

January 7, 2021

Sent via email: cdrabert@vscc.virginia.gov

Deputy Director Colin Drabert
Virginia State Crime Commission
1111 East Broad Street, Suite B036
Richmond, VA 23219

Dear Mr. Drabert:

We write as members of the Virginia Pretrial Justice Coalition, which is a diverse coalition of more than twenty groups fighting to make our Commonwealth's pretrial system more just. Our Coalition has been a leading voice for pretrial reform in the General Assembly for the past two years, championing data transparency and other substantive pretrial reforms. Thank you for offering us the opportunity to provide feedback on the Crime Commission's proposed legislation regarding the collection of and public access to pretrial data.

The Crime Commission's years of work on the Pretrial Data Project has produced one of the most robust pretrial data sets in the country and – together with the proposed legislation adopted unanimously by Crime Commission members this week – could be a watershed moment for pretrial justice reform in the Commonwealth. We are grateful for the tremendous amount of work the Crime Commission staff put into this project.

We absolutely agree that these efforts should be continued and expanded upon. And we are heartened that both the data from the Pretrial Data Project's 2017 cohort and the data collected in the future will be released in a raw, anonymized format. Access to this information is critical to understand, examine, and evaluate the conclusions drawn from the data as well as to allow others to explore other research questions. The data that would be made publicly available under the proposed legislation would be invaluable to those crafting future policy.

We offer the comments and suggestions below in an attempt to strengthen what we believe is already a strong proposal.

Omitted Data Collection Points

We recognize that some of the data points omitted from the proposed legislation are not presently being collected in existing statewide databases and that they may have been omitted for that reason. However, we believe some of these data points are critical for understanding the harms inflicted by our current system and the disparities within it. If these pieces of data are not included in the legislation proposed this session, then a plan to develop the needed infrastructure to ensure future collection of these data points should be considered. The critical and currently omitted data points are:

- **Reason a person is held pretrial without bail.** We know from the Pretrial Data Project that being held without bail was *the most common* outcome of bail determination

hearings in the 2017 cohort.¹ We also know that some jurisdictions that have sought to limit the use of financial conditions have experienced increased rates of outright detention. The heart of meaningful pretrial reform must be reducing the number of people unnecessarily subjected to pretrial detention (as well as pretrial surveillance). For this reason, we believe establishing mechanisms to capture why a judicial officer has determined someone should be held without bail and then analyzing trends statewide is critical. Prior to comprehensive data being captured, the dataset should at a minimum attempt to identify people who are held without bail on charges subject to a rebuttable presumption against bail (Va. Code 19.2-120(B) and (C)).

- **Dates of all bail determinations and initial arraignment.** The date a person is charged, the date of the initial bail determination, and the date of release are captured in the proposed legislation. However, the dates of the initial arraignment as well as any bail determinations made between the initial determination and release are not, which could lead to the omission of multiple pieces of vital information. For instance, if an individual whose initial bail determination is made by a magistrate, has bond reassessed sua sponte by the judge at arraignment, files a bond motion in General District Court, and then appeals the bond decision to the Circuit Court; the length of time that individual was held pretrial based on various judicial officers' decisions is lost. We realize from prior conversations with Crime Commission staff that data source records of certain bail determinations may be overwritten by subsequent judicial decisions on bail. We believe, however, wherever feasible, dates of those various opportunities for reassessment of bail should still be captured.
- **Ethnicity.** It is critical to have information about both the race and ethnicity of individuals entering our legal system. The proposed legislation captures race information but does not require reporting on ethnicity. Without this information, it is likely that the true extent of any disparities in the system will be obscured as many Latinx individuals are classified as "white." To address this, ethnicity data also needs to be included. We understand that this information is not currently captured reliably and believe a strategy for collecting in the future should be considered.
- **Primary language.** Identifying primary language would illuminate inequities in navigating the legal system based on language barriers. While primary language is not explicitly captured currently, we believe the court's use of interpreters is sometimes captured in state databases. While not a precise marker of primary language, this would be a start to understanding this point of potential inequity.
- **Holds and warrants from other jurisdictions.** This information is not currently captured in a consistent and reliable manner, but when it is collected it should be required to be reported.

Incomplete Proposed Data Collection Points

Determination of person's indigency. In order to understand the disparate impact of our legal system on low-income individuals, we must have clear and accurate information regarding individual's financial status. The proposed legislation focuses on counsel type (as it stands at the conclusion of the case) which is not an adequate proxy for socioeconomic status. Indigency

¹ Virginia Pre-Trial Data Project public presentation, November 8, 2018, page 6, <http://vscc.virginia.gov/VSCC%20FINAL%20Pretrial%20Data%20Project%20Presentation.pdf>

largely reflects the financial status of the individual accused; counsel type can reflect the access to resources of family, friends, and other community supporters.

Individual-Level vs Locality-Level Data

The collection of “locality-level” data is referenced multiple times in the proposed legislation. We believe that the intent of the language is to enable data that be sorted by locality. However, we are concerned that as written, it could be interpreted to require reporting data only with locality-level specificity, as opposed to individual-level, anonymized data that can be sorted by locality. This clarification should be made throughout the document.

Timeline of Raw Data Disclosure

The proposed legislation offers timelines of October 2021 for the release of the cohort data and December 2022 for the release of the first annual report and underlying raw data. As the VSCC has already released findings based on the 2017 cohort data, it is crucial that others have access to this data as soon as possible. Recognizing that the transfer, format, and uploading of data may happen in stages, we would suggest the language reflect that the raw data for the 2017 cohort be made available as soon as possible, with the portal being functional no later than October 2021. Further, we would suggest that future data be directed to be uploaded and made available to the public as soon as practical after it is received, but in no event later than the release of the annual report.

Accountability Measures and Reporting Guidance

This bill has the potential to promote an unparalleled level of transparency and accountability in the state’s criminal justice system and arm policymakers, researchers and everyday people with pertinent information about the issues that are plaguing our criminal legal. But in order to facilitate quality analysis, complete data (both in content and jurisdiction) must be collected. This requires some accountability measures to ensure compliance. This will help ensure localities do not refuse to collect the data outlined or elect not to provide the data which the VSCC has already identified is accessible in the existing systems. The legislation should also establish a timeline for the collection and reporting of the data.

Thank you again for championing statewide data collection and for welcoming feedback on your proposed legislation. The continued collection and aggregation of pretrial data in a publicly accessible platform is critically important as Virginia navigates pretrial policy decisions going forward.

Signed,

ACLU of Virginia
Justice Forward Virginia
Legal Aid Justice Center
National Association of Criminal Defense Lawyers
Williamsburg Court Watch
WJCC Coalition for Community Justice