

VIRGINIA PRETRIAL JUSTICE COALITION

Dear Honorable Members of the Senate Judiciary and House Courts of Justice Committees:

We are a group of community members and justice reform organizations who are committed to ensuring individuals receive fair, rational, and humane treatment within the Commonwealth's criminal justice system. Today we write to express our concerns surrounding Virginia's pretrial and bail practices; to address the ongoing work of the Virginia State Crime Commission's (VSCC) Pre-Trial Data Project; and to discuss the lack of regular, institutional data collection that is necessary to permit a meaningful, ongoing, substantive assessment of the Commonwealth's pretrial practices. To that end, we call upon you to:

- exercise caution in relying on the conclusions in VSCC's Virginia Pre-Trial Data Project Preliminary Findings¹,
- support the public release of the data collected during the VSCC study,
- and vote in favor of HB 922/SB 723 which call for ongoing data collection regarding Virginia's pretrial system.

In 2017, the Virginia State Crime Commission was tasked with examining the efficacy of various pretrial release mechanisms at ensuring public safety and appearance at court.² Over the ensuing two years, the VSCC worked with a number of agencies in an effort to capture data on approximately 23,000 individuals arrested in October 2017 and to follow their cases through December 31, 2018. As the VSCC has repeatedly expressed, the task of gathering this data was extremely complex, as Virginia lacks a unified data collection system.

In December 2019, the VSCC issued a report, "Virginia Pre-Trial Data Project Preliminary Findings." The preliminary findings focused on addressing two specific, narrow research questions posed to the VSCC in the early stages of the data collection project:

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

Caution is urged in drawing any conclusions about Virginia's pretrial process from these preliminary findings. Moreover, until we know more about the Commission's methodology, the current conclusions in the preliminary report should not be used to make policy without more research. A letter to the Commission requesting more insight into its process and suggesting additional research questions is forthcoming. It is our hope that the VSCC's final report and analysis will include significantly more detail that can inform future decision-making by courts and legislators.

The data collection process has resulted in the accumulation of hundreds of data points, from demographic information to pretrial detention periods, bail setting practices to sentencing outcomes. It has the potential

¹ Virginia Pre-Trial Data Project Preliminary Findings, December 2019 <http://vscv.virginia.gov/images/VSCC%20Pre-Trial%20Data%20Project%20Preliminary%20Findings.pdf>

² Virginia Pre-Trial Data Project public presentation, November 8, 2018 (<http://vscv.virginia.gov/VSCC%20FINAL%20Pretrial%20Data%20Project%20Presentation.pdf>)

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to be a rich source of information that can allow for a broad, robust, and detailed snapshot of Virginia's criminal justice system. The equity implications of the data are clear as the study confirms the disproportionate minority representation in Virginia's criminal justice system, with 40% of the approximately 23,000 people in the study cohort being Black, despite the fact that Blacks/African-Americans make up just under 20% of the Commonwealth's population.³ To allow the fullest use of this data and to ensure the public has the ability to be informed about the operation of its criminal justice system on both the state and local level, the data gathered by the VSCC during its study should be made available to researchers and the public.⁴

The decision about whether to make the data public rests with the VSCC leadership, some of whom sit on the very committees receiving this letter.⁵ VSCC's last two scheduled public meetings regarding the pretrial data project were cancelled and no new, public meeting dates are currently scheduled, limiting the ability for the community to have a voice in the VSCC's work. The new legislative session is an opportunity to commit to procedures which increase transparency and utilize data to inform our decision-making and improve our understanding of the impacts of pretrial decisions on case outcomes and community safety.

Equally important is the passage of HB 922 (Del. Carroll Foy) and SB 723 (Sen. McClellan). These bills will require criminal justice agencies around the Commonwealth to collect and share data related to the pretrial process. Unlike the VSCC's data project, these bills create a continuous, sustained collection process, allowing for the ongoing assessment of practices and creation of yardsticks against which to measure the impact of various reforms and changes. This will enable us to make more informed decisions about how to minimize unnecessary, costly pretrial detention, while promoting community safety and the meaningful, timely disposition of criminal cases. It will allow for examinations of demographics to shed light on issues of race, ethnicity, gender, and age disparities and can promote practices which move the Commonwealth towards a more just criminal legal system. We urge you to vote in favor of those bills when they come before your respective committees and to support the public release of the data from VSCC's Pre-trial Data Project.

Respectfully,

ACLU Virginia
Civil Rights Corps
Justice Forward Virginia
League of Women Voters
Legal Aid Justice Center
National Association of Criminal Defense Lawyers
New Virginia Majority

Pretrial Justice Institute
Progress Virginia
Richmond Community Bail Fund
RIHD, Inc.
Virginia Sexual and Domestic Violence Action Alliance
Williamsburg Court Watch

CC: Virginia State Crime Commission and staff

³ U.S. Census Bureau population estimates for July 1, 2019, <https://www.census.gov/quickfacts/VA>, last visited Jan. 16, 2020.

⁴ The data would be provided as disaggregated, anonymized information to allow meaningful research while ensuring privacy and confidentiality for those who are members of the data cohort.

⁵ The Virginia State Crime Commission is led by a thirteen-member board: nine members are legislators assigned to the board based on the rules of proportional representation, three are gubernatorial appointments, with the remaining member being the Attorney General or their designee.