

COMMISSION ON VASAP
QUARTERLY MEETING
Friday, June 8, 2018

Minutes

Attendance

Commission Members

Sheriff Michael L. Wade, Chair
Delegate Michael P. Mullin
The Honorable Gino W. Williams
Mr. Anthony Carmichael
Ms. Pat Eggleston
Ms. Mary Read Gillispie
Ms. Mellie Randall
Mr. John Saunders

Telephone Conference

Senator Glen H. Sturtevant, Jr.
Delegate David J. Toscano

Absent

Senator Richard H. Stuart
Delegate Christopher E. Collins
Delegate James A. Leftwich, Jr.
The Honorable Mary Jane Hall
The Honorable George D. Varoutsos

Commission Staff

Ms. Angela Coleman, Executive Director
Mr. Richard Foy
Mr. Christopher Morris
Ms. Charlene Motley
Mr. Richard Phillips
Ms. Keshana Pierce

Office of the Attorney General

Mr. Christian Parrish

ASAP Directors

Mr. Miles Bobbitt
Ms. Andrea Cosans
Ms. Angela Fortune
Mr. James Hatcher Johnson
Ms. Vicki Kesler
Mr. Roy-Keith Lloyd
Ms. Jaime Moran
Ms. Deborah Morgan
Ms. Laura Offield
Mr. Kevin Ortegel
Ms. Cindy Sheffield
Ms. Pam Simmons
Ms. Tara Smith
Mr. Rick Wilkins

Other Attendees

Ms. Linda Aldridge
Ms. Rhonda Comfort-Ellington
Ms. Michele Denhoff
Ms. Jennifer DeNova
Mr. Chad Goodwin
Ms. Julie Hall
Ms. Cynthia Hites
Mr. David Hites
Mr. John Honea
Ms. Marty Lamp
Mr. Steve Loose
Mr. Scott Mason
Mr. Nicholas Rogers

Time and Place

The quarterly meeting of the Commission on Virginia Alcohol Safety Action Program (VASAP) was held on June 8, 2018 at the Virginia State Capitol Building in House Room #1. The meeting was called to order by Sheriff Michael L. Wade, Acting Chair.

Welcome and Introductions

Sheriff Wade extended a welcome to everyone and invited the attendees to introduce themselves.

Approval of Minutes

A motion was made by the Honorable Gino W. Williams, and seconded by Delegate Mullin, to approve the Commission meeting minutes from March 29, 2018. All were in favor; none opposed.

Mr. David Hites, who was in the audience, interjected to state that there was an error in the draft version of the March 29, 2018 minutes. Sheriff Wade advised Mr. Hites that he was out of order for interrupting. He stated that Commission staff reviewed the recording of the meeting, and the final approved minutes accurately reflected Mr. Hites' statements on March 29th.

Recognition of New Commission Members

Sheriff Wade recognized the three newly-appointed legislative members of the Commission: Delegates Michael P. Mullin, James A. Leftwich, Jr., and Christopher E. Collins. Sheriff Wade noted that Delegates Leftwich and Collins were unable to attend due to scheduling conflicts, but that their biographies could be found in the binders provided to the Commission members.

Special Recognitions

Sheriff Wade asked Ms. Coleman to speak about the recognition awards.

The first person to be recognized was Mr. Oscar Brinson. Mr. Brinson recently announced his retirement after serving as the Commission on VASAP's legal counsel for 32 years. Mr. Brinson was instrumental in providing guidance on a number of issues over the years. He also was responsible for drafting the original legislation that created the Commission on VASAP. While Mr. Brinson was not able to attend the Commission meeting, he expressed his appreciation and best wishes to everyone. Mr. Brinson was given a round of applause in his absence. He will be presented a plaque along with a matted and framed nameplate with the signatures and best wishes of his colleagues.

The second person to be recognized was Ms. Mary Read Gillispie. Ms. Gillispie is retiring after 41 years of service in the VASAP system. She has been a stable force and invaluable contributor to the VASAP system as a Commission member, local program director, and certification team member. Sheriff Wade presented Ms. Gillispie with a plaque in appreciation of her years of dedicated service.

Election of Commission Chair and Vice Chair

Mr. Christian Parrish, representing the Virginia Attorney General's Office, spoke to the Commission regarding the legal requirement for the Commission to have both a chair and vice chair. He noted that Sheriff Wade had served as acting chair for the past six months, and he suggested it was now an appropriate time for the Commission to elect a new chair and vice chair. Mr. Parrish asked if there were any nominations for the position of Commission chair. Ms. Gillispie nominated Sheriff Wade, stating that his service to the Commission since the 1990s, work with the local programs, familiarity with the ASAP certification process, and his commitment to the VASAP system well qualified him to serve. No other candidates were nominated. The Commission voted, and Sheriff Wade was unanimously selected to serve as the new chair of the Commission on VASAP. Sheriff Wade was congratulated and received a round of applause.

Mr. Parrish then asked if there were any nominations for the position of vice chair. No nominations were received, so the Commission decided to table the decision until the next Commission meeting.

Executive Director's Report

Ms. Coleman presented the Executive Director's Report.

Advisory Board

Ms. Coleman advised the Commission that §18.2-271.2 of the Code of Virginia states that the Commission on VASAP shall appoint an advisory board to make recommendations regarding its duties and administrative functions. One of the Commission's administrative functions is to oversee program plans, operations and performance for a system of allocating funds. Ms. Coleman reminded the Commission that the VASAP system is funded by offender fees and does not receive revenue from state tax dollars. Over the years, and to a greater extent recently, the ASAP directors and its association have indicated a desire to review the fees and financial structure of the VASAP system. Ms. Coleman requested that the Commission appoint an advisory board to review the related issues and report back to the Commission any findings and recommendations. She suggested that the following individuals be appointed to the advisory board: Ms. Janet Baugh, Office of the Attorney General; Ms. Millicent Ford, Assistant Commissioner for Driver, Vehicle and Data at DMV; Mr. Roy-Keith Lloyd, Director of Southside ASAP; Ms. Susan Marchon, former Commission member and former Director of New River Valley ASAP;

Mr. Andrew Malloy, Director of Chesterfield County Community Corrections; Ms. Jamie Moran, incoming President of the VASAP Directors' Association and Director of Bull Run ASAP; Mr. Rick Wilkins, Director of Chesapeake Bay ASAP; Ms. Krystal Hulette, Director of Court Community Corrections ASAP; one representative from the Virginia Department of Behavioral and Developmental Services (TBD); and one representative from a Community Services Board (TBD). The Honorable Gino W. Williams made a motion that the advisory board be appointed, composed of the members recommended by Ms. Coleman. The motion was seconded by Delegate Mullin. All were in favor; none opposed.

VASAP Annual Training Conference

Ms. Coleman reminded the Commission that VASAP's annual training conference will be held August 20-21, 2018 at the Hampton Convention Center. She invited Commission members to attend if their schedules permit. Based upon feedback from last year's conference, this year the conference will be focused on providing training on daily ASAP functions and VASAP policy and procedure. The bulk of the training will be presented by VASAP staff.

Tri-River ASAP

In November 2015, it became necessary for the Commission on VASAP to assume complete control of the Tri-River ASAP. The program did not have a policy board or a staff in place at that time. The goal of the Commission was to stabilize the program so that the ASAP could continue to provide needed services. In consultation with the judges in the courts of the service area, a decision was made to move the Tri-River ASAP office from Urbanna, VA to a more easily accessible location in Hayes, VA. Since 2015, Tri-River ASAP has employed a director and staff, and they now have a legally constituted policy board. Ms. Coleman recognized the efforts of Laura Offield (Director of the Tri-River ASAP), the Commission staff, and other local ASAP directors for their hard work and assistance in getting the program back on its feet.

Ms. Coleman recommended control of the Tri-River ASAP be returned to the locality. Mr. Carmichael moved, and Ms. Gillispie seconded, that all authority and responsibility for managerial oversight and operational functions of the Tri-River ASAP be returned to the local policy board and program director. All were in favor; none opposed.

Ms. Coleman recognized Keshana Pierce for the valuable fiscal work she did for the Tri-River ASAP. When the Commission assumed responsibility for the ASAP, it was extremely low on funds. With her assistance, Tri-River ASAP was able to increase its balance substantially and the program is now very well positioned financially. Ms. Coleman stated that even though the Commission was relinquishing control of the finances and all other aspects of the Tri-River ASAP to the local policy board and director, the Commission staff will continue to monitor the program.

ASAP Budgets

The Code of Virginia requires that the Commission approve the local ASAP budgets prior to each fiscal year. This is a lengthy process that usually begins in March of each year and is not completed until June. At the suggestion of Sheriff Wade, since 2011 the Commission staff has reviewed the ASAP budgets thoroughly prior to presenting them at the Commission meeting for consideration. This process ensures that all questions are answered and all of the numbers are correct. She thanked the ASAP directors for their work in balancing the budgets. Ms. Coleman directed the Commission members to a budget summary sheet in their binders. She noted that both Fairfax ASAP and Arlington ASAP are supported by their local governments. For FY-2019, Arlington County has committed to providing \$308,000 to support its ASAP; and Fairfax County has budgeted \$684,000 of assistance for its program. Ms. Coleman added that these two programs may not need this funding, but it is available. This ensures that the Commission will not need to fund any revenue shortfalls.

Ms. Coleman also noted that there was a revenue decline of up to 20% at most of the ASAPs during the past year. As a result, a number of ASAPs needed to draw from reserve funds to balance their budgets. Use of reserve funds was carefully scrutinized during the budget review process. Programs drawing from reserves reinvested the funds into their programs and employees in order to retain staff. This use of reserves met with the Commission's approval.

Ms. Coleman recommended approval of all 24 local ASAP budgets. Sheriff Wade asked if any members of the Commission had questions about the budgets. Delegate Mullin inquired about the ASAPs with high capital expenses in their budgets, especially asking about John Tyler ASAP's capital expenses of \$420,000. Ms. Vicki Kesler, Director of John Tyler ASAP, explained that the funding was coming from the program's reserves in order to facilitate purchase of their Henrico office building. Ms. Kesler explained that they had already purchased the building where their Chesterfield office is located, saving approximately \$10,000 in rent per month that can be used to better support her staff and clients. Delegate Mullin commended John Tyler ASAP for using their money wisely.

Ms. Gillispie moved, and Mr. Saunders seconded, that all 24 local ASAP budgets be approved. All were in favor; none opposed.

Recognition for Assistance with New Projects and Initiatives

Over the past year, the Commission has taken on a number of major projects such as the new case management information system. The ASAP directors have been very helpful when called upon to aid the Commission with these initiatives. Ms. Coleman stated that two ASAPs in particular deserved special recognition for their support in allowing the Commission to use their time, staff, and office space to pilot programs and policies. The Commission presented certificates of appreciation to John Tyler ASAP and Chesapeake Bay ASAP for their cooperation and assistance with these projects.

Executive Finance Committee Report

Mr. Carmichael presented the Executive Finance Committee Report.

ASAP Certification

Mr. Carmichael stated that the Code of Virginia requires the Commission to certify local ASAPs to ensure they meet minimum standards and criteria. This process occurs every three years, and the current certifications expire at the end of June 2018. The Commission staff and the certification teams began work in October 2017 to audit all of the ASAPs prior to their certification expiration date. This was a monumental task which entailed visiting all 24 programs, auditing files, reviewing administrative processes, inspecting financial documents, interviewing staff, and in some cases speaking to policy board members.

Ms. Motley presented an overview of the certification team findings. She reiterated Mr. Carmichael's comments, stating that the certification process was a huge undertaking that began in October 2017 and was not completed until May 2018. Ms. Motley expressed her appreciation to the Commission staff and all the ASAP directors and case managers for their participation. She especially thanked Mr. Carmichael and Ms. Gillispie for their active involvement on the certification teams. Their participation ensured that a Commission member was present at the site visits. Based on the certification reviews, 22 of the 24 ASAPs were recommended for full certification by the Executive Finance Committee. Ms. Motley stated that the ASAPs, for the most part, are accomplishing the VASAP mission while adhering to the required operational standards.

Ms. Motley advised that James River ASAP had an unresolved deficiency, but the director has submitted a viable action plan to take corrective action. She stated that the Commission staff is confident that this deficiency will be addressed and a recommendation for full certification for James River ASAP will be forthcoming at the September 2018 meeting of the Commission.

Ms. Motley said the certification process has become more efficient since much of the file review can be conducted electronically from the Commission office in Richmond. The certification reports have also been streamlined to only report deficiencies requiring ASAP action.

The Honorable Gino W. Williams moved that the following ASAPs be approved for full certification: Arlington ASAP, Bull Run ASAP, Capital Area ASAP, Central Virginia ASAP, Chesapeake Bay ASAP, Court Community Corrections ASAP, Dan River ASAP, District Nine ASAP, Fairfax ASAP, John Tyler ASAP, Mount Rogers ASAP, New River Valley ASAP, Old Dominion ASAP, Peninsula ASAP, Piedmont ASAP, Rappahannock Area ASAP, Rockingham/Harrisonburg ASAP, Southeastern Virginia ASAP, Southside Virginia ASAP, Southwest Virginia ASAP, Tri-River ASAP and Valley ASAP. Delegate Mullin seconded the motion. All approved; none opposed. Sheriff Wade presented the certification certificates to the directors of the ASAPs in attendance.

A motion was then made by Ms. Gillispie, and seconded by Ms. Randall, to conditionally certify James River ASAP. All were in favor; none opposed.

VASAPDA Report

Ms. Cindy Sheffield presented the VASAPDA report. She stated that the directors' association met in May and has been busy with several projects to include revamping of the reckless and aggressive driving program and producing a new ASAP orientation video in English and Spanish. She said that VASAPDA is currently working on the administrative staff curriculum for the annual VASAP training conference and will be exploring the feasibility of implementing an online intervention interview process.

Petition for Regulatory Action

Ms. Coleman advised the Commission that § 2.2-4007 of the Code of Virginia states that any person may petition an agency to develop a new regulation or amend an existing regulation. On April 15, 2018, Mr. David Hites petitioned the Commission on VASAP citing VA Code § 2.2-4007 in regard to the definition of "alcohol" in 24 VAC 35-60-20 as it relates to alcohol-specific ignition interlock devices. The petition requests that the Commission suspend all future interlock device installations in Virginia until an ethanol-specific device can be developed as required by law. Mr. Hites states in the petition that the current technology being used in his opinion is not specific to alcohol as required by 24 VAC35-60-70. The petitioner's request was published in the Virginia Register on May 14, 2018 (Petition #272) and the 21-day public comment period ended on June 3, 2018. There will be no additional public comment period.

Sheriff Wade then granted only the petitioner, Mr. Hites, two minutes to speak to the petition, adding that there would be no additional public comment. Mr. Hites offered the following statement:

"First off, I would like to thank you for allowing me to speak today. Please change the wording in the statute 24 VAC35-60-70, Section F, Paragraph 3, from 'the ignition interlock device shall be alcohol-specific using an electro-chemical fuel cell that reacts to and measures alcohol minimizing positive results from other substances' to the following: 'The ignition interlock device shall be alcohol-specific using any proven technology that reacts to and measures alcohol only as defined in [the] 24 VAC35-60-20 definitions, meaning ethyl alcohol, also called ethanol, formula C₂H₅OH.' This is the intent of the law as it is written; but requiring fuel cell technology knowing it detects other substances which can cause a failed reading, goes against what the interlock was designed to do, prevent someone who has been drinking from starting their car. My wife's case manager manufactured a false charge and sent her to court, omitting exonerating data, and subsequently used four other non-ethanol specific readings against her by the time her case was finally heard. She was convicted by a judge who was presented with evidence of a urine test that my wife paid for and police reports that stated she did not smell like alcohol, but a district judge, court judge, still convicted her. It wasn't until after fighting to get an

answer from ALCOLOCK, ASAP and VASAP about the failed readings that Chris Morris got involved. After he saw the interlock data, my wife was not charged another dime, but he could not get back the nine months freedom she lost because the device measures other alcohols. Mr. Morris said that we would not get our money back for the extra time the device was on our vehicle. No reimbursement ever came, not even an acknowledgement that anyone did anything wrong or even made a mistake. Please don't let what happened to my wife happen to anyone else. Please stand up for us and all the other victims of non-ethanol specific fuel cell technology."

Executive Session

Sheriff Wade asked if there was any further discussion from the Commission members or legal counsel. There was none. A motion was then made by Mr. Carmichael, and seconded by the Honorable Gino W. Williams, that pursuant to Virginia Code § 2.2-3712, the Commission go into closed session to discuss matters exempt under § 2.2-3711(A)(7) and (A)(8), specifically to receive legal advice from counsel regarding two petitions to amend regulations filed pursuant to VA Code § 2.2-4007 and under § 2.2-3711(A)(15) for discussion of medical or mental health records exempted under § 2.2-3705.5. All were in favor; none opposed. Sheriff Wade requested that Ms. Angela Fortune, Mr. Christopher Morris, and Mr. Richard Phillips remain in the room during the executive session.

Return to Open Session

Mr. Carmichael moved, and was seconded by Mr. Saunders, that the board confirm that only matters exempt under Virginia Code § 2.2-3711(A)(7) and (A)(8) relating to receiving legal advice from counsel regarding petitions filed pursuant to VA Code § 2.2-4007 and under Virginia Code § 2.2-3711(A)(15) for discussion of medical or mental health records exempted under § 2.2-3705.5 were discussed during the closed meeting. All were in favor as recorded by roll call vote; none were opposed.

Sheriff Michael L. Wade, Chair	YES
Delegate Michael P. Mullin	YES
Delegate David J. Toscano	YES
The Honorable Gino W. Williams	YES
Mr. John Saunders	YES
Ms. Mellie Randall	YES
Mr. Anthony Carmichael	YES

Ms. Mary Read Gillispie YES

Ms. Pat Eggleston YES

Delegate Mullin moved that Mr. Hites' petition (#272) to change the wording in 24 VAC35-60-70, Section F, Paragraph 3 be denied. The motion was seconded by Mr. Carmichael. All were in favor to deny the petition; none opposed.

Executive Session

A motion was made by Mr. Carmichael, and seconded by Ms. Randall, to return to closed, executive session pursuant to Virginia Code § 2.2-3712, to discuss matters exempt under § 2.2-3711(A)(7) and (A)(1), specifically to receive legal advice from counsel regarding possible litigation related to employee performance issues regarding an employee of a public body and under § 2.2-3711(A)(1) for discussion of employment performance issues regarding employees of a public body, namely Alexandria ASAP. All were in favor; none opposed. Sheriff Wade requested that Ms. Charlene Motley remain in the room during the executive session.

Return to Open Session

Mr. Carmichael moved, and was seconded by the Honorable Gino W. Williams, that the board confirm that only matters exempt under Virginia Code § 2.2-3711(A)(7) and (A)(1) relating specifically to receiving legal advice from counsel regarding possible litigation related to employee performance issues regarding an employee of a public body and under § 2.2-3711(A)(1) for discussion of employment performance issues regarding employees of a public body, specifically Alexandria ASAP, were discussed during the closed meeting. All were in favor as recorded by roll call vote; none were opposed.

Sheriff Michael L. Wade, Chair YES

Delegate Michael P. Mullin YES

Delegate David J. Toscano YES

The Honorable Gino W. Williams YES

Mr. John Saunders YES

Ms. Mellie Randall YES

Mr. Anthony Carmichael YES

Ms. Mary Read Gillispie YES

Ms. Pat Eggleston YES

The Honorable Gino W. Williams moved that the Alexandria ASAP be granted conditional certification with the provision that the program be monitored closely by the Commission in cooperation and coordination with the local policy board. The motioned was simultaneously seconded by several Commission members. All were in favor; none opposed.

2018 Meeting Dates

Friday, September 14 10:00 a.m.

Friday, December 7 10:00 a.m.

Adjournment

There being no further business, Sheriff Wade adjourned the meeting.