September 2005.

As Table 12 shows, 54% (132) of the 246 sex offenders with a RRASOR score of zero to three had a Static-99 score of four or higher, and 7% (18) of the offenders scored higher than the maximum score of a six.

Table 12

Comparison of RRASOR and Static-99 Scores

	RRASOR 0	RRASOR 1	RRASOR 2	RRASOR 3	RRASOR 4	RRASOR 5
Static 0-1	2	8	3	1		
Static 2-3	1	31	60	8		
Static 4		11	28	8		
Static 5		1	24	20	2	
Static 6		1	12	13		1
Static 7			2	10	2	
Static 8			1		1	1
Static 9				1		
	3	52	130	61	5	2

Source: Virginia State Crime Commission analysis, September 2005.

Additionally, as Table 13 illustrates, 45% (32) of the 71 sex offenders convicted of aggravated sexual battery with a victim 13 or older, scored in the moderate-high level of risk on the Static-99.

Table 13

Comparison of RRASOR and Static-99 Scores

	RRASOR 0	RRASOR 1	RRASOR 2	RRASOR 3	RRASOR 4	RRASOR 5
Static 0-1	3	6				
Static 2-3	2	20	8			
Static 4		3	4	3		
Static 5		2	3	2		
Static 6		1	2	3		
Static 7			2	1	2	
Static 8					3	
Static 9					1	
	5	32	19	9	6	0

Source: Virginia State Crime Commission analysis, September 2005.

In summary, as Table 14 shows, the analysis revealed that the Static-99 identified 53% (171) of the 324 DOC sample offenders as being in the moderate to high risk pool with a score of four or more.

Table 14 Summary of RRASOR and Static-99 for Sample				
	RRASOR 0-1	RRASOR 2-3	RRASOR 4	RRASOR 5
Static 0-1	19	46		
Static 2-3	54	76		
Static 4	14	43		
Static 5	3	49	2	
Static 6	2	30		
Static 7 -9		17	9	1
Source: Virginia State Crime Commission analysis, September 2005.				

The Crime Commission analysis, coupled with the findings of the academic research, indicates that the Static-99 is superior to the RRASOR in terms of identifying those who are a high risk to offend adults versus those who offend children. A cut score of "4" on the Static-99, as is currently used on the RRASOR in an initial screening process, will identify those offenders who are at least twice as likely as the average sex offender to commit a new sexual or violent offense within the next five years. Additionally, any assessment for identifying SVPs would be improved if all files contained a Pre-Sentence Report (PSI). The SOTP examination was hindered due to the fact that many of the DOC files did not contain a PSI, and the sex offender treatment providers could not get a thorough picture of the offender's criminal history. As such, a PSI should be completed on all individuals convicted of a felony and a structured interview/data collection form should be developed for use when an offender's PSI is written. This will decrease the need to search outside records for information when conducting the screening process.

K. VIRGINIA'S SEXUALLY VIOLENT PREDATOR PROGRAM

All SVPs civilly committed under Virginia's Civil Commitment of SVPs laws are committed to the Virginia Center for Behavioral Rehabilitation (VCBR) in Petersburg, Virginia. The capital cost in 2003 for this center was $5.2 million. The annual operating cost at 48 beds is $7 million. The capacity when VCBR is full is 36 men in single rooms or 48 men with some double rooms. The total commitments to VCBR since April 2003 are 24. However, the current census (as of October 30, 2005) is 18 residents. The number of residents will change shortly because:

-There is one offender in jail pending trial for a new assault;
-There is one offender in prison for probation violation;
-One offender was released by court and reconvicted;
-Three new commitments are pending transport; and,
-There are between 15 and 20 commitments pending disposition.[240]

[240] Steven C. Wolf, Ph.D, Director, SVP Services, Office of Quality Management, Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services, "SVP Program". Presented to Sex Offender Task Force. (October 2005).

At the current RRASOR referral rate, VCBR estimates approximately one commitment per month.

DMHMRSAS has authorized a new facility at Nottoway, Virginia. This facility is co-located with Piedmont Geriatric Hospital and Nottoway Correctional Center. The capital costs for phase one of construction includes 100 beds at $33 million. The capital costs for phase two includes 150 beds at $15 million. At total capacity, this facility will have 250 beds at $48 million. The annual operating cost at 100 beds is $97,000 per bed and at 250 beds it will equal $77,000 per bed. In comparison, the annual cost to DOC per bed is $20,861 and the cost for DMHMRSAS for a mental health bed is $170,000. The DMHMRSAS is currently working with OAG and a developer to finalize the project contract. The contract will be presented for public comment in early November 2005. A comprehensive agreement is planned to be executed in early December with the design finalized thereafter. The site preparation and construction is scheduled to begin in June/August 2006 and the facility will be ready for occupancy between August and December 2007.

Conditionally released SVPs will be placed in an enhanced community containment program for supervision. Conditionally released SVPs will be supervised by the DOC when an offender has a probation or parole obligation; or, supervised by the DMHMRSAS when there is no such obligation. The DMHMRSAS, the DOC and the OAG have developed a cooperative model for conditional release of SVPs. This cooperative plan entails:

(1) The OAG requests a Conditional Release Plan from the DMHMRSAS;
(2) DMHMRSAS develops the plan and gives it to the DOC Office of Community Corrections, who forwards it to the Probation Office in the jurisdiction in which the SVP will reside.
(3) The local DOC Probation Office reviews the plan to insure that the required services and supervision are available. Once "proofed", the plan is returned to the DMHMRSAS.
(4) The DMHMRSAS forwards the completed plan to the OAG, Court and Defense Attorney.

When conditional release is the final disposition and there is no probation or parole obligation, the DMHMRSAS develops a treatment/monitoring contract with a local approved sex offender treatment provider and assigns the client to him. If the probation or parole obligation exists, the local probation office provides monitoring services and contracts with a local provider for sex offender services. In either case, a system for providing treatment, monitoring and polygraph testing is built around each conditionally released client. GPS monitoring provides an additional means to monitor and track the behavior of SVP clients in the community. Figure 20 depicts how this

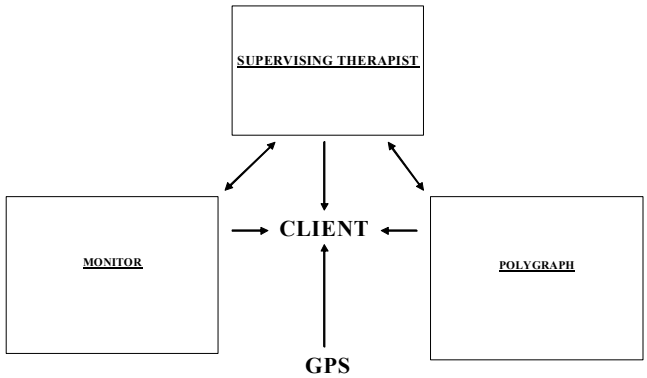
addition completes the containment model. When a client goes out of GPS compliance, the GPS contractor notifies the supervising therapist, the local Probation and Parole office, the DMHMRSAS or DOC, and local law enforcement. After January 1, 2006, this notification will be automated through a DMHMRSAS developed program called SVP Tracker.

When a client is out of compliance with conditional release requirements, the Treatment Team, when there is a probation or parole obligation, contacts the Probation or Parole office. Where no Probation or Parole obligation exists, they contact the DMHMRSAS. In addition, in all cases when a crime has been committed, local law enforcement is contacted.

The total treatment/supervision cost of the SVP Community Supervision Program per individual per year when DOC provides the supervision is $9,200. However, when DMHMRSAS provides the supervision the cost increases to $17,400. Active GPS monitoring adds $10 per day. The increased DMHMRSAS cost is associated with having to create a separate supervision system that parallels the DOC probation system, as well as the economy of scale afforded by the higher number of individuals supervised by DOC.

Figure 20

SVP Community Supervision Model



Source: DMHMRSAS graphic, October 2005.

L. COURT CHALLENGES

In 1997, the United States Supreme Court upheld the constitutionality of laws allowing for the involuntary civil commitment of sexually violent predators. Specifically, in *Kansas v. Hendricks*, the Court upheld the constitutionality of Kansas's Sexually Violent Predator Act and found that the Act's definition of "mental abnormality" satisfies substantive due process requirements and does not raise ex post facto concerns.[241] Although "freedom from physical restraint 'has always been at the core of the liberty protected by the Due Process Clause,'" the Court stated that "liberty interest is not absolute."[242] The Court has consistently upheld involuntary commitment statutes as long as the confinement takes place pursuant to proper procedures and evidentiary standards; that there is a finding of dangerousness either to one's self or to others; and, the proof of dangerousness is coupled with the proof of some additional factor, such as mental illness or mental abnormality.[243] The Kansas Act meets this test by requiring a finding of dangerousness, evidence of past sexually violent behavior and a present mental condition that creates a likelihood of sexually violent behavior if the person is not incapacitated.[244] Additionally, the Act affords the individual procedural safeguards. For example, the individual has the right to present evidence and cross-examine witnesses, review documentary evidence, and provides for three avenues of review.[245] As a result, the Kansas Act does not violate due process.[246]

Likewise, the Court found that the Kansas Act does not establish criminal proceedings, or confinement constituting punishment, to violate the Constitution's Double Jeopardy and Ex Post Facto clauses.[247] Specifically, the Court found that, on its face, the Act intends to be civil in nature. Furthermore, the Court found that the Act does not implicate the two primary objectives of criminal punishment: retribution or deterrence.[248] The Act relies on prior criminal conduct solely for evidentiary purposes, not to affix guilt. Likewise, the Act does not make a criminal conviction a prerequisite for commitment because persons absolved of criminal responsibility may be subject to confinement.[249] Similarly, "no finding of scienter is required to commit an individual who is found to be a sexually violent predator; instead, the commitment determination is made based on a 'mental abnormality; or 'personality disorder' rather than on one's criminal intent," clearly distinguishing this Act from a criminal act.[250]

---

[241] *Kansas v. Hendricks,* 531 U.S. 346 (1997).
[242] *Hendricks* 531 U.S. at 356.
[243] *Hendricks* 531 U.S. at 357-358.
[244] Id.
[245] *Hendricks* 531 U.S. at 353.
[246] *Hendricks* 531 U.S. at 360.
[247] *Hendricks* 531 U.S. at 360-361.
[248] *Hendricks* 531 U.S. at 361-362.
[249] *Hendricks* 531 U.S. at 362.
[250] Id.

The Court also stated that because the individuals are unable to control their behavior, they are unlikely to be deterred by the threat of confinement; therefore providing more evidence that the Act civil, rather than criminal in nature.[251]

Finally, the Court was unpersuaded by Hendricks' argument that the commitment offers no legitimate treatment and therefore his confinement amounts to punishment.[252] Instead, the Court found that because the Act directs that civilly committed sexually violent predators "be segregated from the general prison population and afforded the same status as others who have been civilly committed; recommended treatment if such is possible; and permitted immediate release upon a showing that the individual is no longer dangerous or mentally impaired," that the Act was not punitive and does not violate the double jeopardy or ex post facto clauses of the Constitution.[253]

The United States Supreme Court reviewed the application of *Hendricks* in *Kansas v. Crane*.[254] Specifically, the Court found that the involuntary civil commitment of sexually violent predators does not depend upon a total or complete lack of self-control.[255] Yet, to underscore the necessity of distinguishing between dangerous sex offenders subject to civil commitment and other dangerous criminals, civil commitment must be based on lack of control to some degree; "there must be proof of some serious difficulty in controlling behavior.[256]

The Supreme Court of Virginia has also upheld the constitutionality of Virginia's involuntary civil commitment of sexually violent predator statutes.[257] Most notably, the Court found that the definition of a sexually violent predator does not violate substantive due process because proper procedures and evidentiary safeguards are in place.[258] Additionally, Virginia's Act satisfies the requirement of a finding of dangerousness either to one's self or to others.[259] The Court also found that Virginia's Act withstands constitutional scrutiny because "proof of dangerousness and lack of control are linked to the condition of the person."[260]

Finally, the Supreme Court of Virginia found that Virginia's Sexually Violent Predators Act does not violate prohibitions against double jeopardy or ex post facto laws because the Act is codified as a civil statute; does not implicate the two objectives of punishment: retribution or punishment; and, affords procedural protections.[261]

---

[251] *Hendricks* 531 U.S. at 363.
[252] *Hendricks* 531 U.S. at 365.
[253] *Hendricks* 531 U.S. at 368-369.
[254] *Kansas v. Crane*, 534 U.S. 407 (2002).
[255] *Crane* 534 U.S. at 411.
[256] *Crane* 534 U.S. at 412- 413.
[257] *Shivaee v. Virginia,* 270 Va. 112 (2005).
[258] *Shivaee* 270 Va. at 123.
[259] Id.
[260] Id.
[261] *Shivaee* 270 Va. at 125.

CHAPTER 5:

RECOMMENDATIONS & COSTS

CHAPTER 5: RECOMMENDATIONS & COSTS

PART I: RECOMMENDATIONS

On December 14, 2005, the Virginia State Crime Commission met and approved legislative recommendations from the Sex Offender Task Force in three areas related to sex offenders: Enhanced Criminal Penalties, the Sex Offender Registry, and the Involuntary Civil Commitment of Sexually Violent Predators.[262] All of the recommendations were originally proposed by the Task Force; however, Recommendations 11 and 12 were deferred to the Crime Commission for discussion and subsequently approved.

A. ENHANCED PENALTY RECOMMENDATIONS

Based on the current sentencing structure, the nature of the sex offenses and the high recidivism rate for sex offenders, the Crime Commission voted to recommend the following enhanced penalty and probation/monitoring of sex offenders:

Recommendation 1

Amend the *Code of Virginia* to require a minimum, mandatory 25 year sentence for a first time conviction of the following serious sex offenses when the victim is under the age of 13:

-Forcible Sodomy;
-Object Sexual Penetration; and,
-Rape.

Recommendation 2

Amend the *Code of Virginia* to allow for a mandatory minimum of 3 years supervised probation with electronic monitoring for the following sex offenses:

-Forcible Sodomy (§ 18.2-67.1);
-Object Sexual Penetration (§ 18.2-67.2);
-Rape (18.2-61);
-Kidnapping with Intent (§ 18.2-48(i) & (iii));
-Aggravated Sexual Battery (§ 18.2-67.3);
-Carnal Knowledge (§ 18.2-63), and,
-Indecent Liberties (§ 18.2-370).

[262] *Attachment 6* includes the proposed legislation resulting from these recommendations.

Recommendation 3

Amend the *Code of Virginia* to provide for mandatory unsupervised probation for the duration of the sentence allowed for the following sex offenses:

-Forcible Sodomy (Life);
-Object Sexual Penetration (Life);
-Rape (Life);
-Kidnapping with Intent (Life);
-Aggravated Sexual Battery (20 years);
-Carnal Knowledge (10 years); and,
-Indecent Liberties (10 years).

B. SEX OFFENDER REGISTRY RECOMMENDATIONS

Based on the study effort, the Crime Commission made the following recommendations concerning the Sex Offender Registry by subject area:

ENHANCED PENALTIES

Recommendation 4

Amend *Code of Virginia* § 9.1-904 to increase the frequency of re-registration timeframes for sex offenders from 1 year to 180 days for a conviction of § 18.2-472.1 (Failure to Register); and, increase the frequency of re-registration timeframes for violent sex offenders from 90 days to monthly for a conviction of § 18.2-472.1.

Recommendation 5

Amend *Code of Virginia* § 9.1-908 to increase the duration of a sex offender's registration upon conviction of § 18.2-472.1 to 10 years from the date of last § 18.2-472.1 conviction.[263]

Recommendation 6

Amend *Code of Virginia* § 9.1-909 to modify a sex offender's ability to petition for relief from registration or re-registration as sex offender upon conviction of a § 18.2-472.1 violation; must wait 5 years from date of last § 18.2-472.1 violation to petition for relief.[264]

[263] The current version of *Code of Virginia* § 9.1-908 maintains the duration of a sex offenders at ten years from the date of initial registration.
[264] The current version of *Code of Virginia* § 9.1-909 requires sex offenders to wait three years from the date of registration to petition for relief.

Recommendation 7

Amend *Code of Virginia* § 9.1-910 to increase, upon conviction of § 18.2-472.1 violation, the duration a sex offender must wait to petition to have his information removed from the registry to 10 years from date of the last § 18.2-472.1 conviction.

Recommendation 8

Amend *Code of Virginia* § 46.2-348 to add the providing of false information in order to obtain a driver's license or ID card for purposes of proof of residency for the Sex Offender Registry to be penalized as a Class 4 Felony.

Recommendation 9

Amend *Code of Virginia* § 18.2-472.1 related to convictions of a first time violation of the Registry requirements:

-For violent sex offenders who are convicted of a 1st offense of failure to register, require mandatory electronic monitoring for two years as part of each sentence; and,

-For sex offenders who are convicted of a 1st offense of failure to register, require a mandatory minimum electronic monitoring for six months as part of each sentence.

Amend *Code of Virginia* § 18.2-472.1 related to second and subsequent convictions of the Registry requirements. Specifically,

-For violent sex offenders convicted of a 2nd or subsequent offense:

(1) Increase the penalty from a Class 6 felony to a Class 5 felony;

(2) Require mandatory electronic monitoring for five years as part of each sentence.

-For sex offenders convicted of a 2nd or subsequent offense:

(1) Increase the penalty for 2nd or subsequent conviction from a Class 1 misdemeanor to a Class 6 felony;

(2) Require a mandatory electronic monitoring for two years as part of each sentence.

LIMITATIONS ON OFFENDERS

Recommendation 10

Amend *Code of Virginia* § 18.2-370.2 to:

-Add schools, day care service or child minding service to the locations where loitering by certain sex offenders is prohibited within 100 feet; and,

-Require the court as part of the sentence for a conviction of § 18.2-472.1 to prohibit the offender from loitering if his original offense was prohibited under this statute.

Recommendation 11

Add *Code of Virginia* § 18.2-370.3 to:

-Prohibit persons convicted of Rape, Forcible Sodomy and Object Sexual Penetration against a victim 13 or younger from working on school property or child day center property;

-Make a violation of this section a Class 6 felony; and,

-To grant civil immunity to employers, schools and child day centers, unless they had actual knowledge that the employee was a serious sex offender.

Recommendation 12

Add *Code of Virginia* § 18.2-370.3 to:

-Prohibit a person, who has been convicted of a sex offense that would prohibit him from loitering near a school (a violation of § 18.2-370.2), establishing residence within 500 feet of a school or child day center;

-Allow a person to continue to live in a residence he inhabited prior to conviction for such a sex offense, if a new school or child day center is built nearby; and,

-Make a violation of this section a Class 6 felony.

NEW OFFENSES

Recommendation 13

Amend *Code of Virginia* § 9.1-902 to:

-Require a person convicted of a first offense of child pornography (§ 18.2-374.1:1) to register as a sex offender;

-Require a person convicted of a burglary with intent to commit a felony offense enumerated in § 9.1-902 (§ 18.2-91) to register as a sex offender; and,

-Require a person convicted in a foreign country to register as a sex offender/violent sex offender for a required offense.

MURDER OF A MINOR

Recommendation 14

Amend *Code of Virginia* § 9.1-904 to require a person registered for murder of a minor to re-register the same as a violent sex offender.

Recommendation 15

Amend *Code of Virginia* § 9.1-908 to require a person registered for murder of a minor to register for life.

Recommendation 16

Amend *Code of Virginia* § 9.1-910 to prohibit a person registered for the murder of a minor from having his information removed from the registry.

Recommendation 17

Amend *Code of Virginia* § 18.2-472.1 to provide persons registered for the murder of a minor to be designated as a violent sex offender for penalties for failure to register.

Recommendation 18

Amend *Code of Virginia* § 9.1-902 to require an offender to register for a conviction of a murder of a minor when:

-the victim is less than 15 years of age; or,

-the victim is at least 15 years of age, but less than 18 years of age, and the murder is related to a violation listed in § 9.1-902.

MANDATORY OFFENDER INFORMATION

Recommendation 19

Amend *Code of Virginia* § 9.1-903 to include the following additional mandatory registration requirements:

-Place of employment as a new requirement;
-Collection of a DNA sample, if not present in LIDS Database;
-Provision of a physical address (no longer accept P.O. Boxes to satisfy the address requirement);
-Offender submit to having his/her photograph taken; and,
-New registration for any changes in employment status.

Recommendation 20

Amend *Code of Virginia* § 9.1-904 to require the offender to submit to a law enforcement agency to have his photograph taken every two years.

TIMELINES FOR NOTIFICATION

Recommendation 21

Amend *Code of Virginia* § 9.1-903 to:

-Require offenders to re-register within 3 days upon a change of address or a change in employment status;[265]

-Require law enforcement agencies to submit registration information to the VSP forthwith;[266]

-Require law enforcement agencies to submit registration information to the VSP forthwith at time of conviction; and,

-Require parole officers and probation officers to notify the VSP forthwith for change of address information regarding an offender of which they become aware.[267]

[265] The current version of *Code of Virginia* § 9.1-903 allows for a ten day period for re-registration for a status change. There is no requirement for employment

[266] The current version of *Code of Virginia* § 9.1-903 allows for a seven day for local law enforcement to submit registration information to the VSP.

[267] The current version of *Code of Virginia* § 9.1-903 allows for a ten day period for parole and probation

Recommendation 22

Amend *Code of Virginia* § 9.1-905 to require new residents and non-resident sex offenders to register and complete change of address information within three days.[268]

Recommendation 23

Amend *Code of Virginia* § 9.1-906 to:

-Require students enrolled or employed at institutions of higher education to register with local law enforcement within three days of enrollment or employment; and,

-Require the local law enforcement agency to forthwith provide the information to the VSP.[269]

PUBLIC NOTIFICATION

Recommendation 24

Amend *Code of Virginia* § 9.1-913 to allow all information on all sex offenders, not just violent sex offenders available to the public via the Internet.

Recommendation 25

Amend *Code of Virginia* § 9.1-914 to add institutions of higher learning to those entities eligible to receive automatic notification of registration information.

Recommendation 26

Amend *Code of Virginia* § 9.1-918 to clarify what is not misuse of public registry information.

---

officers to submit registration information to the VSP.

[268] The current version of *Code of Virginia* § 9.1-905 allows for a ten day period for registration of new and non-resident offenders.

[269] The current version of *Code of Virginia* § 9.1-906 allows for a ten day period for registration upon enrollment.

Recommendation 27

Amend *Code of Virginia* § 22.1-79 to require the school boards to ensure that all public schools to register for automatic community notification from the Department of State Police.

Recommendation 28

Amend *Code of Virginia* § 22.1-79.3 to:

-Require the school boards to develop and implement policies to provide parents with information regarding the operations of the Sex Offender Registry; and,

-Require the school boards to develop protocols for the release of a child to any person other than his/her parent or legal guardian.

GOVERNMENTAL NOTIFICATIONS

Recommendation 29

Add a new section to the *Code of Virginia* titled § 16.1-249.1 to require juvenile jail facilities to register and forthwith furnish registration information to the State Police (VSP) upon receipt of a person required to register.

Recommendation 30

Add a new section to the *Code of Virginia* titled § 16.1-278.1:01 to require the Department of Juvenile Justice to register and forthwith furnish registration information to the VSP upon receipt of a person required to register.

Recommendation 31

Add a new section to the *Code of Virginia* titled § 16.2-278.1:02 to require the Department of Juvenile Justice to register and forthwith furnish registration information to the VSP upon the release of a person required to register.

Recommendation 32

Add a new section to the *Code of Virginia* titled § 53.1-23.1 to require DOC to register and forthwith furnish registration information to the VSP upon receipt of a person required to register.

Recommendation 33

Amend *Code of Virginia* § 53.1-116.1 to require jails to register and forthwith furnish registration information to the VSP upon the release of a person required to register.[270]

Recommendation 34

Add a new section to the *Code of Virginia* titled § 53.1-116.1:01 to require jails to register and forthwith furnish registration information to the VSP upon the receipt of a person required to register.

Recommendation 35

Amend *Code of Virginia* § 53.1-160.1 to require DOC to register and forthwith furnish registration information to the VSP upon release of a person required to register.[271]

STATE POLICE RESPONSIBILITIES

Recommendation 36

Amend *Code of Virginia* § 9.1-907 to require the VSP to physically verify all registration information and change of address within 30 days and semi-annually thereafter.

Recommendation 37

Amend *Code of Virginia* § 19.2-390.1 to require the Superintendent of the VSP to staff and operate Virginia's Sex Offender and Crimes against Minors Registry.

TRAINING

Recommendation 38

Amend *Code of Virginia* § 9.1-102 to require the Department of Criminal Justice Services to develop new training standards for all law enforcement, DOC and Jails regarding investigative, registration and dissemination of information pertaining to the Sex Offender Registry.

[270] The current version of *Code of Virginia* § 53.1-116.1 allows for a seven day period for DOC to submit registration information to the VSP.
[271] The current version of *Code of Virginia* § 53.1-160.1 allows for a seven day period for DOC to submit registration information to the VSP.

DATABASE ISSUES

Recommendation 39

Amend *Code of Virginia* §§ 2.2-3703 and 2.2-3802 to exempt provisions of the Sex Offender Registry from Virginia's Freedom of Information Act (FOIA) unless specified for public dissemination.

Recommendation 40

Amend *Code of Virginia* § 9.1-921 to exempt Sex Offender Registry information in databases operated by DOC, DJJ, the Virginia Compensation Board and VSP from the Virginia Information Technology Agency (VITA).

Recommendation 41

Amend *Code of Virginia* § 23-2.2:1 to require Institutions of Higher Learning to submit enrollment information in an electronic format to the State Police for comparison with State and Federal Sex Offender Registry files.

Recommendation 42

Amend *Code of Virginia* §§ 46.2-323; 46.2-324; 46.2-330; 46.3-345 to require the Department of Motor Vehicles (DMV) to submit the following information in an electronic format to the VSP for comparison with State and Federal Sex Offender Registry files:

-Driver's license information;
-Change of address information;
-Renewal information; and,
-Identification card information.

Recommendation 43

Amend *Code of Virginia* § 53.1-115.1 to require local and regional jails to submit daily prisoner jail information to the Compensation Board in an electronic format.

Recommendation 44

Amend *Code of Virginia* § 53.1-121 to require the Sheriff to submit daily prisoner information to the Compensation Board in an electronic format.

MISCELLANEOUS

Recommendation 45

Amend *Code of Virginia* § 9.1-907 to require local law enforcement agencies to notify the State Police when initiating a Sex Offender Registry investigation.

Recommendation 46

Amend *Code of Virginia* § 9.1-909 to provide non-residents with an avenue for relief from the 90 day registration requirement.

C. CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS RECOMMENDATIONS

Based on the study effort, the Crime Commission recommended the following legislative changes to the Involuntary Civil Commitment laws and processes:

Recommendation 47

Allow the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS), through an emergency enactment bill, to contract with the Department of Corrections (DOC) for assistance with monitoring and supervising sexually violent predators who are on conditional release.

Recommendation 48

Amend *Code of Virginia* § 37.2-903 (C) to designate the Static-99 as the screening instrument for SVP identification; a score of 4 or higher (moderate to high) should be used as the criteria for determining the eligibility for further assessment by the CRC.

Recommendation 49

Amend *Code of Virginia* § 37.2-900 to include aggravated sexually battery of any age victim as an eligible predicate offense for civil commitment.

Recommendation 50

Amend *Code of Virginia* § 37.2-900 to include a violation of § 18.2-63, carnal knowledge, as a SVP eligible predicate offense.

Recommendation 51

Amend *Code of Virginia* § 37.2-900 to include kidnapping with intent to defile or rape (§ 18.2-48 (i) and (iii)) as predicate SVP offenses.

Recommendation 52

Amend *Code of Virginia* § 37.2-900 to include attempts of the following predicate sex offenses as eligible for SVP screening and commitment:

- Forcible Sodomy (§ 18.2-67.1);
- Object Sexual Penetration (§ 18.2-67.2);
- Rape (§ 18.2-61);
- Kidnapping with Intent (§ 18.2-48(i) &(iii));
- Aggravated Sexual Battery (§ 18.2-67.3); and,
- Carnal Knowledge (§ 18.2-63).

Recommendation 53

Amend *Code of Virginia* §§ 37.2-908(c) and 37.2-910 to require that conditionally released SVPs be subject to GPS monitoring as part of both the court ordered treatment programs.

Recommendation 54

Amend *Code of Virginia* § 19.2-299 to require a Pre-Sentence Investigation Report (PSI), with national background check, be completed for all cases where the defendant is convicted of an offense eligible for civil commitment pursuant to § 37.2-900.

Recommendation 55

Amend *Code of Virginia* § 37.2-908 to allow the Office of the Attorney General of Virginia to allow continuances for good cause shown.

Recommendation 56

Amend *Code of Virginia* §§§ 37.2-169.3, 37.2-904; 37.2-905 to allow the CRC to be statutorily charged with providing a review of a defendant found incompetent to stand trial, who the DHMRSAS deems eligible for commitment as a SVP.

PART II: COSTS FOR LEGISLATIVE RECOMMENDATIONS

Crime Commission staff worked with staff from the appropriate state agencies to determine approximate costs of the legislative proposals, recognizing that some of the identified areas of costs for the Sexually Violent Predator Program were not fully funded when the original SVP legislation was enacted in 2003. Specifically, costs for the Sex Offender Task Force approved recommendations have, thus far, been identified in six broad areas:

-Virginia Department of State Police personnel and Sex Offender and Crimes Against Minors Registry redesign costs;
-Virginia Department of Corrections supervision and GPS monitoring costs;
-Office of the Attorney General of Virginia personnel costs;
-Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services evaluations and personnel costs;
-Criminal Fund costs for independent SVP evaluations; and,
-Virginia Department of Corrections' Woodrum Impact.

Based on the expenses outlined by the above state agencies, Table 15 outlines the costs currently identified for the legislative proposals.[272]

Table 15

Agency Costs for Legislative Proposals

	FY 2007	FY 2007	FY 2008	FY 2008
	Funds	FTEs	Funds	FTEs
State Police	$9,705,331	78	$5,888,765	78
Department of Corrections	$4,417,463	15	$7,920,579	28
Attorney General Office's	$375,076	5	$375,076	5
DMHMRSAS	$726,208	2	$803,074	3
Criminal Fund	$442,750	n/a	$448,500	n/a
Woodrum Impact	$2,169,480	n/a	n/a	n/a
TOTAL	$17,836,308	100	$15,435,994	114

[272] See *Attachment 7* for details on agency costs for the legislative proposals.

ACKNOWLEDGEMENTS

Acknowledgements

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

Compensation Board
Bruce W. Haynes, Executive Secretary
Anne M. Wilmoth, Chief Information Officer

Department of Criminal Justice Services
Robert Mathieson, Chief Deputy Director

Department of Forensic Science
Dr. Paul Ferrara, Director

Department of Mental Health, Mental Retardation and Substance Abuse Services
James Morris, Ph.D., Director, Office of Forensic Services
Mario Dennis, Ph.D., Clinical Program Director, VCBR

Department of Planning and Budget
Michael Maul, Associate Director, Education, Transportation & Safety
Dick Hall-Sizemore, Policy and Planning Specialist

Sex Offender Treatment Provider
Glenn Rex Miller, Jr., Ph.D., CSOTP, CSAC

Virginia Department of Corrections
Gary L. Bass, Chief of Operations, Offender Management Services
Wendy K. Brown, Classifications and Records Unit
Helen Henshaw, Manager, Research, Evaluation and Forecast Unit
Michael Leininger, Manager, Office of Communications
Carla M. Zarrella, M.S., LCSW, Director, SORT Program

Virginia Information Technologies Agency
Barry Condrey, Enterprise Service Director

Virginia Parole Board
Richard Crossen, Deputy Administrator

Virginia Sheriffs' Association
John W. Jones, Executive Director

Virginia State Police
Bob Crawford, Engineering Section Manager
Luther Ed Cutchins, System Analyst
Anita R. Dolan, Office Services Supervisor, Sr.
Debbie S. Mann, Non-Criminal Justice Manager
Cynthia A. Vernacchia, Director, Information Technology and Planning Division
Lieutenant Joseph W. Walters, Assistant Director

REFERENCES

REFERENCES

Abel, G.G., Becker, J.V., Cunningham-Rathner, J., Mittelman, M., & Rouleau, J.L. (1988). *Multiple paraphilic diagnoses among sex offenders*. Bulletin of the American Academy of Psychiatry and the Law, 16, 153-168.

Armstrong, S. (1994, April 4). *Golden state lawmakers consider harsh one strike anti-crime bill*. The Christian Science Monitor, 9.

Barnard, G.W., Fuller, A.K., Robbins, L., & Shaw, T. (1989). *The child molester: An integrated approach to evaluation and treatment*. New York: Brunner/Mazel.

Boer, D.P., Hart, S.D., Kropp, P.R., & Webster, C.D. (1997). *Manual for the sexual violence risk-20*. Vancouver, B.C. The British Columbia Institute Against Family Violence.

Bonta, J., Law, M., & Hanson, K.R. (1998). *The prediction of criminal and violent recidivism among mentally disordered offenders: A meta-analysis*. Psychological Bulletin, 123, 123-142.

Doren, Dennis M. (1999). "Diagnosing the Sexually Violent Predator Offender and Risk Assessment." Presentation at the American Prosecutors Research Institute's National Center for Prosecution of Child Abuse National Conference on Involuntary Commitment of Sexually Violent Predators, May 4, Alexandria, VA.

Doren, D. (2002). *Evaluating sex offenders: A manual for civil commitment and beyond*. Sage Publications. Thousand Oaks, California.

Epperson, Douglas L., James D. Kaul and Denise Hesselton. (1999). *Minnesota Sex Offender Screening Tool-Revised (MnSOST-R): Development, Performance, and Recommended Risk Level Cut Scores*. St. Paul, MN: Minnesota Department of Corrections.

Epperson, Douglas L., James D. Kaul, Stephen Hout, Denise Hesselton, Will Alexander, and Robin Goldman. 1999. *Minnesota Sex Offender Screening Tool-Revised (MnSOST-R)*. St. Paul, MN: Minnesota Department of Corrections.

Graham, J.R. (1990). *MMPI-2: Assessing personality and psychopathology*. NY: Oxford University Press.

Hanson, R. K. (1997). *The Development of a Brief Actuarial Risk Scale for Sexual Offense Recidivism*. Ottawa, Ontario: Solicitor General of Canada.

Hanson, R. K. (2001). *Age and Sexual Recidivism: A Comparison of Rapists and Child Molesters*. Ottawa, Ontario: Solicitor General of Canada. Retrieved October 11, 2005 (http://www.psepc-sppcc.gc.ca/corrections/publications/_e.asp#2001).

Hanson, K.R. (2000). *Risk Assessment*. Prepared for the Association for the Treatment of Sexual Abusers.

Hanson, K.R & Bussiere, M.T. (1998). *Predicting relapse: A meta-analysis of sexual recidivism studies*. Journal of Consulting and Clinical Psychology, 66, 348-362.

Hanson, K.R. & Morton-Bourgon, K. (2004). *Predictors of Sexual Recidivism: An updated meta-analysis*. Solicitor General of Canada.

Harris, A., Phenix, A., Hanson, K.R., & Thorton, D. (2003). *Static-99 coding rules revised.* Solicitor General of Canada.

Marshall, W.L. & Pithers, W.D. (1994). *A reconsideration of treatment outcome with sex offenders*. Criminal Justice and Behavior, 21, 10-27.

National Center for Victims of Crime and Crime Victims Research and Treatment Center. (1992). *Rape in America: A Report to the Nation*. Arlington, VA: National Center for Victims of Crime and Crime Victims Research and Treatment Center.

U.S. Department of Justice. (1997). *Sex Offenses and Offenders*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

U.S. Department of Justice. (2000). *Criminal Victimization 1999: Changes 1998-99 with Trends 1993-99*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

Virginia Criminal Sentencing Commission. (2001). *Assessing Risk Among Sex Offenders in Virginia*. Richmond, VA: Virginia Criminal Sentencing Commission.

ATTACHMENTS

ATTACHMENT 1:

LETTER REQUESTING ESTABLISHMENT OF SEX OFFENDER TASK FORCE

COMMONWEALTH OF VIRGINIA
HOUSE OF DELEGATES
RICHMOND

ROBERT F. "BOB" McDONNELL
ASSISTANT MAJORITY LEADER

POST OFFICE BOX 62244
VIRGINIA BEACH, VIRGINIA 23466-2244

EIGHTY-FOURTH DISTRICT

COMMITTEE ASSIGNMENTS
COURTS OF JUSTICE (CHAIRMAN)
HEALTH, WELFARE AND INSTITUTIONS
RULES

April 5, 2005

Delegate David B. Albo, Chairman
Virginia State Crime Commission
P.O. Box 6405
Springfield, Virginia 22150

Dear Delegate Albo:

I have become aware of a public safety concern that warrants the attention of the Virginia State Crime Commission. During my recent review of the current provisions and administration of the Sex Offender Registry in Virginia, I have become concerned with several issues that need prompt action to be sure we are properly protecting children, including the 10-day requirement for notice of a sex offender's release under *Virginia Code* 9.1-903(b) and relocation as mandated by § 9.1-903(d). The voluntary nature of the compliance and the long length of time between release and/or relocation and the notice to law enforcement appear much too long. Additionally, I am concerned about the provisions in *Virginia Code* § 9.1-904 requiring sex offenders to re-register annually with the State Police, and violent sex offenders to re-register only every 90 days. However, most importantly, my review of the Sex Offender Registry revealed incomplete files, missing photographs of sex offenders, information presented to the public which is not user friendly, and a registry system that is unable to provide comprehensive, on-going information as to the status of registry violators.

Our state police and other agencies are doing a very good job with the authority and resources we have provided them, but much more needs to be done. As such, I respectfully request that the Virginia State Crime Commission appoint a task force to specifically study, as a minimum, the following issues regarding the Sex Offender Registry:

- Completeness of individual sex offender records;
- Statewide compliance with the Registry requirements;
- *Code* provisions and notification requirements;
- Mechanisms to ensure public and law enforcement notice of the current, appropriate locations for all registered offenders; and,
- Other actions to register and monitor sex offenders

I also request to Chair this task force. Thank you in advance for your consideration of this request.

Sincerely,

Bob

Robert F. McDonnell

cc: Senator Kenneth W. Stolle, Vice Chairman
Kim Hamilton

DISTRICT (757) 552-6010 • RICHMOND (804) 698-1084 • E-MAIL DELEGATE@BOBMCDONNELL.COM

ATTACHMENT 2:

SEX OFFENDER TASK FORCE SUB-COMMITTEE MEMBERSHIP

Sex Offender Task Force
Sub-Committee Membership

Civil Commitment and Probation Reform Sub-Committee

Delegate H. Morgan Griffith, Co-Chairman
Senator Kenneth W. Stolle, Co-Chairman

Delegate David B. Albo
Mr. Paul Martin Andrews
Delegate Robert B. Bell
Mr. Glenn R. Croshaw
Delegate Phillip A. Hamilton
Senator Janet D. Howell
Mr. Gene M. Johnson
Delegate Terry G. Kilgore
Delegate Robert F. McDonnell
Dr. James Reinhard
Mr. Richard L. Savage, III
Delegate Beverly J. Sherwood
William J. Stejskal, Ph.D.
The Honorable Richard E. Trodden

Sex Offender Registry in Sentencing Reform Sub-Committee

Delegate David B. Albo, Co-Chairman
Delegate Robert F. McDonnell, Co-Chairman

Mr. Paul Martin Andrews
Delegate Robert B. Bell
Sheriff Mike Brown
Colonel W. Steven Flaherty
Delegate H. Morgan Griffith
Delegate Phillip A. Hamilton
Senator Janet D. Howell
Delegate Terry G. Kilgore
The Honorable John W. Marshall
Colonel W. Gerald Massengill
Mr. Bobby Mathieson
Ms. Wendy S. McClellan
Deputy Chief Greg Mullin
Dr. James Reinhard
Delegate Beverly J. Sherwood
Senator Kenneth W. Stolle

ATTACHMENT 3:

SUMMARY OF SCHOOL NOTIFICATION

Virginia Schools Sex Offender Information Request Data:

Total of 132 school divisions in Virginia according to DOE with 1,818 elementary, middle, high and combined schools (See Attachment 1).

- Of those 132 school divisions, 91 (69%) divisions have requested sex offender information from State Police; 41 (31%) divisions **have not** requested information (See Attachment 2).

- Of those 41 divisions that **have not** requested information, there are a total of 616 elementary, middle, high and combined schools. These run the gamut, for example, there are a few large divisions that **have not** requested info:

Henrico	63
Chesterfield	56
Norfolk	49

  But there are also school divisions that only have 2 or 3 schools in their division, for example, Amelia, Colonial Beach, and Rappahannock.

- Of the 616 individual schools in non-requesting divisions, 290 (47%) schools made individual requests for sex offender information.
  - Elementary: 188 of 389 schools (48%)
  - Middle: 53 of 116 schools (46%)
  - High: 47 of 104 schools (45%)
  - Combined: 2 of 7 schools (29%)

- Of the 616 individual schools in non-requesting divisions, there are 326 (53%) schools that **have not** made individual information requests.

- Of the 41 divisions that **have not** requested information, 28 (68%) divisions have individual schools that made requests and 13 (32%) school divisions with no individual school requests (See Attachment 3).

- Of the 28 divisions that had individual schools make requests, only 2 divisions had schools where 100% of the schools made requests (Highland & Rappahannock) (See Attachment 4 & 5).
  - 90% and greater: 8 schools
  - 50% and greater: 15 schools
  - Below 50%: 13 schools

DOE School Divisions

Accomack	Albemarle	Alexandria	Alleghany	Amelia
Amherst	Appomattox	Arlington	Augusta	Bath
Bedford	Bland	Botetourt	Bristol	Brunswick
Buchanan	Buckingham	Buena Vista	Campbell	Caroline
Carroll	Charles City	Charlotte	Charlottesville	Chesapeake
Chesterfield	Clarke	Colonial Beach	Colonial Heights	Covington
Craig	Culpeper	Cumberland	Danville	Dickenson
Dinwiddie	Essex	Fairfax	Falls Church	Fauquier
Floyd	Fluvanna	Franklin City	Franklin County	Frederick
Fredericksburg	Galax	Giles	Gloucester	Goochland
Grayson	Greene	Greensville	Halifax	Hampton
Hanover	Harrisonburg	Henrico	Henry	Highland
Hopewell	Isle of Wight	King George	King and Queen	King William
Lancaster	Lee	Lexington	Loudoun	Louisa
Lunenburg	Lynchburg	Madison	Manassas	Manassas Park
Martinsville	Mathews	Mecklenburg	Middlesex	Montgomery
Nelson	New Kent	Newport News	Norfolk	Northampton
Northumberland	Norton	Nottoway	Orange	Page
Patrick	Petersburg	Pittsylvania	Poquoson	Portsmouth
Powhatan	Prince Edward	Prince George	Prince William	Pulaski
Radford	Rappahannock	Richmond County	Richmond City	Roanoke County
Roanoke City	Rockbridge	Rockingham	Russell	Salem
Scott	Shenandoah	Smyth	Southampton	Spotsylvania
Stafford	Staunton	Suffolk	Surry	Sussex
Tazewell	Virginia Beach	Warren	Washington	Waynesboro
West Point	Westmoreland	Williamsburg-James City	Winchester	Wise
Wythe	York			

Attachment 3
Total Schools in Non-requesting Division

Total Schools in Division	Non-Requesting Divisions
16	Alexandria City Public Schools
3	Amelia County Public Schools
3	Bath County Public Schools
21	Bedford County Public Schools
6	Brunswick County Public Schools
10	Buchanan County Public Schools
6	Buckingham County Public Schools
44	Chesapeake City Public Schools
56	Chesterfield County Public Schools
2	Colonial Beach Public Schools
8	Culpeper County Public Schools
3	Cumberland County Public Schools
8	Dickenson County Public Schools
3	Essex County Public Schools
5	Fluvanna County Public Schools
17	Frederick County Public Schools
63	Henrico County Public Schools
15	Henry County Public Schools
2	Highland County Public Schools
9	Isle of Wight County Public Schools
3	King and Queen County Public Schools
4	King William County Public Schools
13	Lee County Public Schools
16	Lynchburg City Public Schools
49	Norfolk City Public Schools
4	Northampton County Public Schools
9	Petersburg City Public Schools
18	Pittsylvania County Public Schools
5	Powhatan County Public Schools
4	Radford City Public Schools
2	Rappahannock County Public Schools
48	Richmond City Public Schools
29	Roanoke City Public Schools
8	Rockbridge County Public Schools
13	Russell County Public Schools
9	Shenandoah County Public Schools
28	Spotsylvania County Public Schools
19	Suffolk City Public Schools
5	Sussex County Public Schools
12	Wythe County Public Schools
18	York County Public Schools
616	**Total Schools in Non-requesting Division**

Attachment 3

Total Non-requesting Divisions with Individual School Requests

Total Individual School Request Per Locality	Non-requesting Divisions	
2	Alexandria City Public Schools	
1	Amelia County Public Schools	
20	Bedford County Public Schools	
5	Chesapeake City Public Schools	
12	Chesterfield County Public Schools	
1	Colonial Beach Public Schools	
3	Culpeper County Public Schools	
1	Dickenson County Public Schools	
1	Essex County Public Schools	
59	Henrico County Public Schools	
2	Highland County Public Schools	
2	King William County Public Schools	
15	Lynchburg City Public Schools	
33	Norfolk City Public Schools	
3	Northampton County Public Schools	
7	Pittsylvania County Public Schools	
1	Powhatan County Public Schools	
2	Radford City Public Schools	
2	Rappahannock County Public Schools	
43	Richmond City Public Schools	
26	Roanoke City Public Schools	
4	Rockbridge County Public Schools	
4	Russell County Public Schools	
1	Shenandoah County Public Schools	
8	Spotsylvania County Public Schools	
6	Suffolk City Public Schools	
9	Wythe County Public Schools	
17	York County Public Schools	
28	**Total Non-requesting Divisions w/ Individual School Requests**	

Attachment 3
Percentage of Total Individual School Requests By Locality

Percentage of Individual School Requests	Non-Requesting Divisions	Total Schools in Division	Total Individual School Request
13%	Alexandria City Public Schools	16	2
33%	Amelia County Public Schools	3	1
0%	Bath County Public Schools	3	0
95%	Bedford County Public Schools	21	20
0%	Brunswick County Public Schools	6	0
0%	Buchanan County Public Schools	10	0
0%	Buckingham County Public Schools	6	0
11%	Chesapeake City Public Schools	44	5
21%	Chesterfield County Public Schools	56	12
50%	Colonial Beach Public Schools	2	1
38%	Culpeper County Public Schools	8	3
0%	Cumberland County Public Schools	3	0
13%	Dickenson County Public Schools	8	1
33%	Essex County Public Schools	3	1
0%	Fluvanna County Public Schools	5	0
0%	Frederick County Public Schools	17	0
94%	Henrico County Public Schools	63	59
0%	Henry County Public Schools	15	0
100%	Highland County Public Schools	2	2
0%	Isle of Wight County Public Schools	9	0
0%	King and Queen County Public Schools	3	0
50%	King William County Public Schools	4	2
0%	Lee County Public Schools	13	0
94%	Lynchburg City Public Schools	16	15
67%	Norfolk City Public Schools	49	33
75%	Northampton County Public Schools	4	3
0%	Petersburg City Public Schools	9	0
39%	Pittsylvania County Public Schools	18	7
20%	Powhatan County Public Schools	5	1
50%	Radford City Public Schools	4	2
100%	Rappahannock County Public Schools	2	2
90%	Richmond City Public Schools	48	43
90%	Roanoke City Public Schools	29	26
50%	Rockbridge County Public Schools	8	4
31%	Russell County Public Schools	13	4
11%	Shenandoah County Public Schools	9	1
29%	Spotsylvania County Public Schools	28	8
32%	Suffolk City Public Schools	19	6
0%	Sussex County Public Schools	5	0
75%	Wythe County Public Schools	12	9
94%	York County Public Schools	18	17
		616	**290**

Attachment 3
Percentage of Total Individual School Requests

Percentage of Individual School Requests	Non-Requesting Divisions	Total Schools in Division	Total Individual School Request
100%	Highland County Public Schools	2	2
100%	Rappahannock County Public Schools	2	2
95%	Bedford County Public Schools	21	20
94%	York County Public Schools	18	17
94%	Lynchburg City Public Schools	16	15
94%	Henrico County Public Schools	63	59
90%	Roanoke City Public Schools	29	26
90%	Richmond City Public Schools	48	43
75%	Northampton County Public Schools	4	3
75%	Wythe County Public Schools	12	9
67%	Norfolk City Public Schools	49	33
50%	Colonial Beach Public Schools	2	1
50%	King William County Public Schools	4	2
50%	Radford City Public Schools	4	2
50%	Rockbridge County Public Schools	8	4
39%	Pittsylvania County Public Schools	18	7
38%	Culpeper County Public Schools	8	3
33%	Amelia County Public Schools	3	1
33%	Essex County Public Schools	3	1
32%	Suffolk City Public Schools	19	6
31%	Russell County Public Schools	13	4
29%	Spotsylvania County Public Schools	28	8
21%	Chesterfield County Public Schools	56	12
20%	Powhatan County Public Schools	5	1
13%	Alexandria City Public Schools	16	2
13%	Dickenson County Public Schools	8	1
11%	Chesapeake City Public Schools	44	5
11%	Shenandoah County Public Schools	9	1
0%	Bath County Public Schools	3	0
0%	Brunswick County Public Schools	6	0
0%	Buchanan County Public Schools	10	0
0%	Buckingham County Public Schools	6	0
0%	Cumberland County Public Schools	3	0
0%	Fluvanna County Public Schools	5	0
0%	Frederick County Public Schools	17	0
0%	Henry County Public Schools	15	0
0%	Isle of Wight County Public Schools	9	0
0%	King and Queen County Public Schools	3	0
0%	Lee County Public Schools	13	0
0%	Petersburg City Public Schools	9	0
0%	Sussex County Public Schools	5	0
		616	290

ATTACHMENT 4:

ANALYSIS OF OTHER STATES' SVP LAWS

	Arizona
SVP Definition	(a) has ever been convicted of or found guilty but insane of a svo or was charged w/ a svo and found incompetent to stand trial (b) has mental disorder that makes likely to engage in acts of violence.
SVO Definition	(a) Sexual conduct with a minor pursuant to §13-1405, sexual assault pursuant to §13-1406, molestation of a child pursuant to §13-1410, continuous sexual abuse of a child pursuant to §13-1417 or sexual assault of a spouse if the offense was committed before the effective date of this amendment to this §. (b) Second degree murder pursuant to §13-1104, first degree murder pursuant to §13-1105, assault pursuant to §13-1203, aggravated assault pursuant to §13-1204, unlawful imprisonment pursuant to §13-1303, kidnapping pursuant to §13-1304 or burglary in the first degree pursuant to §13-1508 if the court at the time of sentencing or civil commitment proceedings determines beyond a reasonable doubt that the act was sexually motivated pursuant to §13-118. (c) An attempt, a solicitation, a facilitation or a conspiracy to commit an offense listed in subdivision (a) or (b) of this paragraph. (d) An act committed in another jurisdiction that if committed in this state would be a sexually violent offense listed in subdivision (a) or (b) of this paragraph (e) a conviction for a felony offense that was in effect b/f 9/1/1978, that if committed on or after 9/1/1978 would be a SVO.
At what point begin assessment process while incarcerated	180 days to 30 days prior to release may refer person to county atty and request petition be filed declaring SVP
Assessment process While incarcerated	Agency w/ custody refer person to county atty or AG & provide all info to support request for petition that includes report completed w/in prior 120 days that includes opinion to reasonable degree of psychiatric, psychological or professional certainty that person has mental disorder and likely to engage in svo. And list of all treating individuals.
Factors Considered at Assessment	Besides report: (1) all psychological, psychiatric tests and assessment reports and supporting info (2) all notes and reports prepared while in custody or receiving treatment from submitting agency (3) presentence investigation reports (4) all records of person's version of offenses (5) all convictions and acquittals regardless of sexual nature (5) police reports (6) institutional records relating to behavior in custody (7) info on dates of acceptance & rejection of medication or treatment
Specify Specific Risk Assessment Instrument	no
Specify Specific Score on Instrument	no
Subsequent evals	n/a
Factors considered at subsequent evals assessment	n/a
Nature of Review Team	competent professional
How Request for Petition made	Agency w/ custody refer person to county atty or AG
Decision to file Case	County atty of place of conviction or place of release can file petition
How Petition for SVP Determination filed	County atty of place of conviction or place of release can file petition
PC Hearing	yes by judge
Mental Health Eval after PC	yes from list of competent professionals; county pay costs
Nature of pretrial eval	n/a

SVP determination made by whom	judge or jury
Standard of proof for commitment	beyond reasonable doubt
Location of Commitment Center	State hospital
Control of Commitment Center	Superintendent of state hospital
Period of Commitment	indefinite
Review of Commitment/How often	annual
Petition for Release/How often	annual
Nature of Community Supervision	Court can impose any conditions necessary but includes mandatory 90 day inpatient eval and the superintendent of state hospital makes recs for release. Conditional release can include: (1) specific residence (2) prohibited contact (3) prohibited use of alcohol & drugs (4) supervision by Dept of Health or probation (5) remain in state (6) outpatient treatment including polygraph and PPG or both.
Conditions req. b/f conditional release	(1) treatment by qualified provider who presents specific course of treatment and agrees to assume resp. for person's treatment, to report on reg. basis to court (2) person has housing arrangements that are secure and person providing housing agrees to accept person, to provide level of security, to immediately report unauthorized absence (3) person comply w/ reqs.

	California
SVP Definition	convicted of svo against 2 or more victims and has diagnosed mental disorder makes person danger to health and safety of others in that it is likely he will engage in sexually violent criminal behavior
SVO Definition	the following acts when committed by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on victim or another person, and that are committed on, before, or after the effective date of this article and result in conviction or finding of NGRI, as provided in subdivision (a): a felony violation of paragraph 2 of subdivision a of section 261, paragraph 1 of subdivision a of section 262, section 264.1, subdivision a or b of section 288 or subdivision a of section 289, or sodomy or oral copulation in violation of section 286 or 288a of Penal Code.
At what point begin assessment process while incarcerated	Director of DOC refer for eval at least 6 months prior to release
Assessment process While incarcerated	social, criminal and institutional history and in accordance w/ structured screening instrument developed and updated by DMH in consultation with DOC. If determined likely SVP then refer to DMH for full eval.
Factors Considered at Assessment	whether person committed svo and on review of social, criminal and institutional history and in accordance w/ structured screening instrument
Specify Specific Risk Assessment Instrument	No
Specify Specific Score on Instrument	No
Subsequent evals	DMH evaluates in accordance w/ standardized assessment protocol developed and updated by DMH. This instrument shall require assessment of diagnosable mental disorders as well as various factors known to be associated w/ risk of reoffense among sos.
Factors considered at subsequent evals assessment	criminal and psychosexual history, type, degree and duration of sexual deviance and severity of mental disorder
Nature of Review Team	2 practicing psychiatrists or psychologists or one practicing psychiatrist and 1 practicing psychologist, designated by DMH
How Request for Petition made	DMH forwards request for petition to county atty
Decision to file Case	County atty
How Petition for SVP Determination filed	filed in superior court of county of conviction
PC Hearing	yes by judge
Mental Health Eval after PC	no; but person has right to have independent eval.
Nature of pretrial eval	n/a
SVP determination made by whom	judge or jury
Standard of proof for commitment	beyond reasonable doubt
Location of Commitment Center	State hospital until site determined by directors of DOC and Mental Health
Control of Commitment Center	Dept. of Mental Health

Period of Commitment	2 years
Review of Commitment/How often	Annual
Petition for Release/How often	Any time
Nature of Community Supervision	Must be in conditional release program for 1 year, then have another hearing to see if should be unconditionally released. All state-operated forensic conditional release programs include outpatient supervision and treatment
Conditions req. b/f conditional release	Based on recs of community program director stating which forensic conditional release program most appropriate

	Florida
SVP Definition	(1) convicted of svo and suffers mental abnormality or personality disorder that makes person likely to engage in acts of sv if not confined in secure facility for long-term control, care, and treatment.
SVO Definition	(1) murder of human while engaged in sexual battery (2) kidnapping of child under 13 and during that offense committing sexual battery or a lewd, lascivious, or indecent assault or act upon or in presence of child (3) committing offense of false imprisonment upon child under 13 and during committing sexual battery or a lewd, lascivious or indecent assault or act upon or in presence of child; (4) sexual battery (5) lewd lascivious or indecent assault or act upon or in presence of child (6) attempt, criminal solicitation or conspiracy of svo (7) comparable svo conviction prior to 10/1/1998 in FL or any comparable fed or other state conviction (8) any criminal act determined beyond reasonable doubt to be sexually motivated
At what point begin assessment process while incarcerated	545 days prior to anticipated release from total confinement in DOC; 180 days prior to anticipated release from residential commitment of person in DJJ; 180 days prior to anticipated hearing regarding possible release of person committed to custody of DOC who was NGRI
Assessment process While incarcerated	Agency w/ jurisdiction over person who has been convicted of SVO give written notice to multidisciplinary team and comply to state attorney of circuit where last convicted of sv o and provide necessary info to team; AG is legal counsel to team. W/in 180 days make written assessment as to whether SVP and written rec to state atty. Written rec provided by Dept of Children and Family services and includes report of team
Factors Considered at Assessment	Institutional history and treatment record; criminal background and any other relevant factor. Person must be offered personal interview
Specify Specific Risk Assessment Instrument	no
Specify Specific Score on Instrument	no
Subsequent evals	n/a
Factors considered at subsequent evals assessment	n/a
Nature of Review Team	Multidisciplinary team: 2 licensed psychiatrists or psychologists or 1 licensed psychiatrist and 1 licensed psychologist
How Request for Petition made	based on recs and written assessment, state atty may file petition w/ circuit court
Decision to file Case	state atty
How Petition for SVP Determination filed	based on recs and written assessment, state atty may file petition w/ circuit court
PC Hearing	yes by judge
Mental Health Eval after PC	no but can request and be subjected to mh exam at trial
Nature of pretrial eval	n/a
SVP determination made by whom	judge or jury
Standard of proof for commitment	clear and convincing evidence
Control of Commitment Center	Dept of Children and Family Services

Period of Commitment	indefinite
Review of Commitment/How often	annual
Petition for Release/How often	any time; limited if previous attempts were frivolous
Nature of Community Supervision	n/a
Conditions req. b/f conditional release	n/a
other	n/a

	Illinois
SVP Definition	been convicted of svo, been adjudicated delinquent for svo or found NGRI for svo and is dangerous b/c he suffers from mental disorder that makes it substantially probable that person will engage in acts of sv
SVO Definition	(1) any crime specified in Sections 12-13, 12-14, 12-14.1 or 12-16, (2) any former law of rape, deviate sexual assault, indecent liberties w/ child or aggravated indecent liberties w/ child (3) 1st degree murder if it is determined to have been sexually motivated (4) any solicitation, conspiracy or attempt to commit crimes above.
At what point begin assessment process while incarcerated	3 months prior to release
Assessment process While incarcerated	Inform AG and state's atty and provide necessary info
Factors Considered at Assessment	offense history; comprehensive MH eval., documentation of any treatment and person's adjustment to any institutional placement
Specify Specific Risk Assessment Instrument	Conducted in conformance w/ standards developed under Sex Offender Management Board Act and by evaluator approved by Board
Specify Specific Score on Instrument	no
Subsequent evals	no
Factors considered at subsequent evals assessment	n/a
Nature of Review Team	n/a
How Request for Petition made	Inform AG and state's atty and provide necessary info
Decision to file Case	Either AG or state's atty or both
How Petition for SVP Determination filed	Filed in either circuit court for county of conviction or county in which in custody
PC Hearing	yes
Mental Health Eval after PC	yes
Nature of pretrial eval	n/a
SVP determination made by whom	judge or jury
Standard of proof for commitment	beyond a reasonable doubt
Location of Commitment Center	DHS can contract w/ DOC for facility
Control of Commitment Center	DHS
Period of Commitment	indefinite
Review of Commitment/How often	DHS make report to court initially after 6 months and then annually for determining whether person made sufficient progress to be conditionally released or discharged

Petition for Release/How often	after 6 months from initial commitment, the most recent release denied or revoked, then any time.
Nature of Community Supervision	DHS prepare plan that: ids the treatment & sevices; addresses need for supervision, counseling, medication, community support services, residential services, vocational services, & substance abuse treatment. May contract w/ county health dept, another public agency or w/ private agency for treatment & services, but person still under control of DHS. In addition, person must: not violate criminal laws; report/appear in person as directed; not posess weapon; not leave state w/o permision; make notification reqs; attend & fully participate in assessment & treatment; waive confidentiality allowing court & DHS access to assessment & treatment results; work regularly at approved place; not contact w/ children; submit to search of person & property; financially support dependents; serve term of home confienment; be placed on electronic monitoring if deemed necessary; comply w/ order of protection; refrain from prohibited areas; refrain from certain associations; use no alcohol or drugs; not date w/o approval; no porn; no adult entertainment; no living near children; no living anywhere w/o approval; no publication w/o approval; no leaving county w/o permission; provide daily log of activties, etc.
Conditions req. b/f conditional release	(1) mental history and present behavior (2) living arrangements (3) how will support himself (4) what arrangements available to ensure person has access to and will participate in necessary treatment. All treatment conducted in conformance w/ standards developed under Sex Offender Management Board Act and conduct by treatment provider approved by board
other	submit to DNA

	Iowa
SVP Definition	Been convicted of or charged w/ svo and who suffers from a mental abnormality which makes person likely to engage in predatory acts constituting sexually violent offenses
SVO Definition	(1) Violation of any provision of chap 709 (2) Violation of following if involves sexual abuse, attempted sexual abuse, or intent to commit sexual abuse: murder, kidnapping, burglary, child endangerment (3) sexual exploitation of minor (4) pandering involving minor (5) offense involving an attempt or conspiracy to commit offense in this subsection (6) offense under prior law or an offense committed in another jurisdiction which would constitute violation under this subsection (7) an act determined beyond reasonable doubt to be sexually motivated
At what point begin assessment process while incarcerated	no later than 90 days prior to release
Assessment process While incarcerated	Agency w/ jurisdiction give written notice to AG and multidisciplinary team w/ necessary info. Multidisciplinary team assesses person and notifies AG. AG appoints prosecutor's review committee to review records and assist ag in determination.
Factors Considered at Assessment	Offense history, documentation of any institutional eval and any treatment received
Specify Specific Risk Assessment Instrument	no
Specify Specific Score on Instrument	no
Subsequent evals	Multidisciplinary team makes assessment and notifies AG
Factors considered at subsequent evals assessment	n/a
Nature of Review Team	Director of DOC establishes team and may include individuals from other state agencies to review available records
How Request for Petition made	Multidisciplinary team makes assessment and notifies AG, then AG refers to prosecutor's review committee for evaluation
Decision to file Case	AG or prosecuting atty of county where person convicted or charged
How Petition for SVP Determination filed	If Prosecutor's review committee determines meets definition, AG may file petition.
PC Hearing	yes
Mental Health Eval after PC	no
Nature of pretrial eval	n/a
SVP determination made by whom	judge or jury
Standard of proof for commitment	beyond a reasonable doubt
Location of Commitment Center	DHS may enter into agreement w/ DOC or other agency or another state for confinement of svps
Control of Commitment Center	Dept of human services
Period of Commitment	indefinite

Review of Commitment/How often	annual
Petition for Release/How often	has right to petition at annual exam and review
Nature of Community Supervision	DHS prepare release plan addressing needs for counseling, medication, community support services, residential services, vocational services, alcohol or drug abuse treatment, se offender treatment or any other necessary treatment or supervision
Conditions req. b/f conditional release	n/a
other	n/a

	Kansas
SVP Definition	been convicted of or charged w/ svo and suffers from mental abnormality or personality disorder which makes person likely to engage in repeat acts of sv
SVO Definition	Rape; indecent liberties w/ child; aggravated indecent liberties w/ child; criminal sodomy; aggravated criminal sodomy; indecent solicitation of child; aggravated indecent solicitation of child; sexual exploitation of child; aggravated sexual battery; aggravated incest; any conviction for former comparable offense in state; any conviction for comparable offense in another jurisdiction; attempt, conspiracy or criminal solicitation to commit svo; any act determined beyond reasonable doubt to have been sexually motivated
At what point begin assessment process while incarcerated	90 days prior to anticipated release
Assessment process While incarcerated	agency w/ jurisdiction gives written notice to AG and multidisciplinary team w/ necessary info. Team notifies AG of assessment. AG appoints prosecutors review committee to review records. Review committee assists AG in determination
Factors Considered at Assessment	offense history; documentation of institutional adjustment and any treatment received
Specify Specific Risk Assessment Instrument	no
Specify Specific Score on Instrument	no
Subsequent evals	multidisciplinary team then prosecutor's review committee
Factors considered at subsequent evals assessment	n/a
Nature of Review Team	Multidisciplinary team may include individuals from other state agencies
How Request for Petition made	Goes from agency to multidisciplinary team to prosecutor's review committee to AG
Decision to file Case	AG
How Petition for SVP Determination filed	after goes through review process and meets definition, AG files
PC Hearing	yes by judge
Mental Health Eval after PC	yes by person deemed to be professionally qualified to conduct eval
Nature of pretrial eval	n/a
SVP determination made by whom	judge or jury
Standard of proof for commitment	beyond reasonable doubt
Location of Commitment Center	secretary of social and rehabilitation services authorized to enter into agreement w/ DOC for facility
Control of Commitment Center	secretary of social and rehabilitation services
Period of Commitment	indefinite

Review of Commitment/How often	annual
Petition for Release/How often	any time, but limited if previously frivolous
Nature of Community Supervision	treatment staff est. plan of treatment that shall include but not limited to: where person resides and w/ whom; taking prescribed meds; attending individual and group counseling; maintaining employment; no contact w/ children or engaging or frequenting places where children congregate. After 5 yrs w/ no violations, treatment staff may examine person to see if condition changed and be considered for discharge.
Conditions req. b/f conditional release	AG has burden of proof to show beyond reasonable doubt person's mental abnormality or personality disorder remains threat to public safety. If court not convinced, ordered to conditional release
other	county or da shall file special allegation of sexual motivation w/in 10 after arraignment in every criminal case other than sex offenses, when sufficient admissible evidence exists, which, when considered w/ most plausible, reasonably foreseeable defense that could be raised under evidence, would justify finding of sexual motivation by reasonable and objective fact finder (b) in criminal case where there has been special allegation, state shall prove beyond a reasonable doubt that accused committed crime w/ sexual motivation

	Massachusetts
SVP Definition	been (i) convicted of or adjudicated delinquent juvenile or youthful offender and who suffers from mental abnormality or personality disorder which makes person likely to engage in sex offenses (ii) charged w/ so and determined incompetent to stated trial and who suffers from mental abnormality or personality disorder which makes person likely to engage in so; or, (iii) previously adjudicated by court and whose misconduct in sexual matters indicates general lack of power to control sexual impulses, as evidenced by repetitive or compulsive sexual misconduct by either violence against any victim, or aggression against any victim under 16 who as a result is likely to attack or otherwise inflict injury on such victims b/c of uncontrolled desires
SVO Definition	indecent assault and battery on child under 14; indecent a&B on mentally retarded person; indecent a & B on person 14; rape; rape of child under 16 w/ force; rape and abuse of child under 16; assault w/ intent to commit rape; assault on child w/ intent to commit rape; drugging persons for sex; unnatural and lascivious acts w/ child under 16; any attempt to commit any of above crimes or like violation of laws of another jurisdiction
At what point begin assessment process while incarcerated	6 months prior to release
Assessment process While incarcerated	agency w/ jurisdiction notify in writing da of county where offense occurred & ag
Factors Considered at Assessment	n/a
Specify Specific Risk Assessment Instrument	n/a
Specify Specific Score on Instrument	n/a
Subsequent evals	n/a
Factors considered at subsequent evals assessment	n/a
Nature of Review Team	n/a
How Request for Petition made	when da or ag determines person likely to be sexually dangerous person
Decision to file Case	da, or ag at request of DA
How Petition for SVP Determination filed	filed in superior court where person committed or where sexual offense occurred
PC Hearing	yes by judge
Mental Health Eval after PC	yes; committed to treatment center for no more than 60 days for purpose of examination and diagnosis under supervision of 2 qualified examiners who shall file w/ court written report of exam and diagnosis and their rec for disposition
Nature of pretrial eval	Court provide examiners w/ juvenile and adult court records which shall contain history of previous juvenile and adult offenses, previous psychiatric and psychological examination and other info; narrative or police reports for each so conviction or adjudication as well as any psychiatric, psychological, medical or social worker records in possession; incident reports arising out of incarceration or custody
SVP determination made by whom	jury unless affirmative waived
Standard of proof for commitment	beyond a reasonable doubt

Location of Commitment Center	nemansket Correctional Center
Control of Commitment Center	commissioner of correction subject to jurisdiction of doc
Period of Commitment	indefinite
Review of Commitment/How often	n/a
Petition for Release/How often	annual; doc may file any time
Nature of Community Supervision	person civilly committed can petition annually for participation in community access program; any person participating in community access program shall continue to reside in facility and be under daily evaluation by treatment center personnel. No conditional release.
Conditions req. b/f conditional release	n/a
other	n/a

	Minnesota
SVP Definition	person who (1) has engaged in course of harmful sexual conduct (2) manifested a sexual, personality or other mental disorder or dysfunction; and (3) as a result is likely to engage in acts of harmful sexual conduct. Not necessary to prove person has inability to control sexual impulses
SVO Definition	(a) harmful sexual conduct means sexual conduct that creates substantial likelihood of serious physical or emotional harm to another (b) rebuttable presumption that following conduct creates substantial likelihood that victim will suffer serious physical or emotional harm: criminal sexual conducting 1st, 2nd, 3rd and 4th degree; If conduct was motivated by person's sexual impulses or was part of pattern of behavior that had criminal sexual conduct as goal, presumption applies to following conduct: murder in 1st, 2nd, 3rd degree; manslaughter in 1st, 2nd degree; assault in 1st, 2nd, 3rd degree; simple robbery; aggravated robbery; kidnapping; false imprisonment; incest; tampering w/ witness; arson in 1st degree; burglary in 1st degree; terroristic threats; harassment and stalking
At what point begin assessment process while incarcerated	at any time
Assessment process While incarcerated	prior to filing petition for commitment, interested person shall apply to county for conduct of prelim investigation. Designated agency appoints screening team to conduct investigation. Petitioner may not be member of screening team
Factors Considered at Assessment	Investigation must include: persona interview w/ proposed patient and other individuals who appear to have knowledge of condition; identification, exploration, and listing of specific reasons for rejecting or recommending alternatives to involuntary placement;
Specify Specific Risk Assessment Instrument	no
Specify Specific Score on Instrument	no
Subsequent evals	after petition filed, court shall appoint examiner. Prior to hearing, court shall inform person of right to independent 2nd exam
Factors considered at subsequent evals assessment	n/a
Nature of Review Team	n/a
How Request for Petition made	facts first submitted to county attorney who if satisfied that good cause exists, will prepare petition. He may request prepetition screen screening report. He may request access to data.
Decision to file Case	county atty
How Petition for SVP Determination filed	may be filed in county where conviction entered. If supreme court establishes pane of district judges to preside over commitment proceedings of sexual psychopathic personalities and sexually dangerous persons, then all petitions for civil commitment shall be filed w/ supreme court.
PC Hearing	yes by court
Mental Health Eval after PC	no
Nature of pretrial eval	n/a
SVP determination made by whom	court
Standard of proof for commitment	clear and convincing evidence
Period of Commitment	indefinite

Review of Commitment/How often	at least annually
Nature of Community Supervision	n/a
Conditions req. b/f conditional release	n/a
other	

	Missouri
SVP Definition	person who suffers from mental abnormality which makes person more likely than not to engage in predatory acts of sv and who (a) has pled guilty or been found guilty, or NGRI of svo; or has been committed as criminal sexual psychopath
SVO Definition	felonies of forcible rape; rape; statutory rape in 1st degree; forcible sodomy; sodomy; statutory sodomy in 1st degree; attempt to commit above crimes; child molestation in 1st or 2nd degree; sexual abuse; sexual assault, deviate sexual assault, or act of abuse of child which involves sexual contact.
At what point begin assessment process while incarcerated	w/in 360 days prior to anticipated release from correctional center; any time prior to release of person found NGRI by reason of mental disease or defect of svo; or at any time prior to release of person who was committed as criminal sexual psychopath
Assessment process While incarcerated	When it appears that person may meet criteria of svp, agency w/ jurisdiction give written notice to ag and multidisciplinary team w/ necessary info. Team notifies AG of assessment. Prosecutor's committee reviews records of persons referred to AG and makes determination.
Factors Considered at Assessment	offense history; documentation of institutional adjustment and any treatment received or refused, including MO sexual offender program and determination by either psychiatrist or psychologist as to whether person meets definition
Specify Specific Risk Assessment Instrument	no
Specify Specific Score on Instrument	no
Subsequent evals	n/a
Factors considered at subsequent evals assessment	n/a
Nature of Review Team	Multidisciplinary team must have no more than 7 members, at least one from DOC and DMH. Prosecutors coordinators training council appoints 5 member prosecutors' review committee composed of cross section of county prosecutors. No more than 3 from urban counties, and one member shall be prosecuting atty of county in which person convicted or committed.
How Request for Petition made	Team notifies AG of assessment. Prosecutor's committee reviews records of persons referred to AG and makes determination.
Decision to file Case	AG
How Petition for SVP Determination filed	When appears that person may be svp and prosecutor's review committee determined by majority vote, AG may file petition in probate division of circuit court of conviction or where committed.
PC Hearing	yes by judge
Mental Health Eval after PC	yes to determine if person is svp. Eval made by psychiatrist or psychologist not member of team. Person can also request to be examined by own dr.
Nature of pretrial eval	Examiner authorized to interview family and associates, victims and witnesses; have access to all materials and to any police reports.
SVP determination made by whom	judge or jury
Standard of proof for commitment	beyond reasonable doubt.
Location of Commitment Center	dept. of mental health can enter into agreement w/ doc for confinement
Control of Commitment Center	dept. of mental health

Period of Commitment	indefinite
Review of Commitment/How often	annual
Petition for Release/How often	any time; limited if previous petition frivolous
Nature of Community Supervision	n/a
Conditions req. b/f conditional release	n/a
other	When AG receives notice that person, who has pled guilty or been convicted of svo and who is not presently in physical custody of an agency w/ jurisdiction has committed a recent overt act or has been in custody of agency w/ jurisdiction w/in preceding 10 yrs and may meet criteria, AG may file petition for detention and eval w/ probate division of court.

	New Jersey
SVP Definition	been convicted; adjudicated delinquent or found NGRI for commission of svo, or been charged w/ svo but found incompetent to stand trial and suffers from mental abnormality or personality disorder that makes person likely to engage in acts of sv.
SVO Definition	aggravated sexual assault; sexual assault; aggravated criminal sexual contact; kidnapping; criminal sexual contact; felony murder if underlying crime is sexual assault; attempt to commit any of above offense; or comparable criminal offense in another jurisdiction or this jurisdiction, any offense based on circumstances of case, person's offense considered svo.
At what point begin assessment process while incarcerated	90 days or as soon as practicable prior to anticipated release from total confinement; any commitment status review hearing DHS intends to recommend discharge or believes discharge likely; any hearing at which DHS intend to recommend discharge
Assessment process While incarcerated	when appears person may meet criteria, agency w/ jurisdiction give written notice to AG w/ necessary info. Ag may initiate court proceeding for involuntary commitment by submission to court of 2 clinical certificates, at least one prepared by psychiatrist.
Factors Considered at Assessment	preparole report, psychological and medical records, any statement of reasons for denial of parole, and statement from agency w/ jurisdiction of reasons for its determination
Specify Specific Risk Assessment Instrument	no
Specify Specific Score on Instrument	no
Subsequent evals	n/a
Factors considered at subsequent evals assessment	n/a
Nature of Review Team	psychiatrist or psychologist
How Request for Petition made	when appears person may meet criteria, agency w/ jurisdiction give written notice to AG w/ necessary info. Ag may initiate court proceeding for involuntary commitment by submission to court of 2 clinical certificates, at least one prepared by psychiatrist.
Decision to file Case	AG
How Petition for SVP Determination filed	Ag may initiate court proceeding for involuntary commitment by submission to court of 2 clinical certificates, at least one prepared by psychiatrist. File certificate in court in jurisdiction in which person whose commitment is sought is located.
PC Hearing	yes
Mental Health Eval after PC	yes;
Nature of pretrial eval	if pc exists, then person temporarily committed and undergoes mental and physical exam, administered appropriate treatment and discharge assessment.
SVP determination made by whom	judge
Standard of proof for commitment	clear and convincing evidence
Location of Commitment Center	DOC; DMHS provides and arranges for treatment
Control of Commitment Center	DOC; DMHS provides and arranges for treatment
Period of Commitment	indefinite

Review of Commitment/How often	annual; if court determines at review hearing that involuntary commitment as svp shall be continued, it shall execute new order; can have additional hearings not more than every 30 days
Petition for Release/How often	any time
Nature of Community Supervision	Conditions shall include those recommended by treatment team and developed w/ participation of person and approved by DHS. Reviews conditions 6 months from date of order.
Conditions req. b/f conditional release	person not likely to engage in acts of sv b/c person amenable to and highly likely to comply w/ plan to facilitate person's adjustment and reintegration into community
other	Clinical certificate for svp is form prepared by DMHS and approved by Administrative Office of Courts that is completed by psychiatrist or other physician who has examine person who is subject to commitment w/in 3 days of presenting person for admission to facility for treatment and which state person is svp. Also states specific facts upon which examining physician based conclusion. Can't be executed by relative by blood or marriage.

	North Dakota
SVP Definition	individual shown to have engaged in sexually predatory conduct and who has congenital or acquired condition that is manifested by sexual disorder, personality disorder or other mental disorder or dysfunction that makes that individual likely to engage in further acts of sexually predatory conduct which constitute danger to physical or mental health or safety of others. Rebuttable presumption that sexually predatory conduct creates danger to physical or mental health or safety of victim of conduct.
SVO Definition	(a) engaging/attempting to engage in sexual act or sexual contact w/ another; causing or attempting to cause another to engage in sexual act or sexual contact if: (1) victim compelled to submit by force or threat of imminent death, serious bodily injury, or kidnapping, or victim compelled to submit by any threat that would render incapable of resisting; (2) victim unknowingly intoxicated or impaired & can't control person's conduct; (3) person knows/should have known victim unaware sexual act being committed; (4) actor knows/should have known victim has disability that substantially impairs victim's understanding; (5) victim under 15; (6) victim in offical custody or detained in facility or other institution & under supervisory authority, disciplinary control or care of actor; (7) victim is minor & actor is adult. (b) engaging/attempting to engage in sexual contact w/ another individual or causing or attempting to cause another to have sexual contact if: (1) actor knows/should have known contact is offensive (2) victim is minor, 15 or older, & actor is minor's parent, guardian, or otherwise responsible for general supervision of victim's welfare.
At what point begin assessment process while incarcerated	6 months b/f projected release date of inmate
Assessment process While incarcerated	DOC complete assessment of inmate to determine whether recommendation is to be made to state's atty. If determines is svp, then refer inmate to state's atty of appropriate county w/ necessary info.
Factors Considered at Assessment	DOC assessment must be based on actuarial and clinical evaluations or any other info determined by director to be relevant, including inmate behavior and whether inmate participated in sexual offender treatment while incarcerated.
Specify Specific Risk Assessment Instrument	no
Specify Specific Score on Instrument	no
Subsequent evals	n/a
Factors considered at subsequent evals assessment	n/a
Nature of Review Team	n/a
How Request for Petition made	DOC complete assessment of inmate to determine whether recommendation is to be made to state's atty. If determines is svp, then refer inmate to state's atty of appropriate county w/ necessary info.
Decision to file Case	state's attorney
How Petition for SVP Determination filed	state's attorney may file petition in district court alleging individual is sexually dangerous individual and stating sufficient facts to support allegation
PC Hearing	yes
Mental Health Eval after PC	yes
Nature of pretrial eval	conducted by 1 or more experts chosen by executive director. Respondent may retain expert to perform eval.
SVP determination made by whom	court, not jury
Standard of proof for commitment	clear and convincing

Location of Commitment Center	DHS
Control of Commitment Center	executive director of DHS
Period of Commitment	indefinite
Review of Commitment/How often	at least annually
Petition for Release/How often	any time
Nature of Community Supervision	n/a
Conditions req. b/f conditional release	person must be placed in appropriate facility or program at which treatment is available. Appropriate treatment facility or program must be least restrictive available treatment facility or program necessary to achieve purposes.
other	

	South Carolina
SVP Definition	(a) been convicted of svo; and (b) suffers from mental abnormality or personality disorder that makes person likely to engage in acts of sv
SVO Definition	(a) criminal sexual conduct in 1st, 2nd, 3rd degree (b) criminal sexual conduct w/ minors in 1st, 2nd degree (c) engaging a child for sexual performance) producing, directing, or promoting sexual performance by child (e) assault w/ intent to commit criminal sexual conduct (f) incest (g) buggery (h) committing or attempting lewd act upon child under 16 (i) violations involving minor when violations are felonies (j) accessory b/f fact to commit offense in section (k) attempt to commit offense in this section (l) any offense for which judge makes specific finding that offense should be considered sexually motivated (m) criminal solicitation of minor if purpose or intent of solicitation or attempted solicitation was to: (i) persuade, induce, entice, or coerce person solicited to engage or participate in sexual activity (ii) perform sexual activity in presence of person solicited
At what point begin assessment process while incarcerated	at least 180 days b/f person's anticipated release from total confinement, anticipated hearing on fitness to stand trial following notice of person charged w/ svo but found unfit to stand trial, or release of person found guilty of svo but mentally ill
Assessment process While incarcerated	when person convicted of svo, agency w/ jurisdiction must give written notice to multidisciplinary team w/ necessary info
Factors Considered at Assessment	offense history, documentation of institutional adjustment and any treatment received
Specify Specific Risk Assessment Instrument	no
Specify Specific Score on Instrument	no
Subsequent evals	Multidisciplinary team must review records and assess whether person satisfies definition of svp and if yes forward report of assessment to prosecutor's review committee. Prosecutor's review committee must determine whether pc exists.
Factors considered at subsequent evals assessment	person's criminal offense record, any relevant medial and psychological records, treatment records, victim's impact statement, and any disciplinary or other records formulated during confinement or supervision.
Nature of Review Team	Multidisciplinary team must include: DOC rep, Department of Probation, Parole and Pardon Services rep, DMH rep who is trained, qualified clinician w/ expertise in treating svos, retired judge, atty w/ substantial experience in practice of criminal defense. Prosecutor's review committee must include member of AG staff, elected circuit solicitor, victim's representative
How Request for Petition made	When prosecutor's review committee has determined pc exists, AG must file petition
Decision to file Case	prosecutor's review committee
How Petition for SVP Determination filed	AG files petition w/ court in jurisdiction where person committed offense.
PC Hearing	yes by court
Mental Health Eval after PC	yes by qualified expert approved by court
Nature of pretrial eval	n/a
SVP determination made by whom	judge or jury
Standard of proof for commitment	beyond reasonable doubt
Location of Commitment Center	n/a

Control of Commitment Center	DMH
Period of Commitment	indefinite
Review of Commitment/How often	annual
Petition for Release/How often	any time
Nature of Community Supervision	n/a
Conditions req. b/f conditional release	n/a
other	

	Texas
SVP Definition	If the person is (1) repeat sexually violent offender and (2) suffers from behavioral abnormality that makes person likely to engage in predatory act of sv. Person is repeat sexually violent offender if person is convicted of more than 1 svo and sentence is imposed for at least 1 of offenses or if : (1) person: (a) convicted of svo regardless of whether sentence for offense was ever imposed or whether sentence was probated and person was subsequently discharged from community supervision (b) enters plea of guilty or no contest for svo in return for grant of deferred adjudication (c) adjudged NGRI (d) adjudicated delinquent and (2) after date on which person is convicted, receives grant of deferred adjudication, is adjudged NGRI, or is adjudicated delinquent, person commits svo for which person: (a) is convicted, but only if sentence imposed or (b) adjudged NGRI
SVO Definition	an offense under Sect. 21.11(a)(1), 22.011, 22.021; (b) offense under sect 20.04(a)(4), if defendant committed offense w/ intent to violate or abuse victim sexually © offense under sect. 30.02, if offense is punishable under subsec d of that section and defendant committed offense w/ intent to commit offense listed in paragraph a or b (d) attempt, conspiracy, or solicitation, as defined by Chap 15 to commit offense listed above (e) offense under prior state law that contains similar elements (f) offense under another jurisdiction w/ substantially similar elements.
At what point begin assessment process while incarcerated	Not later than 1st day of 16th month b/f person's anticipated release or discharge date, must give notice to multidisciplinary review team, but under exigent circumstances may give notice any time b/f anticipated release or discharge date.
Assessment process While incarcerated	B/f anticipated release date, Dept. of Criminal Justice or Dept of MHMR give written notice of anticipated release of person who is serving sentence for svo and may be repeat svo. Not later than 60th day after date team receives notice, team shall: assess whether person is repeat svo and whether person likely to commit svo after release or discharge; give notice of assessment to DCJ or DMHMR and recommend assessment of person for behavioral abnormality
Factors Considered at Assessment	anticipated residence after release or discharge, criminal history; documentation of person's institutional adjustment and actual treatment, assessment of likelihood that person will commit svo after release or discharge
Specify Specific Risk Assessment Instrument	no
Specify Specific Score on Instrument	no
Subsequent evals	Not later than 60th day after date of rec, DCJ or DMHMR shall assess whether person suffers from behavioral abnormality that makes person likely to engage in predatory act of sv.
Factors considered at subsequent evals assessment	Dept shall use expert to examine person. Dept may contract for expert. Expert shall make clinical assessment based on testing psychopathy, clinical interview, and other appropriate assessments and techniques to aid dept in its assessment. If believe person suffers from behavioral abnormality, dept shall give notice and provide documentation to atty representing state not later than 60th day after date of rec.
Nature of Review Team	Multidisciplinary team established by Dept of Criminal Justice and Dept of MHMR and shall include 2 from DMHMR, 2 from DCJ, 1 from Dept of Public Safety and 2 from council or council personnel (Council of Sex Offender Treatment). Team may request assistance of other persons in making an assessment
How Request for Petition made	If person referred to atty representing state, atty may file petition in district court
Decision to file Case	atty representing state
How Petition for SVP Determination filed	atty representing state must file petition not later than 90th day after date of referral
PC Hearing	no

Mental Health Eval after PC	no
Nature of pretrial eval	Not later than 270th day after date petition served, trial takes place. Person and state each entitled to immediate exam of person by expert. All components of exam must be completed not later than 90th day b/f date trial begins.
SVP determination made by whom	judge or jury
Standard of proof for commitment	beyond reasonable doubt
Location of Commitment Center	Not one facility but any supervised housing. Council can enter into interagency agreement w/ DCJ for any necessary supervised housing, but person may not be housed for any period of time in mental health facility, state school, or community center.
Control of Commitment Center	case manager -employed by Sex Offender Treatment Council
Period of Commitment	indefinite
Review of Commitment/How often	biennial review and examination
Petition for Release/How often	any time unless frivolous
Nature of Community Supervision	if person determined to be SVP, judge shall commit person for outpatient treatment and supervision to be coordinated by case manager. Council shall approve and contract for provision of treatment plan for committed person to be developed by treatment provider. Treatment plan may include monitoring of person w/ polygraph or plethysmograph. Case manager shall provide supervision to person. Provision of supervision shall include tracking service and if required by court order, supervised housing
Conditions req. b/f conditional release	B/f entering order directing person's outpatient civil commitment, judge shall impose reqs. These reqs shall include: (1) requiring person reside in particular location; (2) prohibiting person's contact w/ victim or potential victim (3) prohibiting person's possession or use of alcohol, inhalants, or controlled substance (4) requiring person's participation in & compliance w/ specific course of treatment (5) requiring person to: (a) submit to tracking & to any other appropriate supervision; & (b) refrain from tampering w/, altering, modifying, obstructing, or manipulating tracking equipment (6) prohibiting person from changing person's residence w/o prior authorization from judge & from leaving state w/o prior authorization (7) if deterred approrpiate by judge, establishing child safety zone & requiring person to comply w/ requirements (8) requiring person to notify case manager immediately but in any event w/in 24 hours of any change in person's status that affects proper treatment & supervision (9) any other requirements determined necessary by judge
other	

	Virginia
SVP Definition	person who has been convicted of svo or been charged w/ svo and is unrestorable incompetent to stand trial and b/c of mental abnormality or personality disorder, finds it difficult to control predatory behavior which makes him likely to engage in sv acts
SVO Definition	(1) (a) felony conviction under former rape statute (b) rape © forcible sodomy (d) object sexual penetration (2) conviction for aggravated sexual battery where victim less than 13 or (3) felony conviction under VA law for forcible so committed prior to 7/1/1981 where criminal behavior of conviction is set forth in forcible sodomy, object sexual penetration or aggravated sexual battery where victim is less than 13 statutes
At what point begin assessment process while incarcerated	RRASOR or comparable instrument given 10 mons prior to release
Assessment process While incarcerated	DOC director establishes and maintains database of prisoners who are incarcerated for svo or serving or will serve concurrent or consecutive time for other offenses in addition to time for svo; conduct monthly review of database which entails (1) identifying prisoners scheduled for release w/in 10 monts who receive score of 4 or more on RRASOR or comparable instrument score and (2) forwarding name to CRC
Factors Considered at Assessment	use RRASOR factors for assessment
Specify Specific Risk Assessment Instrument	RRASOR or comparable instrument
Specify Specific Score on Instrument	4 or more on RRASOR or comparable instrument score
Subsequent evals	CRC assessment must be made w/in 90 days and make rec to AG
Factors considered at subsequent evals assessment	mental health exam, including personal interview; consideration of RRASOR or comparable instrument score; and review of prisoner's institutional history and treatment record; prisoner's criminal background and other relevant factors
Nature of Review Team	Commitment Review Committee (CRC) shall include: 3 full time employees of DOC, 3 full time employees of DMHMRSAS, one of which must be VA psychiatrist or psychologist specializing in mental abnormalities and personality disorders associated w/ svos and 1 assistant or deputy ag.
How Request for Petition made	Upon receipt of CRC rec, OAG hall have 90 days to conduct review and file petition or notice DOC and Commissioner of DMHMRSAS that will not file
Decision to file Case	OAG
How Petition for SVP Determination filed	file in circuit court of place of conviction; In making determination to file, OAG shall review CRC rec and reasoning; results of mental health exam; prisoner's institutional history and treatment record; prisoner's criminal offense history; other relevant factors; and any mental health eval conducted by court order.
PC Hearing	yes by judge
Mental Health Eval after PC	no
Nature of pretrial eval	n/a
SVP determination made by whom	judge or jury
Standard of proof for commitment	clear and convincing evidence
Location of Commitment Center	Central State Hospital
Control of Commitment Center	DMHMRSAS

Period of Commitment	indefinite
Review of Commitment/How often	12 mons after initial date of commitment and annually for 5 yrs and at biennial intervals thereafter
Petition for Release/How often	only once in each year in which no annual judicial review required. May petition for removal of conditions annually commencing 6 mons after conditional release order issued
Nature of Community Supervision	If person meets conditions, judge shall order: outpatient treatment; day treatment in hospital; night treatment in hospital; outpatient involuntary treatment w/ anti-psychotic medication; or other appropriate treatments.
Conditions req. b/f conditional release	If court determines full commitment not warranted, shall conduct hearing on alternatives. Court shall place person on conditional release if it finds that: (1) person does not need inpatient hospitalization, but needs outpatient treatment or monitoring to prevent his condition from deteriorating; (2) appropriate outpatient supervision and treatment reasonably available (3) significant reason to believe committed person would comply w/ conditions and (4) conditional release will not present undue risk to public safety
other	

	Washington
SVP Definition	any person been convicted of or charged w/ crime of sv and who suffers from mental abnormality or personality disorder which makes person likely to engage in predatory acts of sv
SVO Definition	act committed on, b/f or after 7/1/1990 that is (a) rape in 1st degree, rape in 2nd degree by forcible compulsion, rape of child in 1st, 2nd degree, statutory rape in 1st, 2nd degree, indecent liberties by forcible compulsion, indecent liberties against child under 14, incest against child under 14, or child molestation in 1st or 2nd degree (b) felony offense in effect at any time prior to 7/1/1990 that is comparable to svo as defined in this § or comparable felony offense in another jurisdiction (c) act of murder in 1st, 2nd degree, assault in 1st, 2nd degree, assault of child in 1st 2nd degree, kidnapping in 1st, 2nd degree, burglary in 1st degree, residential burglary, or unlawful imprisonment, which act, either at time of sentencing or during civil commitment proceedings determined beyond reasonable doubt to have been sexually motivated (d) attempt, criminal soliciation, or criminal conspiracy to commit one of felonies in subsection
At what point begin assessment process while incarcerated	3 months prior to anticipated release or release
Assessment process While incarcerated	when appears person may meet criteria, agency w/ jurisdiction refer person in writing to prosecuting atty of county where person charged w/ necessary info
Factors Considered at Assessment	institutional records, any file compiled by indeterminate sentence review board relating to person, all records relating to psychological or psychiatric evaluation and/or treatment of person, current record of all prior arrests and convictions, and full police reports, current mental health evil and mental health records review.
Specify Specific Risk Assessment Instrument	no
Specify Specific Score on Instrument	no
Subsequent evals	n/a
Factors considered at subsequent evals assessment	n/a
Nature of Review Team	n/a
How Request for Petition made	when appears person may meet criteria, agency w/ jurisdiction refer person in writing to prosecuting atty of county where person charged w/ necessary info
Decision to file Case	prosecuting attorney or ag
How Petition for SVP Determination filed	prosecuting atty of county where person convicted or charged or ag if requested by prosecuting atty may file petition alleging person is svp
PC Hearing	yes by judge
Mental Health Eval after PC	yes by judge
Nature of pretrial eval	examination by person deemed to be professionally qualified to conduct exam and pursuant to rules developed by dept of social and health services
SVP determination made by whom	judge or jury
Standard of proof for commitment	beyond reasonable doubt
Location of Commitment Center	McNeil Island (71.09.250)

Control of Commitment Center	dept of social and health services
Period of Commitment	indefinite
Review of Commitment/How often	annual; consider whether meets definition and whether conditional release to less restrictive alternative is in best interest of person and conditions con be imposed that would adequately protect community
Petition for Release/How often	any time
Nature of Community Supervision	(1) any additionally conditions necessary to ensure compliance w/ treatment and to protect community (2) Conditions shall include but not limited to: specification of residence, prohibition of contact w/ potential or past victims, prohibition of alcohol and other drug use, participation in specific course of inpatient or outpatient treatment that may include monitoring by use of polygraph and plethysmograph, supervision by doc community corrections officer, req that person remain w/in state unless person receives prior authorization by court, and any other conditions that court determines in best interest of person or others; (3) service providers provide monthly reports to court, and DSHS; person released shall have case reviewed no later than 1 year after release and annually until person unconditionally discharged
Conditions req. b/f conditional release	(1) person will be treated by provider who is qualified to provide such treatment (2) treatment provider has presented specific course of treatment & agreed to assume responsibility for such treatment & will report progress to court on regular basis, & report violations immediately to court, prosecutor, supervising community corrections officer, & superintendent of special commitment center (3) housing exists that is sufficiently secure to protect community, & person or agency providing housing to conditinally released person has agreed in writing to accept person, to provide level of security required by court, & immediately to report to court, prosecutor, supervising community corrections officer, & superintendent of special commitment center if person leaves housing to which been assigned w/o authorization (4) person willing to comply w/ treatment provider and all requirements imposed by treatment provider & court (5) person willing to comply w/ supervision requirements imposed by doc. (6) conditions must adequately protect community
other	

	Wisconsin
SVP Definition	person convicted of svo, been adjudicated delinquent for svo or found NGRI, and who is dangerous b/c he/she suffers from mental disorder that makes it likely that person will engage in acts of sv.
SVO Definition	any crime specified in 940.225(1) or (2), 948.02(1) or (2), 948.025, 948.06 or 948.07 (b) any crime specified in 940.01, 940.02, 940.05, 940.06, 940.19(4) or (5), 940.195(4) or (5), 940.30, 940.305, 940.31 or 943.10 that is determined to have been sexually motivated (c) any solicitation, conspiracy or attempt to commit crime above
At what point begin assessment process while incarcerated	agency w/ jurisdiction shall inform each appropriate da and doj regarding person as soon as possible beginning 3 months prior to anticipated release of person who may meet criteria for commitment as svp
Assessment process While incarcerated	
Factors Considered at Assessment	anticipated future residence and offense history, documentation of any treatment and person's adjustment to any institutional placement
Specify Specific Risk Assessment Instrument	no
Specify Specific Score on Instrument	no
Subsequent evals	no
Factors considered at subsequent evals assessment	no
Nature of Review Team	n/a
How Request for Petition made	agency w/ jurisdiction shall inform each appropriate da and doj regarding person as soon as possible beginning 3 months prior to anticipated release of person who may meet criteria for commitment as svp
Decision to file Case	DOJ at request of agency w/ jurisdiction or DA for either county of conviction or county where person will reside or be placed upon discharge
How Petition for SVP Determination filed	Shall be filed in circuit court of conviction or where person will reside. Petition shall be filed b/f date of release or discharge
PC Hearing	yes by judge
Mental Health Eval after PC	yes by judge
Nature of pretrial eval	transferred to appropriate facility for evaluation as to whether person is svp
SVP determination made by whom	judge or jury
Standard of proof for commitment	beyond a reasonable doubt
Location of Commitment Center	either secure mental health facility, Wis resource center or secure mental health unit or facility provided by DOC
Control of Commitment Center	department of health and family services
Period of Commitment	indefinite

Review of Commitment/How often	w/in 6 mons of commitment and then annually
Petition for Release/How often	if at least 18 mons have elapsed since initial commitment or at least 6 mons have lapsed since most recent release petition denied or most recent order for supervised release revoked. Director of facility may petition at any time
Nature of Community Supervision	County of residence of person shall prepare plan that identifies treatment and services that person will receive in community; address person's need for supervision, counseling, medication, community support services, residential services, vocational services, and alcohol or other drug abuse treatment; need for pharmacological treatment including ant androgen; who will be responsible for providing treatment and services
Conditions req. b/f conditional release	Judge may consider, nature and circumstances of behavior that was basis of allegation in petition, person's mental history and present mental condition, where person will live, how person will support himself, what arrangements available to ensure person has access to and will participate in necessary treatment, including pharmacological treatment
other	svp persons required to submit to DNA testing. Also hearing for petition for supervised release done b/f judge only and will be granted unless state proves svp by clear and convincing evidence

ATTACHMENT 5:

RRASOR AND STATIC-99

Rapid Risk Assessment for Sex Offense Recidivism (RRASOR) Instrument

I. Prior Sex Offenses (arrests and convictions)

Score	Prior convictions	Prior charges (arrests)
0	0	0
1	1	1 or 2
2	2 or 3	3, 4, or 5
3	4 or more	6 or more

II. Age at Release

Score	Age
1	18 to 24.99 years
0	25 or more years

III. Victim Information

Score	Victim gender
1	ever any male victim(s)
0	only female victim(s)

IV. Relationship to Victim

Score	Relationship
1	any unrelated victim(s)
0	only related victim(s)

Total score is the sum of the individual item scores

Interpretation

RRASOR	Estimated recidivism (re-arrest) rates adjusted for time	
Score	5 year follow-up	10 year follow-up
0	4.4%	6.5%
1	7.6%	11.2%
2	14.2%	21.1%
3	24.8%	36.9%
4	32.7%	48.6%
5	49.8%	73.1%

SCORING SHEET FOR THE STATIC-99

NAME:_____ Number:_____
DATE:_____ Examiner:_____

RISK FACTORS	SCORING CRITERIA	SCORE	NOTES
Any male victim	NO YES	0 1	
Any unrelated victim	NO YES	0 1	
Stranger victim	NO YES	0 1	
Prior sex offenses	**Charges** **Convictions** None None 1-2 1 3-5 2-3 6+ 4+	0 1 2 3	
Young	Age 25 or older Age 18 to 24.99	0 1	
Prior sentencing dates excluding index offense	3 or less 4 or more	0 1	
Any convictions for non-contact sex offenses	NO YES	0 1	
Index non-sexual violence	NO YES	0 1	
Prior non-sexual violence	NO YES	0 1	
Single	Ever lived with someone for at least 2 years? YES NO	0 1	
Total Score:			

Static-99 score	Risk category	5 years	10 years	15 years
0	Low	.05	.11	.13
1		.06	.07	.07
2	Moderate-Low	.09	.13	.16
3		.12	.14	.19
4	Moderate-High	.26	.31	.36
5		.33	.38	.40
6+	High	.39	.45	.52

ATTACHMENT 6:

PROPOSED LEGISLATION

Jessica's Law Bill

SENATE BILL NO. _____ HOUSE BILL NO. _____

A BILL to amend and reenact §§ 18.2-48, 18.2-61, 18.2-67.1, 18.2-67.2, and 19.2-303 of the Code of Virginia, relating to sentences for certain sex crimes; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-48, 18.2-61, 18.2-67.1, 18.2-67.2, and 19.2-303 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-48. Abduction with intent to extort money or for immoral purpose.

Abduction (i) with the intent to extort money or pecuniary benefit, (ii) of any person with intent to defile such person, or (iii) of any child under sixteen years of age for the purpose of concubinage or prostitution, shall be a Class 2 felony. If the sentence imposed for a violation of (ii) or (iii) includes a term of confinement less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the defendant's life subject to revocation by the court.

§ 18.2-61. Rape.

A. If any person has sexual intercourse with a complaining witness, whether or not his or her spouse, or causes a complaining witness, whether or not his or her spouse, to engage in sexual intercourse with any other person and such act is accomplished (i) against the complaining witness's will, by force, threat or intimidation of or against the complaining witness or another person; or (ii) through the use of the complaining witness's mental incapacity or physical helplessness; or (iii) with a child under age 13 as the victim, he or she shall be guilty of rape.

B. A violation of this section shall be punishable, in the discretion of the court or jury, by confinement in a state correctional facility for life or for any term not less than five years; the penalty for a violation of clause (iii) of subsection A shall include a mandatory minimum term of confinement of 25 years, and if the sentence of confinement imposed is for a term less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years. This

suspended sentence shall be suspended for the remainder of the defendant's life subject to revocation by the court. There shall be a rebuttable presumption that a juvenile over the age of 10 but less than 12, does not possess the physical capacity to commit a violation of this section. In any case deemed appropriate by the court, all or part of any sentence imposed for a violation under this section against a spouse may be suspended upon the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.

C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant who has not previously had a proceeding against him for violation of this section dismissed pursuant to this subsection and with the consent of the complaining witness and the attorney for the Commonwealth, may defer further proceedings and place the defendant on probation pending completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy, the court may make final disposition of the case and proceed as otherwise provided. If such counseling is completed as prescribed under § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

§ 18.2-67.1. Forcible sodomy.

A. An accused shall be guilty of forcible sodomy if he or she engages in cunnilingus, fellatio, anilingus, or anal intercourse with a complaining witness whether or not his or her spouse, or causes a complaining witness, whether or not his or her spouse, to engage in such acts with any other person, and

1. The complaining witness is less than 13 years of age, or

2. The act is accomplished against the will of the complaining witness, by force, threat or intimidation of or against the complaining witness or another person, or through the use of the complaining witness's mental incapacity or physical helplessness.

B. Forcible sodomy is a felony punishable by confinement in a state correctional facility for life or for any term not less than five years. The penalty for a violation of subdivision A 1 shall include a mandatory minimum term of confinement of 25 years, and if the sentence of confinement imposed is for a term less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the defendant's life subject to revocation by the court. In any case deemed appropriate by the court, all or part of any sentence imposed for a violation under this section against a spouse may be suspended upon the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.

C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant who has not previously had a proceeding against him for violation of this section dismissed pursuant to this subsection and with the consent of the complaining witness and the attorney for the Commonwealth, may defer further proceedings and place the defendant on probation pending completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy, the court may make final disposition of the case and proceed as otherwise provided. If such counseling is completed as prescribed under § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

§ 18.2-67.2. Object sexual penetration; penalty.

A. An accused shall be guilty of inanimate or animate object sexual penetration if he or she penetrates the labia majora or anus of a complaining witness, whether or not his or her spouse, other than for a bona fide medical purpose, or causes such complaining witness to so penetrate his or her own body with an object or causes a complaining witness, whether or not his or her spouse, to engage in such acts with any other person or to penetrate, or to be penetrated by, an animal, and

1. The complaining witness is less than 13 years of age, or

2. The act is accomplished against the will of the complaining witness, by force, threat or intimidation of or against the complaining witness or another person, or through the use of the complaining witness's mental incapacity or physical helplessness.

B. Inanimate or animate object sexual penetration is a felony punishable by confinement in the state correctional facility for life or for any term not less than five years. The penalty for a violation of subdivision A 1 shall include a mandatory minimum term of confinement of 25 years, and if the sentence of confinement imposed is for a term less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the defendant's life subject to revocation by the court. In any case deemed appropriate by the court, all or part of any sentence imposed for a violation under this section against a spouse may be suspended upon the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.

C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant who has not previously had a proceeding against him for violation of this section dismissed pursuant to this subsection and with the consent of the complaining witness and the attorney for the Commonwealth, may defer further proceedings and place the defendant on probation pending completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy, the court may make final

disposition of the case and proceed as otherwise provided. If such counseling is completed as prescribed under § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

§ 19.2-303. Suspension or modification of sentence; probation; taking of fingerprints as condition of probation.

After conviction, whether with or without jury, the court may suspend imposition of sentence or suspend the sentence in whole or part and in addition may place the the defendant on probation under such conditions as the court shall determine or may, as a condition of a suspended sentence, require the defendant to make at least partial restitution to the aggrieved party or parties for damages or loss caused by the offense for which convicted, or to perform community service, or both, under terms and conditions which shall be entered in writing by the court. The judge, after convicting the defendant of a felony, shall determine whether a copy of the defendant's fingerprints are on file at the Central Criminal Records Exchange. In any case where fingerprints are not on file, the judge shall require that fingerprints be taken as a condition of probation. Such fingerprints shall be submitted to the Central Criminal Records Exchange under the provisions of subsection D of § 19.2-390.

Deleted:
Deleted: accused
Deleted:
Deleted: accused
Deleted:
Deleted: accused
Deleted:
Deleted: accused's

In any case where a defendant is convicted of a violation of § 18.2-48, 18.2-61, 18.2-63, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-370, or 18.2-370.1, committed on or after July 1, 2006, and some portion of the sentence is suspended, the judge shall order that the period of suspension shall be for a length of time at least equal to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned, and the defendant shall be placed on probation for that period of suspension subject to revocation by the court. The conditions of probation may include such conditions as the court shall determine, including active supervision. Where the conviction is for a violation of clause (iii) of subsection A of § 18.2-61, subdivision A 1 of § 18.2-67.1, or subdivision A 1 of § 18.2-67.2, the court shall order that at least three years of the probation include active supervision of the defendant under a postrelease supervision program operated by the Department of Corrections, and for

at least three years of such active supervision, the defendant shall be subject to electronic monitoring by means of a GPS (Global Positioning System) tracking device, or other similar device.

If a person is sentenced to jail upon conviction of a misdemeanor or a felony, the court may, at any time before the sentence has been completely served, suspend the unserved portion of any such sentence, place the person on probation for such time as the court shall determine, or otherwise modify the sentence imposed.

If a person has been sentenced for a felony to the Department of Corrections but has not actually been transferred to a receiving unit of the Department, the court which heard the case, if it appears compatible with the public interest and there are circumstances in mitigation of the offense, may, at any time before the person is transferred to the Department, suspend or otherwise modify the unserved portion of such a sentence. The court may place the person on probation for such time as the court shall determine.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is _____ for periods of imprisonment in state adult correctional facilities and _____ for periods of commitment to the custody of the Department of Juvenile Justice.

#

Sex Offender Registry Bill

SENATE BILL NO. _____ HOUSE BILL NO. _____

A BILL to amend and reenact §§ 2.2-3706, 2.2-3802, 9.1-102, 9.1-902 through 9.1-910, 9.1-913, 9.1-914, 9.1-918, 18.2-370.2, 18.2-472.1, 19.2-390.1, 22.1-79, 22.1-79.3, 46.2-323, 46.2-324, 46.2-330, 46.2-345, 46.2-348, 53.1-115.1, 53.1-116.1, 53.1-121, and 53.1-160.1 of the Code of Virginia, and to amend the Code of Virginia by adding in Chapter 9 of Title 9.1 a section numbered 9.1-921, and by adding sections numbered 16.1-249.1, 16.1-278.7:01, 16.1-278.7:02, 18.2-370.3, 18.2-370.4, 19.2-295.2:1 23-2.2:1, 53.1-23.2, and 53.1-116.1:01, relating to the Sex Offender and Crimes Against Minors Registry; sex crimes; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3706, 2.2-3802, 9.1-102, 9.1-902 through 9.1-910, 9.1-913, 9.1-914, 9.1-918, 18.2-370.2, 18.2-472.1, 19.2-390.1, 22.1-79, 22.1-79.3, 46.2-323, 46.2-324, 46.2-330, 46.2-345, 46.2-348, 53.1-115.1, 53.1-116.1, 53.1-121, and 53.1-160.1 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 9 of Title 9.1 a section numbered 9.1-921, and by adding sections numbered 16.1-249.1, 16.1-278.7:01, 16.1-278.7:02, 18.2-370.3, 18.2-370.4, 19.2-295.2:1, 23-2.2:1, 53.1-23.2, and 53.1-116.1:01, as follows:

§ 2.2-3706. Disclosure of criminal records; limitations.

A. As used in this section:

"Criminal incident information" means a general description of the criminal activity reported, the date and general location the alleged crime was committed, the identity of the investigating officer, and a general description of any injuries suffered or property damaged or stolen.

B. Law-enforcement agencies shall make available upon request criminal incident information relating to felony offenses. However, where the release of criminal incident information is likely to jeopardize an ongoing investigation or prosecution, or the safety of an individual; cause a suspect to flee or evade detection; or result in the destruction of evidence, such information may be withheld until the above-referenced damage is no longer likely to occur from release of the information. Nothing in this

subsection shall be construed to prohibit the release of those portions of such information that are not likely to cause the above-referenced damage.

C. Information in the custody of law-enforcement agencies relative to the identity of any individual, other than a juvenile, who is arrested and charged, and the status of the charge or arrest shall be released.

D. The identity of any victim, witness or undercover officer, or investigative techniques or procedures need not but may be disclosed unless disclosure is prohibited or restricted under § 19.2-11.2.

E. The identity of any individual providing information about a crime or criminal activity under a promise of anonymity shall not be disclosed.

F. The following records are excluded from the provisions of this chapter, but may be disclosed by the custodian, in his discretion, except where such disclosure is prohibited by law:

1. Complaints, memoranda, correspondence, case files or reports, witness statements, and evidence relating to a criminal investigation or prosecution, other than criminal incident information as defined in subsection A;

2. Adult arrestee photographs when necessary to avoid jeopardizing an investigation in felony cases until such time as the release of the photograph will no longer jeopardize the investigation;

3. Reports submitted in confidence to (i) state and local law-enforcement agencies, (ii) investigators authorized pursuant to § 53.1-16 or § 66-3.1, and (iii) campus police departments of public institutions of higher education established pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23;

4. Portions of records of local government crime commissions that would identify individuals providing information about crimes or criminal activities under a promise of anonymity;

5. Records of local law-enforcement agencies relating to neighborhood watch programs that include the names, addresses, and operating schedules of individual participants in the program that are provided to such agencies under a promise of anonymity;

6. All records of persons imprisoned in penal institutions in the Commonwealth provided such records relate to the imprisonment;

7. Records of law-enforcement agencies, to the extent that such records contain specific tactical plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public;

8. All records of adult persons under (i) investigation or supervision by a local pretrial services agency in accordance with Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of Title 19.2; (ii) investigation, probation supervision or monitoring by a local community-based probation program in accordance with Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1; or (iii) investigation or supervision by state probation and parole services in accordance with Article 2 (§ 53.1-141 et seq.) of Chapter 4 of Title 53.1; and

9. Records of a law-enforcement agency to the extent that they disclose the telephone numbers for cellular telephones, pagers, or comparable portable communication devices provided to its personnel for use in the performance of their official duties.

G. Records kept by law-enforcement agencies as required by § 15.2-1722 shall be subject to the provisions of this chapter except:

1. Those portions of noncriminal incident or other investigative reports or materials containing identifying information of a personal, medical or financial nature provided to a law-enforcement agency where the release of such information would jeopardize the safety or privacy of any person;

2. Those portions of any records containing information related to plans for or resources dedicated to undercover operations; or

3. Records of background investigations of applicants for law-enforcement agency employment or other confidential administrative investigations conducted pursuant to law.

H. Records of the Sex Offender and Crimes Against Minors Registry maintained by the Department of State Police pursuant to Chapter 9 (§9.1-901) of Title 9.1, including information obtained by state, local and regional officials, except to the extent that information is required to be posted on the internet pursuant to § 9.1-913.

I. In the event of conflict between this section as it relates to requests made under this section and other provisions of law, this section shall control.

§ 2.2-3802. Systems to which chapter inapplicable.

The provisions of this chapter shall not apply to personal information systems:

1. Maintained by any court of the Commonwealth;

2. Which may exist in publications of general circulation;

3. Contained in the Criminal Justice Information System as defined in §§ 9.1-126 through 9.1-137 or in the Sex Offender and Crimes Against Minors Registry maintained by the Department of State Police pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, except to the extent that information is required to be posted on the internet pursuant to § 9.1-913;

4. Contained in the Virginia Juvenile Justice Information System as defined in §§ 16.1-222 through 16.1-225;

5. Maintained by agencies concerning persons required by law to be licensed in the Commonwealth to engage in the practice of any profession, in which case the names and addresses of persons applying for or possessing the license may be disseminated upon written request to a person engaged in the profession or business of offering professional educational materials or courses for the sole purpose of providing the licensees or applicants for licenses with informational materials relating solely to available professional educational materials or courses, provided the disseminating agency is reasonably assured that the use of the information will be so limited;

6. Maintained by the Parole Board, the Crime Commission, the Judicial Inquiry and Review Commission, the Virginia Racing Commission, and the Department of Alcoholic Beverage Control;

7. Maintained by the Department of State Police; police departments of cities, counties, and towns; and the campus police departments of public institutions of higher education as established by Chapter 17 (§ 23-232 et seq.) of Title 23, and that deal with investigations and intelligence gathering relating to criminal activity; and maintained by local departments of social services regarding alleged cases of child abuse or neglect while such cases are also subject to an ongoing criminal prosecution;

8. Maintained by the Virginia Port Authority as provided in § 62.1-134.1 or 62.1-132.4;

9. Maintained by the Virginia Tourism Authority in connection with or as a result of the promotion of travel or tourism in the Commonwealth, in which case names and addresses of persons

requesting information on those subjects may be disseminated upon written request to a person engaged in the business of providing travel services or distributing travel information, provided the Virginia Tourism Authority is reasonably assured that the use of the information will be so limited;

10. Maintained by the Division of Consolidated Laboratory Services of the Department of General Services and the Department of Forensic Science, which deal with scientific investigations relating to criminal activity or suspected criminal activity, except to the extent that § 9.1-1104 may apply;

11. Maintained by the Department of Corrections that deal with investigations and intelligence gathering by persons acting under the provisions of § 53.1-16; and

12. Maintained by the Department of the State Internal Auditor or internal audit departments of state agencies or institutions that deal with communications and investigations relating to the State Employee Fraud, Waste and Abuse Hotline.

§ 9.1-102. Powers and duties of the Board and the Department.

The Department, under the direction of the Board, which shall be the policy-making body for carrying out the duties and powers hereunder, shall have the power and duty to:

1. Adopt regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), for the administration of this chapter including the authority to require the submission of reports and information by law-enforcement officers within the Commonwealth. Any proposed regulations concerning the privacy, confidentiality, and security of criminal justice information shall be submitted for review and comment to any board, commission, or committee or other body which may be established by the General Assembly to regulate the privacy, confidentiality, and security of information collected and maintained by the Commonwealth or any political subdivision thereof;

2. Establish compulsory minimum training standards subsequent to employment as a law-enforcement officer in (i) permanent positions, and (ii) temporary or probationary status, and establish the time required for completion of such training;

3. Establish minimum training standards and qualifications for certification and recertification for law-enforcement officers serving as field training officers;

4. Establish compulsory minimum curriculum requirements for in-service and advanced courses and programs for schools, whether located in or outside the Commonwealth, which are operated for the specific purpose of training law-enforcement officers;

5. Establish (i) compulsory minimum training standards for law-enforcement officers who utilize radar or an electrical or microcomputer device to measure the speed of motor vehicles as provided in § 46.2-882 and establish the time required for completion of the training and (ii) compulsory minimum qualifications for certification and recertification of instructors who provide such training;

6. Establish compulsory training courses for law-enforcement officers in laws and procedures relating to entrapment, search and seizure, evidence, and techniques of report writing, which training shall be completed by law-enforcement officers who have not completed the compulsory training standards set out in subdivision 2, prior to assignment of any such officers to undercover investigation work. Failure to complete the training shall not, for that reason, constitute grounds to exclude otherwise properly admissible testimony or other evidence from such officer resulting from any undercover investigation;

7. Establish compulsory minimum entry-level, in-service and advanced training standards for those persons designated to provide courthouse and courtroom security pursuant to the provisions of § 53.1-120, and to establish the time required for completion of such training;

8. Establish compulsory minimum entry-level, in-service and advanced training standards for deputy sheriffs designated to serve process pursuant to the provisions of § 8.01-293, and establish the time required for the completion of such training;

9. Establish compulsory minimum entry-level, in-service, and advanced training standards for persons employed as deputy sheriffs and jail officers by local criminal justice agencies and for correctional officers employed by the Department of Corrections under the provisions of Title 53.1, and establish the time required for completion of such training;

10. Establish compulsory minimum training standards for all dispatchers employed by or in any local or state government agency, whose duties include the dispatching of law-enforcement personnel. Such training standards shall apply only to dispatchers hired on or after July 1, 1988;

11. Consult and cooperate with counties, municipalities, agencies of the Commonwealth, other state and federal governmental agencies, and with universities, colleges, community colleges, and other institutions, whether located in or outside the Commonwealth, concerning the development of police training schools and programs or courses of instruction;

12. Approve institutions, curricula and facilities, whether located in or outside the Commonwealth, for school operation for the specific purpose of training law-enforcement officers; but this shall not prevent the holding of any such school whether approved or not;

13. Establish and maintain police training programs through such agencies and institutions as the Board deems appropriate;

14. Establish compulsory minimum qualifications of certification and recertification for instructors in criminal justice training schools approved by the Department;

15. Conduct and stimulate research by public and private agencies which shall be designed to improve police administration and law enforcement;

16. Make recommendations concerning any matter within its purview pursuant to this chapter;

17. Coordinate its activities with those of any interstate system for the exchange of criminal history record information, nominate one or more of its members to serve upon the council or committee of any such system, and participate when and as deemed appropriate in any such system's activities and programs;

18. Conduct inquiries and investigations it deems appropriate to carry out its functions under this chapter and, in conducting such inquiries and investigations, may require any criminal justice agency to submit information, reports, and statistical data with respect to its policy and operation of information systems or with respect to its collection, storage, dissemination, and usage of criminal history record information and correctional status information, and such criminal justice agencies shall submit such information, reports, and data as are reasonably required;

19. Conduct audits as required by § 9.1-131;

20. Conduct a continuing study and review of questions of individual privacy and confidentiality of criminal history record information and correctional status information;

21. Advise criminal justice agencies and initiate educational programs for such agencies with respect to matters of privacy, confidentiality, and security as they pertain to criminal history record information and correctional status information;

22. Maintain a liaison with any board, commission, committee, or other body which may be established by law, executive order, or resolution to regulate the privacy and security of information collected by the Commonwealth or any political subdivision thereof;

23. Adopt regulations establishing guidelines and standards for the collection, storage, and dissemination of criminal history record information and correctional status information, and the privacy, confidentiality, and security thereof necessary to implement state and federal statutes, regulations, and court orders;

24. Operate a statewide criminal justice research center, which shall maintain an integrated criminal justice information system, produce reports, provide technical assistance to state and local criminal justice data system users, and provide analysis and interpretation of criminal justice statistical information;

25. Develop a comprehensive, statewide, long-range plan for strengthening and improving law enforcement and the administration of criminal justice throughout the Commonwealth, and periodically update that plan;

26. Cooperate with, and advise and assist, all agencies, departments, boards and institutions of the Commonwealth, and units of general local government, or combinations thereof, including planning district commissions, in planning, developing, and administering programs, projects, comprehensive plans, and other activities for improving law enforcement and the administration of criminal justice throughout the Commonwealth, including allocating and subgranting funds for these purposes;

27. Define, develop, organize, encourage, conduct, coordinate, and administer programs, projects and activities for the Commonwealth and units of general local government, or combinations thereof, in the Commonwealth, designed to strengthen and improve law enforcement and the administration of criminal justice at every level throughout the Commonwealth;

28. Review and evaluate programs, projects, and activities, and recommend, where necessary, revisions or alterations to such programs, projects, and activities for the purpose of improving law enforcement and the administration of criminal justice;

29. Coordinate the activities and projects of the state departments, agencies, and boards of the Commonwealth and of the units of general local government, or combination thereof, including planning district commissions, relating to the preparation, adoption, administration, and implementation of comprehensive plans to strengthen and improve law enforcement and the administration of criminal justice;

30. Do all things necessary on behalf of the Commonwealth and its units of general local government, to determine and secure benefits available under the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351, 82 Stat. 197), as amended, and under any other federal acts and programs for strengthening and improving law enforcement, the administration of criminal justice, and delinquency prevention and control;

31. Receive, administer, and expend all funds and other assistance available to the Board and the Department for carrying out the purposes of this chapter and the Omnibus Crime Control and Safe Streets Act of 1968, as amended;

32. Apply for and accept grants from the United States government or any other source in carrying out the purposes of this chapter and accept any and all donations both real and personal, and grants of money from any governmental unit or public agency, or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same. Any arrangements pursuant to this section shall be detailed in the annual report of the Board. Such report shall include the identity of the donor, the nature of the transaction, and the conditions, if any. Any moneys received pursuant to this section shall be deposited in the state treasury to the account of the Department. To these ends, the Board shall have the power to comply with conditions and execute such agreements as may be necessary;

33. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and execution of its powers under this chapter, including but not limited to, contracts with

the United States, units of general local government or combinations thereof, in Virginia or other states, and with agencies and departments of the Commonwealth;

34. Adopt and administer reasonable regulations for the planning and implementation of programs and activities and for the allocation, expenditure and subgranting of funds available to the Commonwealth and to units of general local government, and for carrying out the purposes of this chapter and the powers and duties set forth herein;

35. Certify and decertify law-enforcement officers in accordance with §§ 15.2-1706 and 15.2-1707;

36. Establish training standards and publish a model policy for law-enforcement personnel in the handling of family abuse, domestic violence, sexual assault and stalking cases, including standards for determining the predominant physical aggressor in accordance with § 19.2-81.3;

37. Establish training standards and publish a model policy for law-enforcement personnel in communicating with and facilitating the safe return of individuals diagnosed with Alzheimer's disease;

38. Establish compulsory training standards for basic training and the recertification of law-enforcement officers to ensure sensitivity to and awareness of cultural diversity and the potential for biased policing;

39. Review and evaluate community-policing programs in the Commonwealth, and recommend where necessary statewide operating procedures, guidelines, and standards which strengthen and improve such programs, including sensitivity to and awareness of cultural diversity and the potential for biased policing;

40. Publish and disseminate a model policy or guideline that may be used by state and local agencies to ensure that law-enforcement personnel are sensitive to and aware of cultural diversity and the potential for biased policing;

41. [Expired.]

42. Establish a Virginia Law-Enforcement Accreditation Center. The Center shall, in cooperation with Virginia law-enforcement agencies, provide technical assistance and administrative support, including staffing, for the establishment of voluntary state law-enforcement accreditation standards. The

Center may provide accreditation assistance and training, resource material, and research into methods and procedures that will assist the Virginia law-enforcement community efforts to obtain Virginia accreditation status;

43. Promote community policing philosophy and practice throughout the Commonwealth by providing community policing training and technical assistance statewide to all law-enforcement agencies, community groups, public and private organizations and citizens; developing and distributing innovative policing curricula and training tools on general community policing philosophy and practice and contemporary critical issues facing Virginia communities; serving as a consultant to Virginia organizations with specific community policing needs; facilitating continued development and implementation of community policing programs statewide through discussion forums for community policing leaders, development of law-enforcement instructors; promoting a statewide community policing initiative; and serving as a statewide information source on the subject of community policing including, but not limited to periodic newsletters, a website and an accessible lending library;

44. Establish, in consultation with the Department of Education and the Virginia State Crime Commission, compulsory minimum standards for employment and job-entry and in-service training curricula and certification requirements for school security officers, which training and certification shall be administered by the Virginia Center for School Safety pursuant to § 9.1-184. Such training standards shall include, but shall not be limited to, the role and responsibility of school security officers, relevant state and federal laws, school and personal liability issues, security awareness in the school environment, mediation and conflict resolution, disaster and emergency response, and student behavioral dynamics. The Department shall establish an advisory committee consisting of local school board representatives, principals, superintendents, and school security personnel to assist in the development of these standards and certification requirements;

45. Establish training standards and publish a model policy and protocols for local and regional sexual assault response teams;

46. License and regulate property bail bondsmen and surety bail bondsmen in accordance with Article 11 (§ 9.1-185 et seq.) of this chapter;

47. (Effective October 1, 2005) License and regulate bail enforcement agents in accordance with Article 12 (§ 9.1-186 et seq.) of this chapter; 48. Advise criminal justice agencies regarding investigation, registration, and dissemination of information requirements as they pertain to the Sex Offender and Crimes Against Minors Registry and initiate training standards for state, local and regional employees who have duties related to the Registry, including law-enforcement officers, deputy sheriffs, jail officers, probation and parole officers, correctional officers, juvenile intake officers and juvenile correctional officers; and

Deleted: and ¶

49. Perform such other acts as may be necessary or convenient for the effective performance of its duties.

§ 9.1-902. Offenses requiring registration.

A. For purposes of this chapter:

"Offense for which registration is required" means:

1. A violation or attempted violation of § 18.2-63, 18.2-64.1, former § 18.2-67.2:1, § 18.2-90 with the intent to commit rape, § 18.2-374.1 or subsection D of § 18.2-374.1:1; or a third or subsequent conviction of (i) § 18.2-67.4, (ii) subsection C of § 18.2-67.5 or (iii) § 18.2-386.1;

If the offense was committed on or after July 1, 2006, a violation or attempted violation of § 18.2-91 with the intent to commit any felony offense listed in this section or a violation or attempted violation of subsection A of § 18.2-374.1:1.

2. Clause (iv) of subsection B of § 18.2-374.3 or where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, a violation or attempted violation of subsection A of § 18.2-47, clause (i) or (iii) of § 18.2-48, § 18.2-67.4, subsection C of § 18.2-67.5, § 18.2-361, 18.2-366;

Deleted: Where

Deleted: , or clause (iv) of subsection B of § 18.2-374.3

3. A violation of Chapter 117 (18 U.S.C. § 2421 et seq.) of Title 18 of the United States Code;

4. A "sexually violent offense"; or

5. "Murder"

Deleted: pursuant to

"Murder" means a violation of § 18.2-31 or 18.2-32 where the victim is (i) under 15 years of age or (ii) where the victim is at least 15 years of age but under 18 years of age and the murder is related to an offense listed in this section.

Deleted: a minor

"Sexually violent offense" means a violation or attempted violation of:

1. Clause (ii) of § 18.2-48, § 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-67.3, § 18.2-67.4 where the perpetrator is 18 years of age or older and the victim is under the age of six, subsections A and B of § 18.2-67.5, § 18.2-370, or 18.2-370.1; or

2. Sections 18.2-63, 18.2-64.1, former § 18.2-67.2:1, § 18.2-90 with the intent to commit rape or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, a violation or attempted violation of subsection A of § 18.2-47, § 18.2-67.4, subsection C of § 18.2-67.5, clause (i) or (iii) of § 18.2-48, § 18.2-361, 18.2-366, or 18.2-374.1.

If the offense was committed on or after July 1, 2006, a violation or attempted violation of § 18.2-91 with the intent to commit any felony offense listed in this section.

An offense listed under this subdivision shall be deemed a sexually violent offense only if the person has been convicted or adjudicated delinquent of any two or more such offenses, provided that person had been at liberty between such convictions or adjudications.

B. "Offense for which registration is required" and "sexually violent offense" shall also include any similar offense under the laws of (i) any foreign country or any political subdivision thereof, (ii) the United States or any political subdivision thereof and any offense for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted.

Deleted: political subdivision

C. Juveniles adjudicated delinquent shall not be required to register; however, where the offender is a juvenile over the age of 13 at the time of the offense who is tried as a juvenile and is adjudicated delinquent of any offense enumerated in subdivisions A 1 through A 4 on or after July 1, 2005, the court may, in its discretion and upon motion of the attorney for the Commonwealth, find that the circumstances of the offense require offender registration. In making its determination, the court shall consider all of the following factors that are relevant to the case: (i) the degree to which the delinquent

act was committed with the use of force, threat or intimidation, (ii) the age and maturity of the complaining witness, (iii) the age and maturity of the offender, (iv) the difference in the ages of the complaining witness and the offender, (v) the nature of the relationship between the complaining witness and the offender, (vi) the offender's prior criminal history, and (vii) any other aggravating or mitigating factors relevant to the case.

§ 9.1-903. Registration procedures.

A. Every person convicted, including juveniles tried and convicted in the circuit courts pursuant to § 16.1-269.1, whether sentenced as an adult or juvenile, of an offense for which registration is required and every juvenile found delinquent of an offense for which registration is required under subsection C of § 9.1-902 shall be required upon conviction to register and reregister with the Department of State Police. The court shall order the person to provide to the local law-enforcement agency of the county or city where he physically resides all information required by the State Police for inclusion in the Registry. The court shall immediately remand the person to the custody of the local law-enforcement agency for the purpose of obtaining the person's fingerprints and photographs of a type and kind specified by the State Police for inclusion in the Registry. Upon conviction, the local law-enforcement agency shall forthwith forward to the State Police all the necessary registration information.

B. Every person required to register shall register in person within three days of his release from confinement in a state, local or juvenile correctional facility, in a state civil commitment program for sexually violent predators or, if a sentence of confinement is not imposed, within three days of suspension of the sentence or in the case of a juvenile of disposition. A person required to register shall register, submit to be photographed as part of the registration, and submit to have a sample of his blood, saliva, or tissue taken for DNA (deoxyribonucleic acid) analysis to determine identification characteristics specific to the person, and provide information regarding place of employment. The local law-enforcement agency shall obtain from the person who presents himself for registration or reregistration two sets of fingerprints, place of employment information, proof of residency and two photographs of a type and kind specified by the State Police for inclusion in the Registry and advise the person of his duties regarding reregistration. The local law-enforcement agency shall obtain from the

Deleted: The

Deleted: within seven days of the date of sentencing

Deleted:

Deleted: 10

Deleted:

Deleted: 10

person who presents himself for registration a sample of his blood, saliva or tissue taken for DNA (deoxyribonucleic acid) analysis to determine identification characteristics specific to the person. If a sample has been previously taken from the person, as indicated by the Local Inmate Data System (LIDS), no additional sample shall be taken. The local law-enforcement agency shall forthwith forward to the State Police all necessary registration information.

Deleted: promptly

C. To establish proof of residence in Virginia, a person shall present one photo-identification form issued by a governmental agency of the Commonwealth which contains the person's complete name, gender, date of birth and complete physical address.

D. Any person required to register shall also reregister in person with the local law-enforcement agency following any change of residence, whether within or without the Commonwealth. If his new residence is within the Commonwealth, the person shall register in person with the local law-enforcement agency where his new residence is located within three days following his change in residence. If the new residence is located outside of the Commonwealth, the person shall register in person with the local law-enforcement agency where he previously registered within 10 days prior to his change of residence. If a probation or parole officer becomes aware of a change of residence for any of his probationers or parolees required to register, the probation or parole officer shall notify the State Police within forthwith of learning of the change of residence. Whenever a person subject to registration changes residence to another state, the State Police shall notify the designated law-enforcement agency of that state.

Deleted: 10

Deleted: 10 days

E. Any person required to register shall reregister in person with the local law-enforcement agency where his residence is located within three days following any change of the place of employment, whether within or without the Commonwealth. If a probation or parole officer becomes aware of a change of the place of employment for any of his probationers or parolees required to register, the probation or parole officer shall notify the State Police forthwith upon learning of the change of the person's place of employment. Whenever a person subject to registration changes his place of employment to another state, the State Police shall notify the designated law-enforcement agency of that state.

F. The registration shall be maintained in the Registry and shall include the person's name, all aliases that he has used or under which he may have been known, the date and locality of the conviction for which registration is required, his fingerprints and a photograph of a type and kind specified by the State Police, his date of birth, social security number, current physical and mailing address and a description of the offense or offenses for which he was convicted. The registration shall also include the locality of the conviction and a description of the offense or offenses for previous convictions for the offenses set forth in § 9.1-902.

G. The local law-enforcement agency shall forthwith forward to the State Police all necessary registration or reregistration information received by it. Upon receipt of registration or reregistration information the State Police shall forthwith notify the chief law-enforcement officer of the locality listed as the person's address on the registration and reregistration.

Deleted: F

Deleted: promptly

§ 9.1-904. Reregistration.

Every person required to register, other than a person convicted of a sexually violent offense or murder, shall reregister with the State Police on an annual basis from the date of the initial registration. Every person convicted of a sexually violent offense or murder shall reregister with the State Police every 90 days from the date of initial registration. Reregistration means that the person has notified the State Police, confirmed his current physical and mailing address and provided such other information, including identifying information, which the State Police may require. Upon registration and as may be necessary thereafter, the State Police shall provide the person with an address verification form to be used for reregistration. The form shall contain in bold print a statement indicating that failure to comply with the registration required is punishable as provided in § 18.2-472.1.

Deleted: a Class 1 misdemeanor or a Class 6 felony as

B. Any person convicted of a violation of § 18.2-472.1, other than a person convicted of a sexually violent offense or murder, shall register with the State Police every 180 days from the date of such conviction. Any person convicted of a violation of § 18.2-472.1, in which such person was included on the Registry for a conviction of a sexually violent offense or murder, shall reregister with the State Police every month from the date of conviction. Reregistration means the person has notified the State Police, confirmed his current physical and mailing address and provided such other

information, including identifying information, which the State Police may require. Upon registration and as may be necessary thereafter, the State Police shall provide the person with an address verification form to be used for reregistration. The form shall state the registration requirements and contain in bold print a statement indicating that failure to comply with the registration requirements is punishable as provided in § 18.2-472.1.

C. Every person required to register pursuant to this chapter shall submit to be photographed by a local law-enforcement agency every two years commencing with the date of initial registration. Photographs shall be in color, be taken with the registrant facing the camera, and clearly show the registrant's face and shoulders only. No person other than the registrant may appear in the photograph submitted. The photograph shall indicate the registrant's full name, date of birth and the date the photograph was taken. The local law-enforcement agency shall forthwith forward the photograph and the registration form to the Sate Police. Where practical, the local law-enforcement agency may electronically transfer a digital photograph containing the required information to the Sex Offender and Crimes Against Minors Registry within the State Police.

§ 9.1-905. New residents and nonresident offenders; registration required.

A. All persons required to register shall register within three days of establishing a residence in the Commonwealth.

Deleted: 10

B. Nonresident offenders entering the Commonwealth for an extended visit, for employment, to carry on a vocation, or as a student attending school who are required to register in their state of residence or who would be required to register if a resident of the Commonwealth shall, within three days of entering the Commonwealth for an extended visit, accepting employment or enrolling in school in the Commonwealth, be required to register and reregister in person with the local law-enforcement agency.

Deleted: 10

C. To document employment or school attendance in Virginia a person shall present proof of enrollment as a student or suitable proof of temporary employment in the Commonwealth and one photo-identification form issued by a governmental agency of the person's state of residence which contains the person's complete name, gender, date of birth and complete address.

D. For purposes of this section:

"Employment" and "carry on a vocation" include employment that is full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit.

"Extended visit" means a period of visitation for any purpose in the Commonwealth of 30 days or more.

"Student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade or professional institution, or institution of higher education.

§ 9.1-906. Enrollment or employment at institution of higher learning; information required.

A. Persons required to register or reregister who are enrolled in or employed at institutions of higher learning shall, in addition to other registration requirements, indicate on their registration and reregistration form the name and location of the institution attended by or employing the registrant whether such institution is within or without the Commonwealth. In addition, persons required to register or reregister shall notify the local law-enforcement agency in person within three days of any change in their enrollment or employment status with an institution of higher learning. The local law-enforcement agency shall forthwith forward to the State Police all necessary registration or reregistration information received by it.

Deleted: 10

Deleted: promptly

B. Upon receipt of a registration or reregistration indicating enrollment or employment with an institute of higher learning or notification of a change in status, the State Police shall notify the chief law-enforcement officer of the institution's law-enforcement agency or, if there is no institutional law-enforcement agency, the local law-enforcement agency serving that institution, of the registration, reregistration, or change in status. The law-enforcement agency receiving notification under this section shall make such information available upon request.

C. For purposes of this section:

"Employment" includes full- or part-time, temporary or permanent or contractual employment at an institution of higher learning either with or without compensation.

"Enrollment" includes both full- and part-time.

"Institution of higher learning" means any post-secondary school, trade or professional institution, or institution of higher education.

§ 9.1-907. Procedures upon a failure to register or reregister.

A. Whenever it appears from the records of the State Police that a person has failed to comply with the duty to register or reregister, the State Police shall promptly investigate and, if there is probable cause to believe a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person last registered or reregistered or, if the person failed to comply with the duty to register, in the jurisdiction in which the person was last convicted of an offense for which registration or reregistration is required or if the person was convicted of an offense requiring registration outside the Commonwealth, in the jurisdiction in which the person resides. The State Police shall forward to the jurisdiction an affidavit signed by the custodian of the records that such person failed to comply with the duty to register or reregister. Such affidavit shall be admitted into evidence as prima facie evidence of the failure to comply with the duty to register or reregister in any trial for the violation of § 18.2-472.1. The State Police shall also promptly notify the local law-enforcement agency of the jurisdiction of the person's last known residence as shown in the records of the State Police.

B. Nothing in this section shall prohibit a law-enforcement officer employed by a sheriff's office or police department of a locality from enforcing the provisions of this chapter, including obtaining a warrant, or assisting in obtaining an indictment for a violation of § 18.2-472.1. The local law-enforcement agency shall notify the State Police forthwith of such actions taken pursuant to this chapter or under the authority granted pursuant to this section.

C. The State Police shall physically verify or cause to be physically verified the registration information within 30 days of the initial registration and semi-annually each year thereafter and within 30 days of a change of address of all persons required to register pursuant to this chapter. Whenever it

appears that a person has provided false registration information, the State Police shall promptly investigate and, if there is probable cause to believe that a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person last registered or reregistered. The State Police shall forward to the jurisdiction an affidavit signed by the custodian of the records that such person failed to comply with the provisions of this chapter. Such affidavit shall be admitted into evidence as prima facie evidence of the failure to comply with the provisions of this chapter in any trial for the violation of § 18.2-472.1. The State Police shall also promptly notify the local law-enforcement agency of the jurisdiction of the person's last known residence as shown in the records of the State Police.

§ 9.1-908. Duration of registration requirement.

Any person required to register or reregister shall be required to register for a period of 10 years from the date of initial registration or for a period of 10 years from the date of his last conviction for a violation of § 18.2-472.1, except that any person who has been convicted of (i) any sexually violent offense, (ii) murder or (iii) former § 18.2-67.2:1 shall have a continuing duty to reregister for life.

Deleted: or

Any period of confinement in a federal, state or local correctional facility, hospital or any other institution or facility during the otherwise applicable 10-year period shall toll the registration period and the duty to reregister shall be extended. Persons confined in a federal, state, or local correctional facility shall not be required to reregister until released from custody.

§ 9.1-909. Relief from registration or reregistration.

A. Upon expiration of three years from the date upon which the duty to register as a sexually violent offender or murderer is imposed, the person required to register may petition the court in which he was convicted or, if the conviction occurred outside of the Commonwealth, the circuit court in the jurisdiction where he currently resides, for relief from the requirement to reregister every 90 days. . After five years from the date of his last conviction for a violation of § 18.2-472.1, a sexually violent offender may petition for relief from the requirement to reregister monthly. A person who is required to register may similarly petition the circuit court for relief from the requirement to reregister every 180 days after five years from the date of his last conviction for a violation of § 18.2-472.1. The court shall

532 hold a hearing on the petition, on notice to the attorney for the Commonwealth, to determine whether the
533 person suffers from a mental abnormality or a personality disorder that makes the person a menace to
534 the health and safety of others or significantly impairs his ability to control his sexual behavior. Prior to
535 the hearing the court shall order a comprehensive assessment of the applicant by a panel of three
536 certified sex offender treatment providers as defined in § 54.1-3600. A report of the assessment shall be
537 filed with the court prior to the hearing. The costs of the assessment shall be taxed as costs of the
538 proceeding.

539 If, after consideration of the report and such other evidence as may be presented at the hearing,
540 the court finds by clear and convincing evidence that the person does not suffer from a mental
541 abnormality or a personality disorder that makes the person a menace to the health and safety of others
542 or significantly impairs his ability to control his sexual behavior, the petition shall be granted and the
543 duty to reregister more frequently than once a year shall be terminated. The court shall promptly notify
544 the State Police upon entry of an order granting the petition. The person shall, however, be under a
545 continuing duty to register annually for life. If the petition is denied, the duty to reregister with the same
546 frequency as before shall continue. An appeal from the denial of a petition shall lie to the Supreme
547 Court.

548 A petition for relief pursuant to this subsection may not be filed within three years from the date
549 on which any previous petition for such relief was denied.

550 B. The duly appointed guardian of a person convicted of an offense requiring registration or
551 reregistration as either a sex offender sexually violent offender or murderer, who due to a physical
552 condition is incapable of (i) re offending and (ii) reregistering, may petition the court in which the person
553 was convicted for relief from the requirement to reregister. The court shall hold a hearing on the
554 petition, on notice to the attorney for the Commonwealth, to determine whether the person suffers from
555 a physical condition that makes the person (i) no longer a menace to the health and safety of others and
556 (ii) incapable of reregistering. Prior to the hearing the court shall order a comprehensive assessment of
557 the applicant by at least two licensed physicians other than the person's primary care physician. A report

Deleted: every 90 days

Deleted: and the State Police shall remove Registry information on the offender from the Internet system

Deleted: every 90 days

Deleted: or

of the assessment shall be filed with the court prior to the hearing. The costs of the assessment shall be taxed as costs of the proceeding.

If, after consideration of the report and such other evidence as may be presented at the hearing, the court finds by clear and convincing evidence that due to his physical condition the person (i) no longer poses a menace to the health and safety of others and (ii) is incapable of reregistering, the petition shall be granted and the duty to reregister shall be terminated. However, for a person whose duty to reregister was terminated under this subsection, the Department of State Police shall, annually for sex offenders and quarterly for persons convicted of sexually violent offenses and murder, verify and report to the attorney for the Commonwealth in the jurisdiction in which the person resides that the person continues to suffer from the physical condition that resulted in such termination.

Deleted: offenders

The court shall promptly notify the State Police upon entry of an order granting the petition to terminate the duty to reregister.

Deleted: and the State Police shall remove any Registry information on the offender from the Internet system

If the petition is denied, the duty to reregister shall continue. An appeal from the denial of a petition shall be to the Virginia Supreme Court.

A petition for relief pursuant to this subsection may not be filed within three years from the date on which any previous petition for such relief was denied.

If, at any time, the person's physical condition changes so that he is capable of reoffending or reregistering, the attorney for the Commonwealth shall file a petition with the circuit court in the jurisdiction where the person resides and the court shall hold a hearing on the petition, with notice to the person and his guardian, to determine whether the person still suffers from a physical condition that makes the person (i) no longer a menace to the health and safety of others and (ii) incapable of reregistering. If the petition is granted, the duty to reregister shall commence from the date of the court's order. An appeal from the denial or granting of a petition shall be to the Virginia Supreme Court. Prior to the hearing the court shall order a comprehensive assessment of the applicant by at least two licensed physicians other than the person's primary care physician. A report of the assessment shall be filed with the court prior to the hearing. The costs of the assessment shall be taxed as costs of the proceeding.

§ 9.1-910. Removal of name and information from Registry.

585 A. Any person required to register, other than a person who has been convicted of any (i)
586 sexually violent offense, (ii) two or more offenses for which registration is required, (iii) a violation of
587 former § 18.2-67.2:1, or (iv) murder, may petition the circuit court in which he was convicted or the
588 circuit court in the jurisdiction where he then resides for removal of his name and all identifying
589 information from the Registry. A petition may not be filed earlier than 10 years after the date of initial
590 registration nor earlier than 10 years from the date of his last conviction for a violation of § 18.2-472.1.
591 The court shall hold a hearing on the petition at which the applicant and any interested persons may
592 present witnesses and other evidence. If, after such hearing, the court is satisfied that such person no
593 longer poses a risk to public safety, the court shall grant the petition. In the event the petition is not
594 granted, the person shall wait at least 24 months from the date of the denial to file a new petition for
595 removal from the Registry.

Deleted: or

596 B. The State Police shall remove from the Registry the name of any person and all identifying
597 information upon receipt of an order granting a petition pursuant to subsection A or at the end of the
598 period for which the person is required to register under § 9.1-908.

599 § 9.1-913. Public dissemination by means of the Internet.

600 The State Police shall develop and maintain a system for making certain Registry information on
601 persons convicted of murder of a minor and violent sex offenders publicly available by means of the
602 Internet. The State Police shall also make publicly available by means of the Internet information on
603 offenders convicted of any offense for which registration is required, where such offense occurred on or
604 after July 1, 2006. The information to be made available shall include the offender's name; all aliases
605 that he has used or under which he may have been known; the date and locality of the conviction and a
606 brief description of the offense; his age, current address and photograph; and such other information as
607 the State Police may from time to time determine is necessary to preserve public safety including but not
608 limited to the fact that an individual is wanted for failing to register or reregister. The system shall be
609 secure and not capable of being altered except by the State Police. The system shall be updated each
610 business day with newly received registrations and reregistrations. The State Police shall remove all
611 information that it knows to be inaccurate from the Internet system.

Deleted:

§ 9.1-914. Automatic notification of registration to certain entities; electronic notification to requesting persons.

Any school, day-care service and child-minding service, and any state-regulated or state-licensed child day center, child day program, children's residential facility, family day home or foster home as defined in § 63.2-100 and any institution of higher education may request from the State Police and, upon compliance with the requirements therefor established by the State Police, shall be eligible to receive from the State Police electronic notice of the registration or reregistration of any sex offender and if such entities do not have the capability of receiving such electronic notice, the entity may register with the State Police to receive written notification of sex offender registration or reregistration. Within three business days of receipt by the State Police of registration or reregistration, the State Police shall electronically or in writing notify an entity listed above that has requested such notification, has complied with the requirements established by the State Police and is located in the same or a contiguous zip code area as the address of the offender as shown on the registration.

Deleted: . Entities that request and are entitled to this notification, and that

Any person may request from the State Police and, upon compliance with the requirements therefor established by the State Police, shall be eligible to receive from the State Police electronic notice of the registration or reregistration of any sex offender. Within three business days of receipt by the State Police of registration or reregistration, the State Police shall electronically notify a person who has requested such notification, has complied with the requirements established by the State Police and is located in the same or a contiguous zip code area as the address of the offender as shown on the registration.

The State Police shall establish reasonable guidelines governing the automatic dissemination of Registry information, which may include the payment of a fee, whether a one-time fee or a regular assessment, to maintain the electronic access. The fee, if any, shall defray the costs of establishing and maintaining the electronic notification system and notice by mail.

For the purposes of this section:

Deleted: ,

"Child-minding service" means provision of temporary custodial care or supervisory services for the minor child of another;

"Day-care service" means provision of supplementary care and protection during a part of the day for the minor child of another; and

"School" means any public, religious or private educational institution, including any preschool, elementary school, secondary school, post-secondary school, trade or professional institution, or institution of higher education.

Deleted: day-care

Deleted: "child-minding service" means provision of temporary custodial care or supervisory services for the minor child of another;

Deleted: school

§ 9.1-918. Misuse of registry information; penalty.

Use of registry information for purposes not authorized by this chapter is prohibited, the unlawful use of the information contained in or derived from the Registry for purposes of intimidating or harassing another is prohibited, and a willful violation of this chapter is a Class 1 misdemeanor. For purposes of this section, absent other aggravating circumstances, the mere republication or reasonable distribution of material contained on or derived from the publicly available Internet sex offender database shall not be deemed intimidation or harassment.

§ 9.1-921. Exemption of information systems from provisions related to the Virginia Information Technologies Agency.

The provisions of Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2 shall not apply to the Sex Offender and Crimes Against Minors Registry pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, operated by the Department of State Police or to information technology as defined in § 2.2-2006 operated by the Department of Juvenile Justice, Department of Corrections or the Virginia Compensation Board that interact, furnish, update, contain or exchange information with the Sex Offender and Crimes Against Minors Registry.

§ 16.1-249.1 Places of confinement to give notice of intake of certain persons.

A. At the time of receipt of any person, for whom registration with the Sex Offender and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1 into a secure facility, the secure facility shall obtain from that person all necessary registration information, including fingerprints and photographs of a type and kind approved by the Department of State Police. A person required to register shall register and submit to be photographed as part of the registration. The facility

665 shall forthwith forward the registration information to the Department of State Police on the date of the
666 receipt of the prisoner.
667 B. Whenever a person required to register has failed to comply with the provisions of subsection
668 A, the facility shall promptly investigate or request the State Police promptly investigate and, if there is
669 probable cause to believe a violation has occurred, obtain a warrant, or assist in obtaining an indictment
670 charging a violation of § 18.2-472.1 in the jurisdiction in which the person was received. The facility
671 shall notify the State Police forthwith of such actions taken pursuant to this section.
672 § 16.1-278.7:01. Department to give notice of the receipt of certain persons.
673 A. At the time or receipt of any person, for whom registration with the Sex Offender and Crimes
674 Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, the
675 Department shall obtain from that person all necessary registration information, including fingerprints
676 and photographs of a type and kind approved by the Department of State Police. A person required to
677 register shall register and submit to be photographed as part of the registration. The Department shall
678 forthwith forward the registration information and photograph to the Department of State Police on the
679 date of the receipt of the person.
680 B. Whenever a person required to register has failed to comply with the provisions of subsection
681 A, the Department shall promptly investigate or request the State Police promptly investigate and, if
682 there is probable cause to believe a violation has occurred, obtain a warrant or petition or assist in
683 obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person was
684 received. The Department shall notify the State Police forthwith of such actions taken pursuant to this
685 section.
686 § 16.1-278.7:02. Department to give notice of Sex Offender and Crimes Against Minors
687 Registry requirements to certain persons.
688 A. Prior to the release or discharge of any persons for whom registration with the Sex Offender
689 and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1,
690 the Department shall give notice to the persons of his duty to register with the State Police. A person
691 required to register shall register, submit to be photographed as part of the registration, and provide

692 information regarding place of employment, if available, to the Department. The Department shall also
693 obtain from that person all necessary registration information, including fingerprints and photographs of
694 a type and kind approved by the Department of State Police; inform the person of his duties regarding
695 reregistration and change of address; and inform the person of his duty to register. The Department of
696 Juvenile Justice shall forward the registration information to the Department of State Police on the date
697 of the person's release or discharge.

698 B. Whenever a person required to register has failed to comply with the provisions of subsection
699 A, the Department shall promptly investigate or request the State Police promptly investigate and, if
700 there is probable cause to believe a violation has occurred, obtain a warrant or assist in obtaining an
701 indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person was discharged.
702 The Department shall notify the State Police forthwith of such actions taken pursuant to this section.

703 § 18.2-370.2. Sex offenses prohibiting proximity to children; penalty.

704 A. "Offense prohibiting proximity to children" means a violation or an attempt to commit a
705 violation of (i) subsection A of § 18.2-47, clause (ii) or (iii) of § 18.2-48, subsection B of § 18.2-361, or
706 subsection B of § 18.2-366, where the victim of one of the foregoing offenses was a minor, or (ii)
707 subsection A (iii) of § 18.2-61, §§ 18.2-63, 18.2-64.1, subdivision A 1 of § 18.2-67.1, subdivision A 1 of
708 § 18.2-67.2, or subdivision A 1 or A 4 (a) of § 18.2-67.3, or §§ 18.2-370, 18.2-370.1, clause (ii) of §
709 18.2-371, §§ 18.2-374.1, 18.2-374.1:1 or § 18.2-379. As of July 1, 2006, "offense prohibiting proximity
710 to children" shall include a violation of § 18.2-472.1, when the offense requiring registration was one of
711 the foregoing offenses.

712 B. Every adult who is convicted of an offense prohibiting proximity to children when the offense
713 occurred on or after July 1, 2000, shall as part of his sentence be forever prohibited from loitering within
714 100 feet of the premises of any place he knows or has reason to know is a primary, secondary or high
715 school. In addition, every adult who is convicted of an offense prohibiting proximity to children when
716 the offense occurred on or after July 1, 2006, shall as part of his sentence be forever prohibited from
717 loitering within 100 feet of the premises of any place he knows or has reason to know is a child day
718 program as defined in § 63.2-100.

A violation of this section is punishable as a Class 6 felony.

§ 18.2-370.3. Sex offenses prohibiting residing in proximity to children; penalty.

A. Every adult who is convicted of an offense occurring on or after July 1, 2006, of (i) subdivision A (iii) of § 18.2-61, (ii) subdivision A 1 of §18.2-67.1 or (iii) subdivision A 1 of §18.2-67.2, shall be forever prohibited from residing within 500 feet of the premises of any place he knows or has reason to know is a child day center as defined in § 63.2-100, or a primary, secondary, or high school. A violation of this section is punishable as a Class 6 felony.

B. An adult whose residence is within 500 feet of a child day center or a primary, secondary, or high school at the time of conviction of an offense listed in subsection A may continue to reside at such residence and may return to such residence following incarceration without being in violation of this section. However, an adult who moves away from such a residence that he occupied at the time of conviction is in violation of this section if he reoccupies his residence at such location. An adult who is convicted of an offense listed in subsection A and has established a residence shall not be required to move and shall not be considered to be in violation of this section if a child day center or a primary, secondary, or high school is established within 500 feet of his residence subsequent to his conviction.

§ 18.2-370.4. Sex offenses prohibiting working on school property; penalty.

A. Every adult who has been convicted of an offense occuring on or after July 1, 2006, of (i) subdivision A (iii) of § 18.2-61, (ii) subdivision A 1 of §18.2-67.1 or (iii) subdivision A 1 of §18.2-67.2, shall be forever prohibited from working on property he knows or has reason to know is public or private elementary or secondary school or child day center property. A violation of this section is punishable as a Class 6 felony.

B. Any employer of a person who violated this section in the course of such person's employment and the school or child day center where the violation of this section occurred are immune from civil liability unless they had actual knowledge that such person had been convicted of an offense listed in subsection A.

Formatted: section

§ 18.2-472.1. Providing false information or failing to provide registration information; penalty; prima facie evidence.

A. Any person subject to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, other than a person convicted of a sexually violent offense or murder as defined in § 9.1-902, who knowingly fails to register or reregister, or who knowingly provides materially false information to the Sex Offender and Crimes Against Minors Registry is guilty of a Class 1 misdemeanor. A second or subsequent conviction for an offense under this subsection shall be a Class 6 felony.

B. Any person convicted of a sexually violent offense or murder, as defined in § 9.1-902, who knowingly fails to register or reregister, or who knowingly provides materially false information to the Sex Offender and Crimes Against Minors Registry is guilty ofa Class 6 felony. A second or subsequent conviction for an offense under this subsection shall be a Class 5 felony.

Deleted: However, any

C. A prosecution pursuant to this section shall be brought in the city or county where the offender can be found or where the offender last registered or reregistered or, if the offender failed to comply with the duty to register, where the offender was last convicted of an offense for which registration or reregistration is required.

D. At any trial pursuant to this section, an affidavit from the State Police issued as required in § 9.1-907 shall be admitted into evidence as prima facie evidence of the failure to comply with the duty to register or reregister and a copy of such affidavit shall be provided to the registrant or his counsel seven days prior to hearing or trial by the attorney for the Commonwealth.

E. For the purposes of this section any conviction for a substantially similar offense under the laws of another state or territory of the United States, the District of Columbia, or the United States shall be considered a prior conviction.

§ 19.2-295.2:1. Postrelease supervision of felons sentenced for certain offenses committed on or after July 1, 2006.

A. For offenses committed on or after July 1, 2006:

1. At the time the court imposes sentence upon a conviction for a first violation of subsection A of §18.2-472.1 the court shall impose an added term of postrelease supervision of six months.

771 2. For a second or subsequent violation of subsection A of § 18.2-472.1 when both violations
772 occurred after July 1, 2006, or a first violation of subsection B of § 18.2-472.1, the court shall impose an
773 added term of postrelease supervision of two years.
774 3. For a second or subsequent violation of subsection B of § 18.2-472.1 when both violations
775 occurred after July 1, 2006, the court shall impose an added term of postrelease supervision of five
776 years.
777 Any terms of postrelease supervision imposed pursuant to this section shall be in addition to any
778 other punishment imposed, including any periods of active incarceration or suspended periods of
779 incarceration, if any.
780 B. The court shall order that any term of postrelease supervision imposed pursuant to this
781 section be suspended, and the defendant be placed on active supervision under a postrelease supervision
782 program operated by the Department of Corrections. The court shall order that the defendant be subject
783 to electronic monitoring by means of a GPS (Global Positioning System) tracking device, or other
784 similar device during this period of postrelease supervision. Failure to successfully abide by the terms
785 and conditions of the postrelease supervision program shall be grounds to terminate the period of
786 postrelease supervision and recommit the defendant to the Department of Corrections or to a local
787 correctional facility. Procedures for any such termination shall be conducted after a hearing in the court
788 which originally sentenced the defendant, conducted in a manner consistent with a revocation hearing
789 under § 19.2-306, mutatis mutandis.
790 C. Nothing in this section shall be construed to prohibit the court from exercising any authority
791 otherwise granted by law.
792 § 19.2-390.1. Sex Offender and Crimes Against Minors Registry; maintenance; access.
793 The Department of State Police shall keep and maintain a Sex Offender and Crimes Against
794 Minors Registry, separate and apart from all other records maintained by it.
795 The Superintendent of State Police shall organize, equip, and staff, within the Department of
796 State Police, the Sex Offender and Crimes Against Minors Registry. The Superintendent shall appoint

Formatted: Font: Not Italic
Formatted: Font: Not Italic
Formatted: Font: Not Italic
Formatted: Font: Not Italic
Formatted: Font: Not Italic

and designate personnel as he deems necessary to carry out all duties and assignments related to the Sex Offender and Crimes Against Minors Registry as required by Chapter 9 (§ 9.1-900 et seq.) of Title 9.1

§ 22.1-79. Powers and duties.

A school board shall:

1. See that the school laws are properly explained, enforced and observed;

2. Secure, by visitation or otherwise, as full information as possible about the conduct of the public schools in the school division and take care that they are conducted according to law and with the utmost efficiency;

3. Care for, manage and control the property of the school division and provide for the erecting, furnishing, equipping, and noninstructional operating of necessary school buildings and appurtenances and the maintenance thereof by purchase, lease, or other contracts;

4. Provide for the consolidation of schools or redistricting of school boundaries or adopt pupil assignment plans whenever such procedure will contribute to the efficiency of the school division;

5. Insofar as not inconsistent with state statutes and regulations of the Board of Education, operate and maintain the public schools in the school division and determine the length of the school term, the studies to be pursued, the methods of teaching and the government to be employed in the schools;

6. In instances in which no grievance procedure has been adopted prior to January 1, 1991, establish and administer by July 1, 1992, a grievance procedure for all school board employees, except the division superintendent and those employees covered under the provisions of Article 2 (§ 22.1-293 et seq.) and Article 3 (§ 22.1-306 et seq.) of Chapter 15 of this title, who have completed such probationary period as may be required by the school board, not to exceed 18 months. The grievance procedure shall afford a timely and fair method of the resolution of disputes arising between the school board and such employees regarding dismissal, suspension, or other disciplinary actions and shall be consistent with the provisions of the Board of Education's procedures for adjusting grievances except that there shall be no right to a hearing before a fact-finding panel;

7. Perform such other duties as shall be prescribed by the Board of Education or as are imposed by law;

8. Obtain public comment through a public hearing not less than 10 days after reasonable notice to the public in a newspaper of general circulation in the school division prior to providing (i) for the consolidation of schools; (ii) the transfer from the public school system of the administration of all instructional services for any public school classroom or all noninstructional services in the school division pursuant to a contract with any private entity or organization; or (iii) in school divisions having 15,000 pupils or more in average daily membership, for redistricting of school boundaries or adopting any pupil assignment plan affecting the assignment of 15 percent or more of the pupils in average daily membership in the affected school. Such public hearing may be held at the same time and place as the meeting of the school board at which the proposed action is taken if the public hearing is held before the action is taken. If a public hearing has been held prior to the effective date of this provision on a proposed consolidation, redistricting or pupil assignment plan which is to be implemented after the effective date of this provision, an additional public hearing shall not be required;

Deleted: and

9. (Expires July 1, 2010) At least annually, survey the school division to identify critical shortages of teachers and administrative personnel by subject matter, and report such critical shortages to the Superintendent of Public Instruction and to the Virginia Retirement System; however, the school board may request the division superintendent to conduct such survey and submit such report to the school board, the Superintendent, and the Virginia Retirement System, and

10. Ensure that the public schools within the school division are registered with the Department of State Police to receive from the State Police electronic notice of the registration or reregistration of any sex offender within that school division pursuant to § 9.1-914.

§ 22.1-79.3. Policies regarding certain activities.

A. No later than January 1, 2001, local school boards shall develop and implement policies to ensure that public school students are not required to convey or deliver any materials that (i) advocate the election or defeat of any candidate for elective office, (ii) advocate the passage or defeat of any

849 referendum question, or (iii) advocate the passage or defeat of any matter pending before a local school
850 board, local governing body or the General Assembly of Virginia or the Congress of the United States.
851 This section shall not be construed to prohibit the discussion or use of political or issue-oriented
852 materials as part of classroom discussions or projects or to prohibit the delivery of informational
853 materials.
854 B. Local school boards shall develop and implement policies to prohibit the administration of
855 questionnaires or surveys to public school students during the regular school day or at school-sponsored
856 events without written, informed parental consent for the student's participation when participation in
857 such questionnaire or survey may subsequently result in the sale for commercial purposes of personal
858 information regarding the individual student.
859 C. Local school boards shall develop and implement policies to provide information to the parent
860 or legal guardian of a student regarding the registration of sex offenders in the Commonwealth and the
861 availability of information in the Sex Offender and Crimes Against Minors Registry. Local school
862 boards shall also develop protocolsgoverning the release of children to persons who are not their parent
863 or legal guardian.
864 D. No local school board providing access and opportunity to use school facilities or to distribute
865 literature may deny equal access or fair opportunity to use such school facilities or to distribute
866 literature, or otherwise discriminate against the Boy Scouts of America or the Girl Scouts of the USA.
867 Nothing in this subsection shall be construed to require any school or school division to sponsor
868 the Boy Scouts of America or the Girl Scouts of the USA, or to exempt any such groups from school
869 board policies governing access to and use of school facilities and distribution of literature.
870 § 23-2.2:1. Reporting of student information to Sex Offender and Crimes Against Minor
871 Registry.
872 Each public and private two- and four-year institution of higher education physically located in
873 the Commonwealth shall electronically transmit enrollment information to the Department of State
874 Police by September 1 of each year, in a format approved by the State Police, for comparison with
875 information contained in the Virginia Criminal Information Network and National Crime Information

Center Convicted Sexual Offender Registry File when a student has been accepted for admission and enrolls in classes at such an educational institution.

Whenever it appears from the records of the State Police that a person has failed to comply with the duty to register or reregister pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, the State Police shall promptly investigate and, if there is probable cause to believe a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person was enrolled with the educational institution.

§ 46.2-323. Application for driver's license; proof of completion of driver education program; penalty.

A. Every application for a driver's license, temporary driver's permit, learner's permit, or motorcycle learner's permit shall be made on a form prescribed by the Department and the applicant shall write his usual signature in ink in the space provided on the form. The form shall include notice to the applicant of the duty to register with the Department of State Police as provided in Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, if the applicant has been convicted of an offense for which registration with the Sex Offender and Crimes Against Minors Registry is required.

B. Every application shall state the full legal name, year, month, and date of birth, social security number, sex, and residence address of the applicant; whether or not the applicant has previously been licensed as a driver and, if so, when and by what state, and whether or not his license has ever been suspended or revoked and, if so, the date of and reason for such suspension or revocation. The Department, as a condition for the issuance of any driver's license, temporary driver's permit, learner's permit, or motorcycle learner's permit may require the surrender of any driver's license or, in the case of a motorcycle learner's permit, a motorcycle license issued by another state and held by the applicant. The applicant shall also answer any questions on the application form or otherwise propounded by the Department incidental to the examination. The applicant may also be required to present to the person conducting the examination a birth certificate or other evidence, reasonably acceptable to the Department, of his name and date of birth.

The applicant shall also certify that he is a resident of the Commonwealth by signing a certification statement, on a form prescribed by the Commissioner, and by providing satisfactory proof that he is a resident of the Commonwealth. The Commissioner may adopt regulations to determine the process by which applicants prove that they are residents of the Commonwealth.

If the applicant either (i) fails or refuses to sign the certification statement or (ii) fails to follow the process determined by the Commissioner for proving residency, the Department shall not issue the applicant a driver's license, temporary driver's permit, learner's permit or motorcycle learner's permit.

Any applicant who knowingly makes a false certification of Virginia residency or supplies false or fictitious evidence of Virginia residency shall be punished as provided in § 46.2-348.

The Commissioner may, on a case-by-case basis, waive any provision of such regulations for good cause shown.

C. Every application for a driver's license shall include a color photograph of the applicant supplied under arrangements made by the Department. The photograph shall be processed by the Department so that the photograph can be made part of the issued license.

D. Notwithstanding the provisions of § 46.2-334, every applicant for a driver's license who is under 19 years of age shall furnish the Department with satisfactory proof of his successful completion of a driver education program approved by the State Department of Education.

E. (Effective January 1, 2007) The Department shall electronically transmit application information to the Department of State Police, in a format approved by the State Police, for comparison with information contained in the Virginia Criminal Information Network and National Crime Information Center Convicted Sexual Offender Registry Files, at the time of issuance of a driver's license, temporary driver's permit, learner's permit, or motorcycle learner's permit. Whenever it appears from the records of the State Police that a person has failed to comply with the duty to register or reregister pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, the State Police shall promptly investigate and, if there is probable cause to believe a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person made application of licensure.

§ 46.2-324. Applicants and license holders to notify Department of change of address; fee.

A. Whenever any person, after applying for or obtaining a driver's license or special identification card shall move from the address shown in the application or on the license or special identification card, he shall, within thirty days, notify the Department of his change of address. If the Department receives notification from the person or any court or law-enforcement agency that a person's residential address has changed to a non-Virginia address, unless the person (i) is on active duty with the armed forces of the United States, (ii) provides proof that he is a U.S. citizen and resides outside the United States because of his employment or the employment of a spouse or parent, or (iii) provides proof satisfactory to the Commissioner that he is a bona fide resident of Virginia, the Department shall (i) mail, by first-class mail, no later than three days after the notice of address change is received by the Department, notice to the person that his license and/or special identification card will be cancelled by the Department and (ii) cancel the driver's license and/or special identification card thirty days after notice of cancellation has been mailed.

B. There may be imposed upon anyone failing to notify the Department of his change of address as required by this section a fee of five dollars, which fee shall be used to defray the expenses incurred by the Department.

C. (Effective January 1, 2007) The Department shall electronically transmit change of address information to the Department of State Police, in a format approved by the State Police, for comparison with information contained in the Virginia Criminal Information Network and National Crime Information Center Convicted Sexual Offender Registry Files, at the time of the change of address. Whenever it appears from the records of the State Police that a person has failed to comply with the duty to register or reregister pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, the State Police shall promptly investigate and, if there is probable cause to believe a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person last registered or reregistered or in the jurisdiction where the person made application for change of address.

§ 46.2-330. Expiration and renewal of licenses; examinations required.

A. Every driver's license shall expire on the applicant's birthday in years in which the applicant attains an age equally divisible by five. At no time shall any driver's license be issued for less than three nor more than seven years. Thereafter the driver's license shall be renewed on or before the birthday of the licensee and shall be valid for five years, expiring in the next year in which the licensee's age is equally divisible by five.

B. Within one year prior to the date shown on the driver's license as the date of expiration, the Department shall mail notice, to the holder thereof, at the address shown on the records of the Department in its driver's license file, that his license will e xpire on a date specified therein, whether he must be reexamined, and when he may be reexamined. Nonreceipt of the notice shall not extend the period of validity of the driver's license beyond its expiration date.

Any driver's license may be renewed by application, which shall include the applicant's certification of Virginia residency, after the applicant has taken and successfully completed those parts of the examination provided for in §§ 46.2-311, 46.2-325 and the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.), including vision and written tests, other than the parts of the examination requiring the applicant to drive a motor vehicle. All drivers applying in person for renewal of a license shall take and successfully complete the examination each renewal year.

C. Notwithstanding any other provision of this section, the Commissioner, in his discretion, may require any applicant for renewal to be fully examined as provided in §§ 46.2-311, 46.2-325 and the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.). Furthermore, if the applicant is less than 80 years old, the Commissioner may waive the vision examination for any applicant for renewal of a driver's license which is not a commercial driver's license, and the requirement or the taking of the written test as provided in subsection B of this section, § 46.2-325 and the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.), for any applicant for renewal who is at least 21 years old. Such written test shall not be waived for an applicant less than 21 years old if such applicant's driver's license record on file with the Department contains a record of one or more convictions for any offense reportable under §§ 46.2-382, 46.2-382.1, and 46.2-383. However, in no case shall there be any waiver of the vision examination for applicants for renewal of a commercial driver's license or of the knowledge

test required by the Virginia Commercial Driver's License Act for the hazardous materials endorsement on a commercial driver's license. No driver's license or learner's permit issued to any person who is 80 years old or older shall be renewed unless the applicant for renewal appears in person and either (i) passes a vision examination or (ii) presents a report of a vision examination, made within 90 days prior thereto by an ophthalmologist or optometrist, indicating that the applicant's vision meets or exceeds the standards contained in § 46.2-311.

D. Every applicant for renewal of a driver's license, whether renewal shall or shall not be dependent on any examination of the applicant, shall appear in person before the Department to apply for renewal, unless specifically notified by the Department that renewal may be accomplished in another manner as provided in the notice.

E. This section shall not modify the provisions of § 46.2-221.2.

F. (Effective January 1, 2007) The Department shall electronically transmit application information to the Department of State Police, in a format approved by the State Police, for comparison with information contained in the Virginia Criminal Information Network and National Crime Information Center Convicted Sexual Offender Registry Files, at the time of the renewal of a driver's license. Whenever it appears from the records of the State Police that a person has failed to comply with the duty to register or reregister pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, the State Police shall promptly investigate and, if there is probable cause to believe a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person last registered or reregistered or in the jurisdiction where the person made application for licensure.

§ 46.2-345. Issuance of special identification cards; fee; confidentiality; penalties.

A. On the application of any person who is a resident of the Commonwealth or the parent or legal guardian of any such person who is under the age of 15, the Department shall issue a special identification card to the person provided:

1. Application is made on a form prescribed by the Department and includes the applicant's full legal name; year, month, and date of birth; sex; and residence address;

2. The applicant presents a birth certificate or other evidence acceptable to the Department of his name and date of birth;

3. The Department is satisfied that the applicant needs an identification card or the applicant shows he has a bona fide need for such a card; and

4. The applicant does not hold a driver's license, commercial driver's license, temporary driver's permit, learner's permit, or motorcycle learner's permit.

Persons 70 years of age or older may exchange a valid Virginia driver's license for a special identification card at no fee. Special identification cards subsequently issued to such persons shall be subject to the regular fees for special identification cards.

B. The fee for the issuance of an original or renewal special identification card is $5. The fee for the issuance of a duplicate or reissue of a special identification card is $5. Persons 21 years old or older may be issued a scenic special identification card for an additional fee of $5.

C. Every special identification card shall expire on the last day of the month of birth of the applicant in years in which the applicant attains an age exactly divisible by five. At no time shall any special identification card be issued for less than three nor more than seven years, except under the provisions of subsection B of § 46.2-328.1 and except that those cards issued to children under the age of 15 shall expire on the child's sixteenth birthday, thereafter the special identification card may be renewed on or before the last day of the month of birth of the applicant and shall be valid for five years, expiring in the next year in which the applicant's age is exactly divisible by five, except under the provisions of subsection B of § 46.2-328.1.

D. A special identification card issued under this section may be similar in size, shape, and design to a driver's license, and include a color photograph of its holder, but the card shall be readily distinguishable from a driver's license and shall clearly state that it does not authorize the person to whom it is issued to drive a motor vehicle.

E. Special identification cards, for persons at least 15 years old but less than 21 years old, shall be immediately and readily distinguishable from those issued to persons 21 years old or older. Distinguishing characteristics shall include unique design elements of the document and descriptors

within the photograph area to identify persons who are at least 15 years old but less than 21 years old. These descriptors shall include the month, day, and year when the person will become 21 years old.

F. Special identification cards for persons under age 15 shall bear a full face photograph. The special identification card issued to persons under age 15 shall be readily distinguishable from a driver's license and from other special identification cards issued by the Department. Such cards shall clearly indicate that it does not authorize the person to whom it is issued to drive a motor vehicle.

G. A valid Virginia driver's license may be surrendered for a special identification card without the applicant's having to present proof of legal presence as required by § 46.2-328.1 if the Virginia driver's license is unexpired and it has not been revoked, suspended, or cancelled. The special identification card shall be considered a reissue and the expiration date shall be the last day of the month of the surrendered driver's license's month of expiration.

H. Any personal information, as identified in § 2.2-3801, which is retained by the Department from an application for the issuance of a special identification card is confidential and shall not be divulged to any person, association, corporation, or organization, public or private, except to the legal guardian or the attorney of the applicant or to a person, association, corporation, or organization nominated in writing by the applicant, his legal guardian, or his attorney. This subsection shall not prevent the Department from furnishing the application or any information thereon to any law-enforcement agency.

I. Any person who uses a false or fictitious name or gives a false or fictitious address in any application for an identification card or knowingly makes a false statement or conceals a material fact or otherwise commits a fraud in any such application shall be guilty of a Class 2 misdemeanor. However, where the name or address is given, or false statement is made, or fact is concealed, or fraud committed, with the intent to purchase a firearm or where the identification card is obtained for the purpose of committing any offense punishable as a felony, a violation of this section shall constitute a Class 4 felony.

J. The Department may promulgate regulations necessary for the effective implementation of the provisions of this section.

K. The Department shall utilize the various communications media throughout the Commonwealth to inform Virginia residents of the provisions of this section and to promote and encourage the public to take advantage of its provisions.

L. (Effective January 1, 2007) The Department shall electronically transmit application information to the Department of State Police, in a format approved by the State Police, for comparison with information contained in the Virginia Criminal Information Network and National Crime Information Center Convicted Sexual Offender Registry Files, at the time of issuance of a special identification card. Whenever it appears from the records of the State Police that a person has failed to comply with the duty to register or reregister pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, the State Police shall promptly investigate and, if there is probable cause to believe a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person made application for the special identification card.

§ 46.2-348. Fraud or false statements in applications for license; penalties.

Any person who uses a false or fictitious name or gives a false or fictitious address in any application for a driver's license, or any renewal or duplicate thereof, or knowingly makes a false statement or conceals a material fact or otherwise commits a fraud in his application shall be guilty of a Class 2 misdemeanor. However, where the license is used, or the fact concealed, or fraud is done, with the intent to purchase a firearm or use as proof of residency under § 9.1-903, a violation of this section shall be punishable as a Class 4 felony.

§ 53.1-23.2. Department to give notice of the receipt of certain prisoners.

A. At the time or receipt of any prisoner for whom registration with the Sex Offender and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, the Department shall obtain from that person all necessary registration information, including fingerprints and photographs of a type and kind approved by the Department of State Police. A person required to register shall register and submit to be photographed as part of the registration. The Department shall forthwith forward the registration information and photograph to the Department of State Police on the date of the receipt of the prisoner.

B. Whenever a person required to register has failed to comply with the provisions of subsection A, the Department shall promptly investigate or request the State Police promptly investigate and, if there is probable cause to believe a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person was received. The Department shall notify the State Police forthwith of such actions taken pursuant to this section.

§ 53.1-115.1. Superintendents of regional jails and regional jail-farms to make daily reports to Compensation Board.

(Effective October 1, 2006) The superintendent of every regional jail and every regional jail-farm shall report each day to the Compensation Board, giving the record of each prisoner received during the preceding day in an electronic format approved by the Compensation Board, stating whether the offense for each prisoner is for violation of state law or of city or town ordinance. The computer-generated report shall be authenticated by both the superintendent and chairman of the regional jail-farm board. Either person who authenticates such report and willfully falsifies the information contained in such report is guilty of a Class 1 misdemeanor.

If any superintendent fails to send such report, the Compensation Board shall notify the superintendent of such failure. If the superintendent fails to make the report within ten days, then the Compensation Board shall cause the report to be prepared from the books of the superintendent and shall certify the cost thereof to the Comptroller. The Comptroller shall issue his warrant on the Treasurer for that amount, deducting the same from any funds that may be due the superintendent by the Commonwealth.

§ 53.1-116.1. Jailer to give notice of release of certain prisoners.

A. Prior to the release or discharge of any prisoner for whom registration with the Sex Offender and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, the sheriff, jail superintendent or other jail administrator shall give notice to the prisoner of his duty to register with the State Police. A person required to register shall register, submit to be photographed as part of the registration, and provide information regarding place of employment, if available, to the sheriff, jail superintendent or other jail administrator. The sheriff, jail superintendent or other jail

Deleted: on the first

Deleted: of each month

Deleted: month on blank forms to be furnished

Deleted:

Deleted: signed

Deleted:

Deleted: signer found guilty of

Deleted:

Deleted: falsifying

Deleted: shall be

Deleted:

Deleted: within ten business days after the date when the report should be forwarded

Deleted:

Deleted: from that date

Deleted: serving a sentence for an offense for which

1118 administrator shall also obtain from that person all necessary registration information, including
1119 fingerprints and photographs of a type and kind approved by the Department of State Police; inform the
1120 person of his duties regarding reregistration and change of address; and inform the person of his duty to
1121 register. The sheriff, jail superintendent or other jail administrator shall forthwith forward the
1122 registration information to the Department of State Police on the date of the prisoner's release.

Deleted: within seven days of receipt

1123 B. Whenever a person required to register has failed to comply with the provisions of subsection
1124 A, the sheriff, jail superintendent or other jail administrator shall promptly investigate or request the
1125 State Police to promptly investigate and, if there is probable cause to believe a violation has occurred,
1126 obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the
1127 jurisdiction in which the person was discharged. The sheriff, jail superintendent or other jail
1128 administrator shall notify the State Police forthwith of such actions taken pursuant to this section.

1129 § 53.1-116.1:01. Jailer to give notice of intake of certain prisoners.

1130 A. At the time of intake of any prisoner, for whom registration with the Sex Offender and Crimes
1131 Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, the sheriff, jail
1132 superintendent or other jail administrator shall also obtain from that person all necessary registration
1133 information, including fingerprints and photographs of a type and kind approved by the Department of
1134 State Police. A person required to register shall register, and submit to be photographed as part of the
1135 registration. The sheriff, jail superintendent or other jail administrator shall forthwith forward the
1136 registration information to the Department of State Police on the date of the prisoner's intake.

1137 B. Whenever a person required to register has failed to comply with the provisions of subsection
1138 A, the sheriff, jail superintendent or other jail administrator shall promptly investigate or request the
1139 State Police promptly investigate and, if there is probable cause to believe a violation has occurred,
1140 obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the
1141 jurisdiction in which the person was discharged. The sheriff, jail superintendent or other jail
1142 administrator shall notify the State Police forthwith of such actions taken pursuant to this section.

1143 § 53.1-121. Sheriffs to make daily reports to Compensation Board; failure to send report.

1144 (Effective October 1, 2006) The sheriff shall report each day to the Compensation Board, giving
1145 the record of each prisoner received during the preceding day in an electronic format approved by the
1146 Compensation Board, stating whether the offense is for violation of state law or of city or town
1147 ordinance.

Deleted: on the first

Deleted: of each month

Deleted: month on blank forms to be furnished

1148 If any sheriff fails to send such report, the Compensation Board shall notify the sheriff of such
1149 failure. If the sheriff fails to make the report within ten days, then the Compensation Board shall cause
1150 the report to be prepared from the books of the sheriff and shall certify the cost thereof to the
1151 Comptroller. The Comptroller shall issue his warrant on the Treasurer for that amount, deducting the
1152 same from any funds that may be due the sheriff by the Commonwealth.

Deleted:

Deleted: within ten business days after the date when the report should be forwarded

Deleted:

Deleted: from that date

1153 The computer-generated report shall be authenticated by both the chief jailer and the sheriff who
1154 shall certify the accuracy of the report. Either signer found guilty of willfully falsifying the information
1155 contained in such report shall be guilty of a Class 1 misdemeanor.

Deleted:

Deleted: signed

1156 § 53.1-160.1. Department to give notice of Sex Offender and Crimes Against Minors Registry
1157 requirements to certain prisoners.

1158 A. Prior to the release or discharge of any prisoner for whom registration with the Sex Offender
1159 and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1,
1160 the Department shall give notice to the prisoner of his duty to register with the State Police. A person
1161 required to register shall register, submit to be photographed as part of the registration, and provide
1162 information regarding place of employment, if available, to the Department. The Department shall also
1163 obtain from that person all necessary registration information, including fingerprints and photographs of
1164 a type and kind approved by the Department of State Police, inform the person of his duties regarding
1165 reregistration and change of address, and inform the person of his duty to register. The Department shall
1166 forward the registration information to the Department of State Police on the date of the prisoner's
1167 release or discharge.

Deleted: serving a sentence for an offense

Deleted: which

Deleted: within seven days of receipt

1168 B. Whenever a person required to register has failed to comply with the provisions of subsection
1169 A, the Department shall promptly investigate or request the State Police promptly investigate and, if
1170 there is probably cause to believe a violation has occurred, obtain a warrant or assist in obtaining an

1171 indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person was release or
1172 discharged. The Department shall notify the State Police forthwith of such actions taken pursuant to this
1173 section.
1174 **2. That the amendments to §§ 53.1-115.1 and 53.1-121 shall become effective on October 1, 2006.**
1175 **3. That the amendments to §§ 46.2-323, 46.2-324, 46.2-330 and 46.2-345 shall become effective on**
1176 **January 1, 2007.**
1177 **4. That the provisions of this act may result in a net increase in periods of imprisonment or**
1178 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is**
1179 **_____ for periods of imprisonment in state adult correctional facilities and _____ for**
1180 **periods of commitment to the custody of the Department of Juvenile Justice.**
1181 #

Involuntary Civil Commitment of Sexually Violent Predators Bill

SENATE BILL NO. _____ HOUSE BILL NO. _____

A BILL to amend and reenact §§ 19.2-169.3, 19.2-299, 37.2-900, 37.2-903, 37.2-904, 37.2-905, 37.2-906, 37.2-908, 37.2-910, and 37.2-912 of the Code of Virginia, relating to civil commitment of sexually violent predators.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-169.3, 19.2-299, 37.2-900, 37.2-903, 37.2-904, 37.2-905, 37.2-906, 37.2-908, 37.2-910, and 37.2-912 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-169.3. Disposition of the unrestorably incompetent defendant; capital murder charge; referral to Commitment Review Committee.

A. If, at any time after the defendant is ordered to undergo treatment pursuant to subsection A of § 19.2-169.2, the director of the treating facility concludes that the defendant is likely to remain incompetent for the foreseeable future, he shall send a report to the court so stating. The report shall also indicate whether, in the director's opinion, the defendant should be released, committed pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, committed pursuant to Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, or certified pursuant to § 37.2-806 in the event he is found to be unrestorably incompetent. Upon receipt of the report, the court shall make a competency determination according to the procedures specified in subsection E of § 19.2-169.1. If the court finds that the defendant is incompetent and is likely to remain so for the foreseeable future, it shall order that he be (i) released, (ii) committed pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, (iii) reviewed for commitment pursuant to Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, or (iv) certified pursuant to § 37.2-806. If the court finds the defendant incompetent but restorable to competency in the foreseeable future, it may order treatment continued until six months have elapsed from the date of the defendant's initial admission under subsection A of § 19.2-169.2.

Deleted: § 37.2-908

Deleted: § 37.2-905

B. At the end of six months from the date of the defendant's initial admission under subsection A of § 19.2-169.2 if the defendant remains incompetent in the opinion of the director, the director shall so

notify the court and make recommendations concerning disposition of the defendant as described above. The court shall hold a hearing according to the procedures specified in subsection E of § 19.2-169.1 and, if it finds the defendant unrestorably incompetent, shall order one of the dispositions described above. If the court finds the defendant incompetent but restorable to competency, it may order continued treatment under subsection A of § 19.2-169.2 for additional six-month periods, provided a hearing pursuant to subsection E of § 19.2-169.1 is held at the completion of each such period and the defendant continues to be incompetent but restorable to competency in the foreseeable future.

C. Unless an incompetent defendant is charged with capital murder or the charges against an incompetent criminal defendant have been previously dismissed, charges against an unrestorably incompetent defendant shall be dismissed on the date upon which his sentence would have expired had he been convicted and received the maximum sentence for the crime charged, or on the date five years from the date of his arrest for such charges, whichever is sooner.

D. If the court orders an unrestorably incompetent defendant to be reviewed for commitment pursuant to § 37.2-904, it shall order the attorney for the Commonwealth in the jurisdiction wherein the defendant was charged and the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services to provide the Commitment Review Committee established pursuant to § 37.2-902 with any information relevant to the review, including, but not limited to: (i) a copy of the warrant or indictment, (ii) a copy of the defendant's criminal record, (iii) information about the alleged crime, (iv) a copy of the competency report completed pursuant to § 19.2-169.1, and (v) a copy of the report prepared by the director of the defendant's treating facility pursuant to this section. The court shall further order that the defendant be held in the custody of the Department of Mental Health, Mental Retardation and Substance Abuse Services for secure confinement and treatment until the Commitment Review Committee's and Attorney General's review and any subsequent hearing or trial are completed. If the court receives notice that the Attorney General has declined to file a petition for the commitment of an unrestorably incompetent defendant as a sexually violent predator after conducting a review pursuant to § 37.2-905, the court shall order that the defendant be released, committed pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, or certified pursuant to § 37.2-806.

Deleted: § 37.2-905

Deleted: Attorney General

E. In any case when an incompetent defendant is charged with capital murder, notwithstanding any other provision of this section, the charge shall not be dismissed and the court having jurisdiction over the capital murder case may order that the defendant receive continued treatment under subsection A of § 19.2-169.2 for additional six-month periods without limitation, provided that (i) a hearing pursuant to subsection E of § 19.2-169.1 is held at the completion of each such period, (ii) the defendant remains incompetent, (iii) the court finds continued treatment to be medically appropriate, and (iv) the defendant presents a danger to himself or others.

F. The attorney for the Commonwealth may bring charges that have been dismissed against the defendant when he is restored to competency.

§ 19.2-299. Investigations and reports by probation officers in certain cases.

A. Unless waived by the court and the defendant and the attorney for the Commonwealth, when a person is tried in a circuit court (i) upon a charge of assault and battery in violation of § 18.2-57 or 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, or driving while intoxicated in violation of § 18.2-266, and is adjudged guilty of such charge, the court may, or on motion of the defendant shall; or (ii) upon a felony charge not set forth in subdivision (iii) below, the court may when there is a plea agreement between the defendant and the Commonwealth and shall when the defendant pleads guilty without a plea agreement or is found guilty by the court after a plea of not guilty; or (iii) the court shall when a person is charged and adjudged guilty of a felony violation, or conspiracy to commit or attempt to commit a felony violation, of § 18.2-46.2, 18.2-46.3, 18.2-48, 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4:1, 18.2-67.5:1, 18.2-355, 18.2-356, 18.2-357, 18.2-361, 18.2-362, 18.2-366, 18.2-368, 18.2-370, 18.2-370.1, or 18.2-370.2, or any attempt to commit or conspiracy to commit any felony violation of § 18.2-67.5, 18.2-67.5:2, or 18.2-67.5:3, direct a probation officer of such court to thoroughly investigate and report upon the history of the accused, including a report of the accused's criminal record as an adult and available juvenile court records, any information regarding the accused's participation or membership in a criminal street gang as defined in § 18.2-46.1, and all other relevant facts, to fully advise the court so the court may determine the appropriate sentence to be imposed. The

probation officer, after having furnished a copy of this report at least five days prior to sentencing to counsel for the accused and the attorney for the Commonwealth for their permanent use, shall submit his report in advance of the sentencing hearing to the judge in chambers, who shall keep such report confidential. Counsel for the accused may provide the accused with a copy of the presentence report. The probation officer shall be available to testify from this report in open court in the presence of the accused, who shall have been provided with a copy of the presentence report by his counsel or advised of its contents and be given the right to cross-examine the investigating officer as to any matter contained therein and to present any additional facts bearing upon the matter. The report of the investigating officer shall at all times be kept confidential by each recipient, and shall be filed as a part of the record in the case. Any report so filed shall be made available only by court order and shall be sealed upon final order by the court, except that such reports or copies thereof shall be available at any time to any criminal justice agency, as defined in § 9.1-101, of this or any other state or of the United States; to any agency where the accused is referred for treatment by the court or by probation and parole services; and to counsel for any person who has been indicted jointly for the same felony as the person subject to the report. Any report prepared pursuant to the provisions hereof shall without court order be made available to counsel for the person who is the subject of the report if that person is charged with a felony subsequent to the time of the preparation of the report. The presentence report shall be in a form prescribed by the Department of Corrections. In all cases where such report is not ordered, a simplified report shall be prepared on a form prescribed by the Department of Corrections. For the purposes of this subsection, information regarding the accused's participation or membership in a criminal street gang may include the characteristics, specific rivalries, common practices, social customs and behavior, terminology, and types of crimes that are likely to be committed by that criminal street gang.

B. As a part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony, the court probation officer shall advise any victim of such offense in writing that he may submit to the Virginia Parole Board a written request (i) to be given the opportunity to submit to the Board a written statement in advance of any parole hearing describing the impact of the offense upon him and his opinion regarding the defendant's release and (ii)

to receive copies of such other notifications pertaining to the defendant as the Board may provide pursuant to subsection B of § 53.1-155.

C. As part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony drug offense set forth in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, the presentence report shall include any known association of the defendant with illicit drug operations or markets.

D. As a part of any presentence investigation conducted pursuant to subsection A, when the offense for which the defendant was convicted was a felony, not a capital offense, committed on or after January 1, 2000, the defendant shall be required to undergo a substance abuse screening pursuant to § 18.2-251.01.

§ 37.2-900. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Defendant" means any person charged with a sexually violent offense who is deemed to be an unrestorably incompetent defendant pursuant to § 19.2-169.3 and is referred for commitment review pursuant to this chapter.

Deleted: § 37.2-905

"Director" means the Director of the Department of Corrections.

"Mental abnormality" or "personality disorder" means a congenital or acquired condition that affects a person's emotional or volitional capacity and renders the person so likely to commit sexually violent offenses that he constitutes a menace to the health and safety of others.

"Sexually violent offense" means (i) a felony conviction under former § 18-54, former § 18.1-44, § 18.2-61, 18.2-67.1, 18.2-67.2; (ii) a conviction under § 18.2-48 (ii), 18.2-48 (iii), 18.2-63, 18.2-64.1, or 18.2-67.3 ; (iii) a felony conviction under the laws of the Commonwealth for a forcible sexual offense committed prior to July 1, 1981, where the criminal behavior on which the conviction is based is set forth in § 18.2-67.1 or 18.2-67.2, or is set forth in § 18.2-67.3 ; or (iv) a felony conviction for conspiracy to commit or attempt to commit any of the above offenses.

Deleted: where the complaining witness is less than 13 years of age

Deleted: or

Deleted: where the complaining witness is less than 13 years of age

"Sexually violent predator" means any person who (i) has been convicted of a sexually violent offense or has been charged with a sexually violent offense and is unrestorably incompetent to stand trial

133 pursuant to § 19.2-169.3 and (ii) because of a mental abnormality or personality disorder, finds it
134 difficult to control his predatory behavior, which makes him likely to engage in sexually violent acts.

135 § 37.2-903. Treatment plans; database of prisoners convicted of sexually violent offenses;
136 maintained by Department of Corrections; notice of pending release to CRC.

137 A. The Director shall establish and maintain a treatment program for prisoners convicted
138 pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 and committed to the custody of the
139 Department of Corrections. This program shall include a clinical assessment of all such prisoners upon
140 receipt into the custody of the Department of Corrections and the development of appropriate treatment
141 plans, if indicated. This program shall be operated under the direction of a licensed psychiatrist or
142 licensed clinical psychologist who is experienced in the diagnosis and treatment of mental abnormalities
143 and disorders associated with criminal sexual offenders.

144 B. The Director shall establish and maintain a database of prisoners in his custody who are (i)
145 incarcerated for sexually violent offenses or (ii) serving or will serve concurrent or consecutive time for
146 other offenses in addition to time for a sexually violent offense. The database shall include the following
147 information regarding each prisoner: (a) the prisoner's criminal record and (b) the prisoner's sentences
148 and scheduled date of release. A prisoner who is serving or will serve concurrent or consecutive time for
149 other offenses in addition to his time for a sexually violent offense, shall remain in the database until
150 such time as he is released from the custody or supervision of the Department of Corrections or Virginia
151 Parole Board for all of his charges. Prior to the initial assessment of a prisoner under subsection C, the
152 Director shall order a national criminal history records check to be conducted on the prisoner.

153 C. Each month, the Director shall review the database and identify all such prisoners who are
154 scheduled for release from prison within 10 months from the date of such review who receive a score of
155 four or more on the Static-99 or a like score on a comparable, scientifically validated instrument
156 designated by the Commissioner. If the Director and the Commissioner agree that no specific
157 scientifically validated instrument exists to measure the risk assessment of a prisoner, the prisoner may
158 instead be evaluated by a licensed psychiatrist or licensed clinical psychologist for an initial
159 determination of whether or not the prisoner may meet the definition of a sexually violent predator.

Deleted:

Deleted: Rapid Risk Assessment for Sexual Offender Recidivism

Upon the identification of such prisoners, the Director shall forward their names, their scheduled dates of release, and copies of their files to the CRC for assessment.

§ 37.2-904. CRC assessment of prisoners or incompetent defendants eligible for commitment as sexually violent predators; mental health examination; recommendation.

A. Within 90 days of receiving notice from the Director pursuant to § 37.2-903 regarding a prisoner who is in the database, or from a court referring an incompetent defendant pursuant to §19.2-169.3, the CRC shall (i) complete its assessment of the prisoner or defendant for possible commitment pursuant to subsection B and (ii) forward its written recommendation regarding the prisoner to the Attorney General pursuant to subsection C.

B. CRC assessments of eligible prisoners or incompetent defendants shall include a mental health examination, including a personal interview, of the prisoner or incompetent defendant by a licensed psychiatrist or a licensed clinical psychologist who is designated by the Commissioner, skilled in the diagnosis and treatment of mental abnormalities and disorders associated with sex offenders, and not a member of the CRC. If the prisoner's or defendant's name was forwarded to the CRC based upon an evaluation by a licensed psychiatrist or licensed clinical psychologist, a different licensed psychiatrist or licensed clinical psychologist shall perform the examination for the CRC. The licensed psychiatrist or licensed clinical psychologist shall determine whether the prisoner or incompetent defendant is a sexually violent predator, as defined in § 37.2-900, and forward the results of this evaluation and any supporting documents to the CRC for its review. The CRC assessment shall also include consideration of the prisoner's or incompetent defendant's score on the Static-99 or a comparable, scientifically validated instrument designated by the Commissioner and a review of the prisoner's or incompetent defendant's (i) institutional history and treatment record, if any; (ii) his criminal background; and (iii) any other factor that is relevant to the determination of whether he is a sexually violent predator. Notwithstanding § 19.2-299.1 or any other provision of law, the CRC is authorized to possess, copy, and use presentence reports, postsentence reports, and victim impact statements for all lawful purposes.

C. Following the examination and review conducted pursuant to subsection B, the CRC shall recommend that the prisoner or incompetent defendant (i) be committed as a sexually violent predator

Deleted: violent

Deleted:

Deleted: Rapid Risk Assessment for Sexual Offender Recidivism

Deleted: (i)

Deleted: the prisoner's

Deleted: the prisoner

Deleted: of a prisoner

pursuant to this chapter; (ii) not be committed, but be placed in a conditional release program as a less restrictive alternative; or (iii) not be committed because he does not meet the definition of a sexually violent predator. To assist the Attorney General in his review, the Department of Corrections, the CRC, and the psychiatrist or psychologist who conducts the mental health examination pursuant to this section shall provide the Attorney General with all evaluation reports, prisoner records, criminal records, medical files, and any other documentation relevant to determining whether a prisoner or incompetent defendant is a sexually violent predator.

D. Pursuant to clause (ii) of subsection C, the CRC shall recommend that a prisoner or incompetent defendant enter a conditional release program if it finds that (i) he does not need inpatient treatment, but needs outpatient treatment and monitoring to prevent his condition from deteriorating to a degree that he would need inpatient treatment; (ii) appropriate outpatient supervision and treatment are reasonably available; (iii) there is significant reason to believe that, if conditionally released, he would comply with the conditions specified; and (iv) conditional release will not present an undue risk to public safety.

Deleted: the prisoner

Deleted: the prisoner

E. Notwithstanding any other provision of law, all state and local courts, clerks, departments, agencies, boards, and commissions shall provide to the CRC all requested records, documents, notes, recordings, or other information of any kind, including presentence or postsentence reports, victim impact statements, and child abuse registry records, within 20 days of receiving such request.

F. Notwithstanding any other provision of law, any mental health professional employed or appointed pursuant to subsection B or § 37.2-907 shall be permitted to copy and possess any presentence or postsentence reports and victim impact statements for use in examinations, creating reports, and testifying in any proceedings pursuant to this article. However, at the conclusion of the examiner's testimony or service in such proceedings, the examiner shall return all presentence reports, postsentence reports and victim impact statements to the Office of the Attorney General.

G. Any mental health professional appointed or employed pursuant to subsection B or § 37.2-907 shall be permitted to testify at the probable cause hearing and at the trial as to his diagnosis, his opinion as to whether the prisoner or incompetent defendant meets the definition of a sexually violent predator,

his recommendation as to treatment and his reasoning therefor. Such opinion shall not be dispositive of whether the person is a sexually violent predator.

§ 37.2-905. Review of prisoners convicted of a sexually violent offense; review of unrestorably incompetent defendants charged with sexually violent offenses; petition for commitment; notice to Department of Corrections or referring court regarding disposition of review.

A. Upon receipt of a recommendation by the CRC regarding an eligible prisoner or an unrestorably incompetent defendant for review pursuant to § 19.2-169.3, the Attorney General shall have 90 days to conduct a review of the prisoner or defendant and (i) file a petition for the civil commitment of the prisoner or defendant as a sexually violent predator and stating sufficient facts to support such allegation or (ii) notify the Director and Commissioner, in the case of a prisoner, or the referring court and the Commissioner, in the case of an unrestorably incompetent defendant, that he will not file a petition for commitment. Petitions for commitment shall be filed in the circuit court in which the prisoner was last convicted of a sexually violent offense or in which the defendant was deemed unrestorably incompetent and referred for commitment review pursuant to § 19.2-169.3.

Deleted: upon receipt of a court order referring

B. In determining whether to file a petition to civilly commit a prisoner under this chapter, the Attorney General shall review (i) the CRC recommendation and its reasoning; (ii) the results of the mental health examination conducted pursuant to § 37.2-904; (iii) the prisoner's institutional history and treatment record, if any; (iv) the prisoner's criminal offense history; and (v) any other factor relevant to the determination of whether the prisoner should be civilly committed. Although the Attorney General shall consider the CRC recommendation as part of the review, the CRC recommendation is not binding upon the Attorney General.

C. In determining whether to file a petition to civilly commit a defendant under this chapter, the Attorney General shall review (i) the CRC recommendation and its reasoning, (ii) the defendant's warrant or indictment, (iii) the competency report completed pursuant to § 19.2-169.1, (iv) the report and recommendations prepared by the director of the defendant's treating facility pursuant to § 19.2-169.3, (v) the mental health evaluation completed pursuant to § 37.2-904, (vi) the defendant's criminal

Deleted: (ii)

Deleted: (iii)

Deleted: (iv)

offense history, (vii) information about the alleged crime, and (viii) any other factor relevant to the determination of whether the defendant should be civilly committed.

D. Notwithstanding § 19.2-299.1 or any other provision of law, the Attorney General is authorized to possess, copy, and use presentence reports, postsentence reports, and victim impact statements for all lawful purposes.

§ 37.2-906. Probable cause hearing.

A. Upon the filing of a petition alleging that a person is a sexually violent predator, the circuit court shall (i) forthwith order that until a final order is entered in the proceeding, in the case of a prisoner, he remain in the secure custody of the Department of Corrections or, in the case of a defendant, he remain in the secure custody of the Department and (ii) schedule a hearing within 60 days to determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. A continuance extending the case beyond the 60 days may be granted to either the Attorney General or the person who is the subject of the petition only upon good cause shown. A copy of the petition shall be mailed by the clerk to the attorney appointed or retained for the person named in the petition and, in those cases in which the person named in the petition is a prisoner, to the warden or superintendent of the correctional facility in which the person is then confined. The warden or superintendent shall cause the petition to be delivered to the person and shall certify the delivery to the clerk. In addition, a written explanation of the sexually violent predator involuntary commitment process and the statutory protections associated with the process shall be given to the person at the time the petition is delivered.

B. Prior to any hearing under this section, the judge shall ascertain if the person whose commitment is sought is represented by counsel and, if he is not represented by counsel, the judge shall appoint an attorney to represent him. However, if the person requests an opportunity to employ counsel, the court shall give him a reasonable opportunity to employ counsel at his own expense.

C. At the probable cause hearing, the judge shall (i) verify the person's identity and (ii) determine whether probable cause exists to believe that the person is a sexually violent predator. In the case of a

Deleted: (v)

Deleted: (vi)

Deleted: , and (vii) the mental health evaluation performed pursuant to subsection E

Deleted: E. Whenever a court refers an incompetent defendant to the Attorney General for review, the court shall also appoint a licensed psychiatrist or licensed clinical psychologist from the list maintained by the Commissioner pursuant to subsection B of § 37.2-904 to conduct a mental health evaluation, including a personal interview, of the incompetent defendant. The licensed psychiatrist or licensed clinical psychologist shall determine whether the incompetent defendant is a sexually violent predator as defined in § 37.2-900 and shall forward the results of this evaluation and any supporting documents to the Attorney General within 45 days of his appointment

prisoner in the custody of the Departme nt of Corrections, if the judge finds that there is not probable cause to believe that the person is a sexually violent predator, the judge shall dismiss the petition, and the person shall remain in the custody of the Department of Corrections until his scheduled date of release from prison. In the case of a defendant, if the judge finds that there is not probable cause to believe the defendant is a sexually violent predator, the judge shall dismiss the petition and order that the defendant be discharged, involuntarily admitted pursuant to §§ 37.2-814 through 37.2-819, or certified for admission pursuant to § 37.2-806.

§ 37.2-908. Trial; right to trial by jury; standard of proof; discovery.

A. Within 90 days after the completion of the probable cause hearing held pursuant to § 37.2-906, the court shall conduct a trial to determine whether the person who is the subject of the petition is a sexually violent predator. A continuance extending the case beyond the 90 days may be granted to either the Attorney General or the person who is the subject of the petition only upon good cause shown.

B. The Attorney General or the person who is the subject of the petition shall have the right to a trial by jury. Seven persons from a panel of 13 shall constitute a jury in such cases. If a jury determines a person to be a sexually violent predator, a unanimous verdict shall be required. If no demand is made by either party for a trial by jury, the trial shall be before the court.

C. The court or jury shall determine whether, by clear and convincing evidence, the person who is the subject of the petition is a sexually violent predator. If the court or jury does not find clear and convincing evidence that the person is a sexually violent predator, the court shall, in the case of a prisoner, direct that he be returned to the custody of the Department of Corrections. The Department of Corrections shall immediately release him if his scheduled release date has passed, or hold him until his scheduled release date. In the case of a defendant, if the court or jury does not find by clear and convincing evidence that the defendant is a sexually violent predator, the court shall order that the defendant be discharged, involuntarily admitted pursuant to §§ 37.2-814 through 37.2-819, or certified for admission pursuant to § 37.2-806.

If the court or jury finds the person to be a sexually violent predator, the court shall then determine whether the person shall be fully committed or placed on conditional release. If the court

finds, in its determination of treatment needs, that alternatives to involuntary secure inpatient treatment have been investigated and deemed unsuitable and there is no less restrictive alternative to involuntary secure inpatient treatment, the judge shall by written order and specific findings so certify and order that the person be committed to the custody of the Department for appropriate inpatient treatment in a secure facility designated by the Commissioner. Persons committed pursuant to this chapter are subject to the provisions of § 19.2-174.1 and Chapter 11 (§ 37.2-1100 et seq.).

If the court determines not to order full commitment, the court shall continue the case for not less than 30 days and shall require the Commissioner to submit a report to the court, the Attorney General, and counsel for the person suggesting possible alternatives to full commitment. The court shall then reconvene the hearing and receive testimony on the possible alternatives to full commitment. At the conclusion of the hearing, if the court finds, in determining the treatment needs of a person found to be a sexually violent predator, that less restrictive alternatives to involuntary secure inpatient treatment have been investigated and are deemed suitable, and if the judge finds specifically that the person meets the criteria for conditional release set forth in § 37.2-912, the judge shall order outpatient treatment, day treatment in a hospital, night treatment in a hospital, outpatient involuntary treatment with anti-psychotic medication pursuant to Chapter 11 (§ 37.2-1100 et seq.), or such other appropriate course of treatment as may be necessary to meet the needs of the individual. The judge shall also order the person to be subject to electronic monitoring of his location by means of a GPS (Global Positioning System) tracking device, or other similar device, at all times while he is on conditional release.

The Department shall recommend a specific course of treatment and programs for provision of such treatment and shall monitor the person's compliance with such treatment as may be ordered by the court under this section, unless the person is on parole or probation, in which case the parole or probation officer shall monitor the person's compliance. The person's failure to comply with involuntary outpatient treatment as ordered by the court may be admitted into evidence in subsequent hearings held pursuant to the provisions of this chapter. Upon failure of the person to adhere to the terms of the involuntary outpatient treatment, the judge may revoke the same and, upon notice to the person

undergoing involuntary outpatient treatment and after a hearing, order the person committed as a sexually violent predator for inpatient treatment at a secure facility designated by the Commissioner.

In the event of a mistrial, the court shall direct that the prisoner remain in the secure custody of the Department of Corrections or the defendant remain in the secure custody of the Department until another trial is conducted. Any subsequent trial following a mistrial shall be held within 90 days of the previous trial.

All proceedings conducted hereunder are civil proceedings. However, no discovery other than that provided in § 37.2-901 shall be allowed without prior leave of the court, which may deny or limit discovery in any such proceeding. No less than 30 days prior to the trial of the matter, any expert employed or appointed pursuant to § 37.2-907 shall prepare a written report detailing his findings and conclusions and shall submit the report, along with all supporting data, to the court, the Attorney General, and counsel for the person. Under no circumstances shall the prisoner or defendant be entitled to receive a copy of the victim impact statement or the presentence investigation report. However, counsel for the prisoner or defendant and any expert employed or appointed pursuant to § 37.2-907 may review the victim impact statement or presentence investigation report outside the presence of the prisoner or defendant. The Attorney General shall file with the clerk copies of any relevant presentence reports, postsentence reports, and victim impact statements in his possession, withholding identifying information about victims. Such filings shall be held by the court in confidence and reviewable only by the court, the Attorney General, and the counsel for the prisoner or defendant pursuant to this section.

§ 37.2-910. Review of continuation of secure inpatient treatment hearing; procedure and reports; disposition.

A. The committing court shall conduct a hearing 12 months after the date of commitment to assess each committed person's need for secure inpatient treatment. A hearing for assessment shall be conducted at yearly intervals for five years and at biennial intervals thereafter. The court shall schedule the matter for hearing as soon as possible after it becomes due, giving the matter priority over all pending matters before the court.

B. Prior to the hearing, the Commissioner shall provide to the court a report reevaluating the committed person's condition and recommending treatment. The report shall be prepared by a licensed psychiatrist or a licensed clinical psychologist skilled in the diagnosis and treatment of mental abnormalities and personality disorders associated with violent sex offenders and qualified by training and experience to perform forensic evaluations. If the Commissioner's report recommends discharge or the committed person requests discharge, the committed person's condition and need for secure inpatient treatment shall be evaluated by a second person with such credentials who is not currently treating the committed person. Any professional person who conducts a second evaluation of a committed person shall submit a report of his findings to the court and the Commissioner. A copy of any report submitted pursuant to this subsection shall be sent to the Attorney General.

C. The burden of proof at the hearing shall be upon the Commonwealth to prove to the court by clear and convincing evidence that the committed person remains a sexually violent predator.

D. If the court finds, based upon the report and other evidence provided at the hearing, that the committed person's condition has so changed that he is no longer a sexually violent predator, the court shall (i) release the committed person from secure inpatient treatment if he does not need it and does not meet the criteria for conditional release set forth in § 37.2-912, provided the court has approved a discharge plan prepared by the Department or (ii) place the committed person on conditional release if he meets the criteria for conditional release and the court has approved a conditional release plan prepared by the Department. If the judge places the person on conditional release, he shall order the person to be subject to electronic monitoring of his location by means of a GPS (Global Positioning System) tracking device, or other similar device, at all times while he is on conditional release. However, if the court finds that the committed person remains a sexually violent predator, it shall order that he remain in the custody of the Commissioner for secure inpatient treatment.

§ 37.2-912. Conditional release; criteria; conditions; reports.

A. At any time the court considers the committed person's need for secure inpatient treatment pursuant to this chapter, it shall place the committed person on conditional release if it finds that (i) based on consideration of the factors that the court must consider in its commitment decision, he does

not need secure inpatient treatment but needs outpatient treatment or monitoring to prevent his condition from deteriorating to a degree that he would need secure inpatient treatment; (ii) appropriate outpatient supervision and treatment are reasonably available; (iii) there is significant reason to believe that the committed person, if conditionally released, would comply with the conditions specified; and (iv) conditional release will not present an undue risk to public safety. The court shall subject a conditionally released committed person to the orders and conditions it deems will best meet the committed person's need for treatment and supervision and best serve the interests of justice and society. In all cases of conditional release, the court shall order the person to be subject to electronic monitoring of his location by means of a GPS (Global Positioning System) tracking device, or other similar device, at all times while he is on conditional release.

The Department or, if the person is on parole or probation, the person's parole or probation officer shall implement the court's conditional release orders and shall submit written reports to the court on the committed person's progress and adjustment in the community no less frequently than every six months. The Department or, if the person is on parole or probation, the person's parole or probation officer shall send a copy of each written report submitted to the court and copies of all correspondence with the court pursuant to this section to the Attorney General and the Commissioner.

B. Notwithstanding any other provision of law, when any person is placed on conditional release under this article, the Department of Corrections shall provide to the Department of Mental Health, Mental Retardation and Substance Abuse Services, or if the person is on parole or probation, the person's parole or probation officer, all relevant criminal history information, medical and mental health records, presentence and postsentence reports and victim impact statements, and the mental health evaluations performed pursuant to subsection B of § 37.2-904 and § 37.2-907, for use in the management and treatment of the person placed on conditional release. Any information or document provided pursuant to this subsection shall not be subject to disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

2. That the provisions of § 37.2-900 shall become effective on January 1, 2007.

#

Emergency Legislation

SENATE BILL NO. _____ HOUSE BILL NO. _____

A BILL to authorize the Department of Mental Health, Mental Retardation and Substance Abuse Services to contract for certain services.

Be it enacted by the General Assembly of Virginia:

1. § 1. That the Department of Mental Health, Mental Retardation and Substance Abuse Services is authorized to contract with the Department of Corrections to provide services for the monitoring and supervision of persons committed as sexually violent predators pursuant to Chapter 9 (§ 37.2-900 et seq.) of Title 37.2 who are on conditional release.

2. That an emergency exists and this act is in force from its passage.

#

Office of Sexually Violent Predator Services Bill

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend the Code of Virginia by adding a section numbered 37.2-900.1, relating to the office
2 of sexually violent predator services.

3 **Be it enacted by the General Assembly of Virginia:**
4 **1. That the Code of Virginia is amended by adding a section numbered 37.2-900.1 as follows:**
5 § 37.2-900.1. Office of Sexually Violent Predator Services.
6 There is hereby established within the Department of Mental Health, Mental Retardation and
7 Substance Abuse Services, the Office of Sexually Violent Predator Services for the purpose of
8 administering the duties of the Department under this chapter.
9 #

ATTACHMENT 7:

COSTS FOR LEGISLATIVE PROPOSALS

Sex Offender Registry Costs

Based on information provided by the Virginia State Police

Website **FY 07 - $1,117,288** **2 GF FTEs**
FY 08 - $338,677 **2 GF FTEs**

- no major upgrades or enhancements since 1998 when developed
- current replacement project is being funded by a federal grant which includes:
  1. conversion of MAPPER system to Oracle;
  2. replacement of sex offender registry application;
  3. replacement of sex offender web interface; and,
  4. replacement of sex offender VCIN files.
- Scheduled for implementation in December 2005.
- Need funds for replacement of hardware and software and personnel to update website technology/information on a routine basis.

IT Personnel $202,694

1 Systems Analyst	$105,544 (salary/benefits per year)
1 Sr. Programmer/Analyst	$97,150 (salary/benefits per year)

Hardware Needs $366,194

Server for National Sex Offender Registry Interface	$80,000
Disk Storage SOR Image Repository	$70,000
Application Server for SOR Internet Access	$80,000
Web Server for SOR Internet Access	$60,000
Server for Mapping	$60,000
Image Quality Scanners	$16,194

Software Needs $548,400

Oracle Spatial License (Development/Production)	$29,200
Application Server License	$73,200
Development Tools for Staff	$24,000
Software License Fees (Messenger Application)	$125,000
Applications Development	$297,000

- mapping application
- web page enhancements
- system interfaces/web services

Total Website Development/Maintenance FY 07/08

	FY 07	**FY 08**
Personnel	$202,694	$208,775
Hardware	$366,194	$75,600
Software	$548,400	$54,302
Total	**$1,117,288**	**$338,677**

Compliance with Registry Requirements **FY 07 - $8,588,043 76 GF FTEs**
FY 08 - $5,550,088 76 GF FTEs

Central Office Support Staff

- State Police have not received additional support positions to monitor sex offender compliance since the registry began; approximately, 1,100 persons are added to the registry annually. Violent offenders must re-register every 90 days and non-violent offenders, annually.

- The State Police need a total of 5 support positions to mail out and monitor the re-registration information, as well as, confer investigative needs to the division offices for non-compliant offenders:

	FY 07	FY 08
1 Office Manager	$50,442	$51,527
4 Program Support Technicians	$169,896	$176,894
TOTAL	$220,338	$228,421

Compliance Checks

- The State Police are currently required to monitor approximately 6,500 sex offenders living in communities in Virginia. The Sex Offender Task Force has voted to mandate semi-annual physical verifications of offenders and spot checks to ensure Registry compliance. The State Police have requested a ratio of 1:100 troopers to monitored offenders and accomplish the physical checks.

- The State Police have identified the following resources as necessary to accomplish the monitoring of sex offenders:

	FY 07	FY 08
65 State Troopers	$7,408,983	$4,673,760
5 Sergeants	$790,240	$530,850
1 First Sergeants	$168,482	$117, 057
TOTAL	$8,367,705	$5,321,667

Department of Corrections Costs

Based on information provided by the Virginia Department of Corrections

SVP Evaluators	**FY 07 - $166,138**	**2 FTEs**
	FY 08 - $166,138	**2 FTEs**

Central Office Screening Staff

- DOC was not provided central office staff to oversee the application of the RRASOR to the SVP eligible population when the Civil Commitment legislation was enacted;

- Proposed changes to the law will result in more offenders being screened and the application of the more complex Static-99 instrument; and,

- DOC needs two full-time psychologists (Masters level training) to apply the Static- 99 instrument to the SVP eligible DOC population. The two positions will need to be certified by the Virginia Board of Psychology as Sex Offender Treatment Providers.

GPS Tracking	**FY 07 - $4,251,325**	**13 FTEs**
	FY 08 - $7,754,441	**26 FTEs**

GPS Tracking and Probation Staff

- DOC currently has nine sex offender containment models in the state, none of which routinely use GPS tracking;

- It is estimated that approximately 460 SVP eligible offenders will not be committed as SVP, but will be released on probation/parole;

- DOC will apply the containment model (probation/treatment/polygraph), with GPS tracking, for each of the 460 offenders annually; and,

- DOC needs 13 additional probation officers in FY 07 and 26 in FY 08 to handle the new population under the containment model for sex offenders. *(See Attachment 1)*.

Office of the Attorney General

Based on information provided by the Virginia Criminal Sentencing Commission

Legal Staff	**FY 07 - $375,076**	**5 FTEs**
	FY 08 - $375,076	**5 FTEs**

SVP Attorneys and Support Staff

- OAG was not provided additional legal staff when the SVP law was enacted.

- As of November, 28th the OAG has:
  (1) Reviewed 75 cases referred by the Clinical Review Committee for SVP Commitment;
  (2) Received commitment of 22 SVPs; and,
  (3) Has 21 cases still pending.

- Based on prevailing practices and Task Force recommended changes to the SVP laws, there will be 289 cases reviewed by the OAG during FY 07 and FY 08; *(Attachment 2)*.

- The OAG is in need of 4 attorneys and 1 paralegal to handle both the new anticipated cases and the statutorily required annual SVP review hearings mandated by the *Code*.

- Anticipated annual salaries for each type of positions:

Attorneys	$60,000 + 19.17% benefits + health care	$79,782
Paralegal	$40,000 + 19.17% benefits + health care*	$55,948.

*Family health care coverage is incorporated at $8,280 for each position.

Department of Mental Health, Mental Retardation and Substance Abuse Services

SVP Evaluations **FY 07 - $433,500**
FY 08 - $433,500

SVP Evaluator Testimony **FY 07 - $72,750**
FY 08 - $72,750

- It is forecast, with prevailing commitment practices and proposed Task Force changes, that 289 offenders will be referred to the Clinical Review Committee (CRC) for evaluation (See Attachment 2);
- Each evaluation cost approximately $3,000 and evaluators are paid $750 per day for court testimony; when the original SVP legislation was enacted, funds were not provided to Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) for either the evaluations or court testimony;
- As of 12/12/05 the OAG has received 76 cases from the CRC for possible SVP filings since the SVP legislation was enacted, of this:
  - 51 (67%) have had petitions filed, and,
  - of the 51 with petitions filed, 41 (80%) have had an independent evaluation; and,
- Staff from the DMHMRSAS, Department of Corrections and Crime Commission estimate that of the 289 offenders referred for evaluations to the CRC, 194 will result in a petition being filed by the OAG; [1] and 155 will require an independent evaluation.

Office of SVP Services **FY 07 - $219,958** **2 FTEs**
FY 08 - $296,824 **3 FTEs**

- The DMHMRSAS did not receive designated central office staff to oversee the SVP Program when the legislation was enacted;
- Proposed Task Force changes will result in more conditionally released SVP cases and the need for more information for annual court review hearings of SVPs;
- The DMHMRSAS needs a full-time director of SVP services (position is currently part-time only) and 3 office support specialists to provide training, documentation for court and tracking of conditionally released SVPs;
- The DMHMRSAS would like to separate the funding and personnel for all SVP services from those currently being provided to other Department populations to ensure separate focus and independent funding sources;
- A small office component allocation of $15,000 is provided annually for computer support.

---

[1] As of 12/12/05, of the 76 cases that have gone to the OAG, petitions were file in (51 cases) 67% where the evaluator's presence is required at trial.

- Anticipated FY 07 positions and salaries:[2]

FY 07	Director $75,000 + benefits $24,750 = $99,750
	Office Support $33,864 + benefits $11,175 = $45,039
	Data Specialist $45,240 + $14,929 = $60,169
FY 08	Director $75,000 + benefits $24,750 = $99,750
	Office Support $33,864 + benefits $11,175 = $45,039
	Data Specialist $45,240 + benefits $14,929 = $60,169
	SVP Specialist $57,794 + benefits $19,072 = $76,866

[2] Current DMHMRSAS funds of $37,500 for 2 part-time positions being made full-time have been subtracted from the increase.

Woodrum Impact: Department of Corrections Costs

Based on information provided by the Virginia Criminal Sentencing Commission

<u>Proposed Fiscal Impact</u>

State Adult Correctional Facilities
FY 07 - $2,218,729
+93 Beds

Local Adult Correctional Facilities
FY 07 – (-$49,249state/-$40,912 local)
- 5 beds

The Task Forced voted to have a mandatory minimum 25 years to life sentence for first time convictions of the following offenses against a child under the age of 13 years: rape, forcible sodomy and object sexual penetration.

Additionally, for second convictions of these offenses, there is a mandatory life sentence.

The *net* Woodrum Amendment for the state share of incarceration is $2,169,480 *(See Attachment 3)*.

Criminal Fund

Independent SVP Evaluations	**FY 07 - $385,000**
	FY 08 - $390,000
SVP Evaluator Testimony	**FY 07 - $57,750**
	FY 08 - $58,500

- Staff from the DMHMRSAS, Department of Corrections and Crime Commission estimate that of the 289 offenders referred for evaluations to the CRC, 194 will result in a petition being filed by the OAG; and 155 will require an independent evaluation and court testimony. [3]
- The Criminal Fund is authorized to pay up to $5,000 for an independent SVP evaluation and $750 per day for court testimony.
- The Criminal Fund was not given an appropriation to pay for SVP services when the bill was enacted in 2003; the fund will need resources to adequately pay for independent SVP services.

[3] Independent evaluations have been ordered in 41 of 51 (80%) cases where a petition was filed as of 12/12/05.

Total Costs

	FY 2007	FY 2007	FY 2008	FY 2008
	Funds	FTEs	Funds	FTEs
State Police	$9,705,331	78	$5,888,765	78
Department of Corrections	$4,417,463	15	$7,920,579	28
Attorney General Office's Office	$375,076	5	$375,076	5
DMHMRSAS	$726,208	2	$803,074	3
Criminal Fund	$442,750	n/a	$448,500	n/a
Woodrum Impact	$2,169,480	n/a	n/a	n/a
TOTAL	$17,836,308	100	$15,435,994	114

DOC Supervision/GPS Costs
Attachment 1

Cost Estimates

	Year 1
Personal Services for 13 PO's	$736,895
Overtime Costs of 13 PO's	$56,071
Maintenance Polygraphs for 308 sex offenders	$246,400
Non-Personal Services	$409,409
Assessments for 308 offenders	$184,800
Food/Lodging for 308 sex offenders	$154,000
Electronic Monitoring Costs for 460 offenders	$1,679,000
Electronic Monitoring sanction costs for offenders who fail to register	$784,750
Total Estimated Cost	**$4,251,325**

	Year 2
Personal Services for 26 PO's	$1,473,789
Overtime Costs of 26 PO's	$112,143
Maintenance Polygraphs for an additional 616 offenders	$492,800
Non-Personal Services	$409,409
Assessments for a new pool of 308 offenders	$184,800
Food/Lodging for a new pool of 308 offenders	$154,000
Electronic Monitoring Costs for 920 offenders	$3,358,000
Electronic Monitoring sanction costs for offenders who fail to register	$1,569,500
	$7,754,441

TOTAL ESTIMATED COST FOR THE BIENNIUM	$12,005,766

*** Total does not include treatment costs (approximately $4,900 per offender)

Notes:

1) An annual population of 460 sex offenders who are not civilly committed is assumed. Of this population, it is estimated that one third (152) will be supervised by one of the Division's current sex offender containment models while the other two thirds (308) will require supervision from this model.

2) Year two assumes population and staff are cumulative (offender population flow doubles from year one to year two with a corresponding need for staff).

3) Electronic monitoring costs assume annual population of the 460 offenders who are not civilly committed. Costs to impose sanctions for offenders who fail to register are also inlcuded (262 **annually**).

4) Overtime cost assumes 100 hours overtime total per month per ten PO's.

5) One-Time non-personal service cost assumes vehicles, cell phones, furniture, computers, printers, and fax machines.

6) Assessment cost assumes $600 per assessment per offender (one per offender).

7) Maintenance polygraph cost for assumes $200 per polygraph (four per year per offender).

8) Food/lodging costs assume $500 per offender.

9) Electronic Monitoring costs assume $10 per day for each offender for 365 days.

Estimation of Impact of Changes to Civil Commitment Statutes
Attachment 2

OCTOBER 18, 2005

NOTES

STEP 1 Identify offenders released from DOC for the four predicate crimes in current Code (April 2003-April 2005)

839	Files of offenders released for one of the four predicate crimes
80	Files of offenders released for aggravated sexual battery of a victim 13 years of age or older (ASB-Victim 13+)
7	Duplicate files
1	Header row on original Excel file
927	TOTAL - original figures Department of Corrections (DOC) gave to Crime Commission (VSCC) in May 2005

STEP 2 Identify released sex offenders who scored 4 or more on RRASOR (April 2003-April 2005)

56	Offenders scored 4 or more on RRASOR (based on DOC's original scoring)
13	Additional offenders scored 4 or more on RRASOR (based on Rex and Carla's rescoring)
69	TOTAL offenders who scored 4 or more on RRASOR from April 2003-April 2005 for four predicate crimes currently in Code

STEP 3 Add ASB-Victim 13+, carnal knowledge, kidnapping minor with intent and attempts to list of predicate crimes (April 2003-April 2005)

5 Offenders released for ASB-Victim 13+ who scored 4 or more on RRASOR (based on DOC's original scoring) from April 2003-April 2005

This number is based on an email from Wendy Brown at DOC (July 12) which gives the following information:

RRASOR score	ASB-Victim 13+ Cases
0	6
1	41
2	22
3	6
4	4
5	1
	80

5 Offenders released for carnal knowledge who would have scored 4 or more on RRASOR (estimated) from April 2003-April 2005

This estimate was derived using the percent of ASB-Victim 13+ offenders released from April 2003-April 2005 who scored 4 or more on RRASOR (5 out of 80, or 6.25%).
DOC provided data on the number of offenders convicted of carnal knowledge who will be released in the coming 18 months (July 2006-December 2007); the figure of 58 male releases was divided by .75 to get an estimate of the number of releases for the two-year period of April 2003-April 2005 (this was the information most readily available at the time).

58 divided by 0.75 = 77.3

77 multiplied by 0.0625 = 4.8

3 Offenders released for attempted rape, forcible sodomy, & object penetration who would have scored 4 or more on RRASOR (estimated) from April 2003-April 2005

This estimate was derived using the percent of ASB-Victim 13+ offenders released from April 2003-April 2005 who scored 4 or more on RRASOR (5 out of 80, or 6.25%).
DOC provided data on the number of offenders convicted of attempted crimes who will be released in the coming 18 months (July 2006-December 2007); the figure of 31 male releases was divided by .75 to get an estimate of the number of releases for the two-year period of April 2003-April 2005 (this was the information most readily available at the time).

31 divided by 0.75 = 41.3

41 multiplied by 0.0625 = 2.6

STEP 4 Combine STEP 2 and STEP 3

Offenders Scoring 4 or more on RRASOR

69	Current predicate offenses
5	ASB-Victim 13+ (estimate)
5	Carnal Knowledge (estimate)
1	kidnapping w/ intent (based on current DOC releases)
3	Attempts (estimate)
83	TOTAL offenders who would have scored 4 or more on RRASOR with proposed predicate offenses added from April 2003-April 2005

Offenders Released

839	Current predicate offenses
80	ASB-Victim 13+ (actual)
77	Carnal Knowledge (estimate-see STEP 3)
1	Kidnapping w/ intent
41	Attempts (estimate-see STEP 3)
1038	TOTAL offenders released for current and proposed predicate offenses from April 2003-April 2005

STEP 5 Estimate rate at which offenders would score 4 or more on RRASOR for current and proposed predicate offenses

83 divided by 1038 = 0.080

It is estimated that 8% of offenders released for the current and proposed predicate offenses will score 4 or more on RRASOR

STEP 6 Identify offenders released for current predicate offenses who scored less than 4 on the RRASOR but score 4 or more on STATIC99

Rex and Carla found that 19 out of 92 offenders released for one of the current predicate offenses who scored a 0 or 1 on RRASOR scored a 4 or more on STATIC99.

19 divided by 92 = 0.207

Rex and Carla found that 139 out of 219 offenders released for one of the current predicate offenses who scored a 2 or 3 on RRASOR scored a 4 or more on STATIC99.

139 divided by 219 = 0.635

STEP 7 Identify impact of replacing RRASOR with STATIC99 (current predicate offenses only)

69	offenders who scored 4 or more on RRASOR from April 2003-April 2005 for four predicate crimes currently in Code (see STEP 2)
19	Offenders who scored 0 or 1 on RRASOR but 4 or more on STATIC99 (see STEP 6)
139	Offenders who scored 2 or 3 on RRASOR but 4 or more on STATIC99 (see STEP 6)
227	TOTAL offenders who scored 4 or more on STATIC 99 from April 2003-April 2005

227	is	3.29	times the original figure of	69

STEP 8 Identify impact of replacing RRASOR with STATIC99 (proposed predicate offenses)

26 Offenders released on ASB-Victim 13+ (April 2003-April 2005) scored less than a 4 on RRASOR but 4 or more on STATIC99 (based on Rex and Carla's scoring of these cases)

11 Offenders released for carnal knowledge who would have scored less than 4 on RRASOR but 4 or more on STATIC99 (estimated) for April 2003-April 2005

This estimate was derived using the 3.29 multiplier calculated in STEP 7 for the increase from RRASOR to STATIC99 and backing out the number already included in STEP 3 for carnal knowledge offenders who would score 4 or more on the RRASOR.

5	times	3.29	=	16.45				
				16	minus	5	=	11

7 Offenders released for attempted crimes who would have scored less than 4 on RRASOR but 4 or more on STATIC99 (estimated) for April 2003-April 2005

This estimate was derived using the 3.29 multiplier calculated in STEP 7 for the increase from RRASOR to STATIC99 and backing out the number already included in STEP 3 for attempted crime offenders who would score 4 or more on the RRASOR.

3	times	3.29	=	9.87				
				10	minus	3	=	7

STEP 9 Estimate offenders who would have scored a 4 or more on STATIC99 (April 2003-April 2005) for current and proposed predicate offenses

Offenders Scoring 4 or more on RRASOR

69 Current predicate offenses
5 ASB-Victim 13+ (estimate)
5 Carnal Knowledge (estimate)
1 Kidnapping minor with intent
3 Attempts (estimate)

83 TOTAL offenders who would have scored 4 or more on RRASOR with proposed predicate offenses added from April 2003-April 2005

Offenders Scoring Less than 4 or RRASOR but 4 or more on STATIC99 - Current Predicate Offenses

19 Offenders who scored 0 or 1 on RRASOR but 4 or more on STATIC99 (see STEP 6)
139 Offenders who scored 2 or 3 on RRASOR but 4 or more on STATIC99 (see STEP 6)

Offenders Scoring Less than 4 or RRASOR but 4 or more on STATIC99 - Proposed Predicate Offenses

26 ASB-Victim 13+
11 Carnal Knowledge
7 Attempts
1 Kidnapping minor w/ intent

286 TOTAL offenders (83+19+139+26+11+7+1) released for one of the current or proposed predicate offenses would have scored 4 or more on STATIC99 (estimate) for April 2003-April 2005

1038 TOTAL offenders released for current and proposed predicate offenses from April 2003-April 2005 (see STEP 4)

286 divided by 1038 = 0.276 rounded to .28

It is estimated that 28% of offenders released for one of the current or proposed predicate offenses from April 2003-April 2005 would have scored 4 or more on STATIC99.

STEP 10 Apply rate developed in STEP 9 to future releases from DOC

DOC reports that 773 males offenders will be released during the 18 months from July 2006-December 2007 for one of the current or proposed predicate offenses.

Annualized: 773 SVP-eligible/18 months = 43 per month
43 per month x 24 months (the 2006 - 2008 biennium) = 1032 SVP-eligible inmates

STEP 11 1032-eligible inmates x STATIC-99 hit rate of 28% = 289 CRC evaluations in 24 months
289 CRC evaluations/24 months = 12 04 CRC evaluations per month

STEP 12 Identify rate at which sex offenders considered for civil commitment are found to be SVPs

56 Cases reviewed by AG's Office for civil commitment from April 2003-April 2005
15 Pending or on Appeal
41 Concluded

18 of the 41 offenders with concluded cases were found to be SVP's
Assume the 15 pending/appeal cases will be determined to be SVPs.
So, 18 +15 = 33

33 divided by 56 = 58.9%

It is estimated that 58.9% of offenders considered for civil commitment will be determined to be SVPs.

Of the 18 found to be SVPs from April 2003-April 2005, 14 (77.8%) were committed to VCBR and 4 (22.2%) were placed on SVP community supervision.

STEP 13 Apply rate from STEP 12 to estimate number of released sex offenders who will score 4 or more on STATIC-99

289 x .589 = 170

It is estimated that 170 offenders over the coming 24 months will be determined to be SVPs
It is estimated that 7 offenders per month will be determined to be SVPs

170 x .778 = 132
180 x .222 = 38

It is estimated that 132 of the 170 will be committed to VCBR.
It is estimated that 38 of the 170 will be placed on SVP community supervision

Attachment 3

Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Date: 8/11/2005

Topic: Penalties for rape, forcible sodomy and object sexual penetration

Fiscal Impact Summary:

- **State Adult Correctional Facilities:** +93 beds ($2,218,729)
- **Local Adult Correctional Facilities:** -5 beds (-$49,249 state/-$40,912 local)
- **Adult Community Corrections Programs:** Cannot be determined

- **Juvenile Correctional Centers:** None ($0)
- **Juvenile Detention Facilities:** None ($0)

Summary of Proposed Legislation:

The proposal increases the penalty for rape, forcible sodomy and object sexual penetration offenses committed against children under the age of 13 (see below).

	Current penalty	Proposed penalty
First conviction	5 years to life	25 years to life with a mandatory minimum penalty of 25 years and Global Positioning Satellite (GPS) surveillance for life upon release from prison
Second conviction	5 years to life	Life imprisonment with no option for geriatric release under § 53.1-40.01

Analysis:

In fiscal year (FY) 2002 and FY2003, 278 offenders were convicted of rape, forcible sodomy or object sexual penetration of a child under the age of 13 (in violation of § 18.2-61, 18.2-67.1, or 18.2-67.2). These offenders, who had no prior convictions for such crimes, received a prison term in nearly all cases (97%). The median prison sentence (the middle value, where half the sentences were higher and half were lower) was 12 years.

In four cases, offenders had both a current and a prior conviction for rape, forcible sodomy or object sexual penetration of a child under the age of 13. All of the repeat offenders received a prison term, with two ordered to life imprisonment.

Offenders convicted under truth-in-sentencing/no-parole provisions are required to serve at least 85% of the active term (imposed sentence less any suspended time) ordered by the court. According to the Department of Corrections (DOC), rape and sexual assault offenders sentenced under no-parole laws

are serving approximately 89% of the sentence (as of December 31, 2004). At this rate, an offender would serve about 22 years of a 25-year term. Older offenders, however, will be eligible for geriatric release under § 53.1-40.01 when they reach the age of 60 (if they have served at least 10 years) or age 65 (if they have served at least 5 years).

The median age of offenders convicted of the specified offenses is 32 years. For offenders who serve 22 years of the proposed 25-year mandatory minimum term, the median age at release from prison would be 54 years. Under the proposal, released offenders must submit to GPS surveillance for the remainder of their lives. According to the U.S. Census Bureau, a 32-year-old male today can be expected to live to the age of 76. If released at the age of 54, an offender could spend approximately 22 years under GPS surveillance.

Under existing provisions (§ 18.2-67.5:3, adopted in 1995), a prosecutor may seek a mandatory life term for offenders convicted of a second rape, forcible sodomy or object sexual penetration, regardless of victim age. The current statute, however, requires the prosecutor to give the defendant 30 days notice of his intent to seek life imprisonment. Unlike the proposal, offenders convicted under the current provision are eligible for geriatric release under § 53.1-40.01. According to Pre/Post-Sentence Investigation (PSI) data, no offenders have been sentenced under the existing statute.

FY2002 and FY2003 Felony Sentencing Information

Felony Offense	Total Cases	Type of Disposition				
		No Active Incarceration	Local-Responsible (Jail)		State-Responsible (Prison)	
		% of Cases	% of Cases	Median Sentence	% of Cases	Median Sentence
1st conviction – Rape, forcible sodomy, or object sexual penetration of child under age 13	278*	2%	1%	12 mos.	97%	12 yrs.
2nd conviction – Rape, forcible sodomy, or object sexual penetration of child under age 13	4	0%	0%	NA	100%	2 received life terms

Note: The median sentence is the middle value, above and below which lie an equal number of cases. Data includes only completed acts.

Data Source(s): Pre/Post-Sentence Investigation (PSI) and Sentencing Guidelines (SG) databases

* An additional nine (9) offenders were convicted in circuit court but sentenced to the Department of Juvenile Justice (DJJ).

Impact of Proposed Legislation:

State adult correctional facilities. The proposal is expected to increase state-responsible (prison) bed space needs by 93 beds (for a cost of $2,218,729) in FY2012. As most offenders convicted of the specified offenses currently receive sentences in excess of six years, much of the potential impact associated with the proposal would likely occur beyond the six-year forecast window required by § 30-19.1:4.

Local adult correctional facilities. The proposal is expected to reduce local-responsible (jail) bed space needs by five beds, as the few offenders who historically have received jail terms will receive prison sentences as a result of the proposed mandatory terms. This represents a cost savings to the state of $49,249 and additional savings to localities of $40,912.

Adult community corrections programs. Because the proposal requires offenders convicted of the specified crimes to submit to GPS surveillance for life upon release from prison, the proposal will have an impact on adult community corrections. There are two primary modes of GPS tracking for offenders—passive and active. Under passive surveillance, the movement of the offender is recorded and a probation officer later reviews the data to ensure the offender has complied with the conditions and restrictions of community supervision. Under active tracking, the movement of the offender is monitored continuously. Active GPS surveillance is more costly than passive surveillance. In Florida, which had 522 offenders under GPS surveillance in January 2005, the cost of passive GPS monitoring of an offender is approximately $4 per day, while the cost of active GPS monitoring is $9 per day (Florida House of Representatives Staff Analysis of House Bill 1877 (2005 session)). These figures do not include staff time necessary to review offender movement data or respond to breaches identified by the GPS system.

Analysis suggests that these offenders, once released, will be monitored for a median of 22 years under the proposal. While the impact on community corrections is expected to be large, the exact impact cannot be determined.

Virginia's sentencing guidelines. Convictions for rape, forcible sodomy and object sexual penetration (under § 18.2-61, 18.2-67.1, and 18.2-67.2) are covered by Virginia's sentencing guidelines as the primary (or most serious) offense; however, no adjustment to the guidelines is necessary under the proposal. Mandatory sentences required by statute supersede any recommendations of the sentencing guidelines that are lower than the mandatory term.

Juvenile correctional centers. According to the Department of Juvenile Justice (DJJ), the proposal is not expected to increase juvenile correctional center (JCC) bed space needs since mandatory minimum sentences are not applicable to juvenile offenders. Also, the Department's Length-of-Stay (LOS) guidelines will not be affected by the proposed changes.

Juvenile detention facilities. The Department of Juvenile Justice (DJJ) reports that the proposal is not expected to increase the bed space needs of juvenile detention facilities.

Estimated Six-Year Impact in State-Responsible (Prison) Beds

FY07	FY08	FY09	FY10	FY11	FY12
2	8	21	37	60	93

Estimated Six-Year Impact in Local-Responsible (Jail) Beds

FY06	FY07	FY08	FY09	FY10	FY11
-2	-4	-4	-5	-5	-5

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is $2,218,729 for periods of imprisonment in state adult correctional facilities and is $0 for periods of commitment to the custody of the Department of Juvenile Justice.

Assumptions underlying the analysis include:

General Assumptions

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary's Committee on Inmate Forecasting in 2004.
2. New cases representing state-responsible sentences were based on forecasts developed for the Secretary's Committee on Inmate Forecasting and approved in July 2005.
3. Cost per prison bed was assumed to be $23,966 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.***
4. Cost per jail bed was based on The Compensation Board's FY2003 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was $27.48 per day or $10,037 per year. The local cost was calculated by using the daily expenditure cost of $54.51 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in $22.83 per day or $8,338 per year. ***Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.***

Assumptions relating to sentence lengths

1. The impact of the proposed legislation on criminal provisions, which would be effective on July 1, 2006, is phased in to account for case processing time.
2. The bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2004; for sexual assault offenses the rate was 11.1%. Release dates for local-responsible felony convictions were estimated based on data provided by the Compensation Board on the average percentage of time actually served by felons sentenced in FY2003 to local jails; this rate was 89.7%.
3. Persons eligible for a mandatory term of 25 years under the proposal were treated as having been sentenced to the mandatory 25 years. Persons eligible for a mandatory term of life imprisonment under the proposal were treated as having been sentenced to the mandatory life term. If the actual sentence already exceeded the proposed mandatory minimum penalty, the case was presumed to have no impact.

RapeProposal_McDonnell_081005