



COMMONWEALTH of VIRGINIA

Commission

on the

Virginia Alcohol Safety Action Program (VASAP)

Angela D. Coleman
Executive Director

QUARTERLY BOARD MEETING

Friday, December 11, 2020

Teleconference

10:00 a.m.

AGENDA

- I. CALL TO ORDER /INTRODUCTIONS
John Saunders, Vice Chairman
- II. APPROVAL OF MINUTES
- III. EXECUTIVE DIRECTOR'S REPORT
Angela D. Coleman
- IV. VASAP DIRECTORS' ASSOCIATION REPORT
Milles Bobbitt
- V. REVIEW OF PETITION # 332
- VI. EXECUTIVE SESSION
- VII. MEETING DATES 2021
March 26th June 4th September 17th December 10th
- VIII. ADJOURNMENT

Members:

Senator Richard H. Stuart, Chairman
Mr. John Saunders, Vice Chairman
Senator Scott Surovell
Delegate James A. "Jay" Leftwich, Jr
Delegate Jennifer D. Carroll Foy
Delegate Mark H. Levine
Delegate Don L. Scott, Jr.
The Honorable George D. Varoutsos
The Honorable Mary Jane Hall

The Honorable Gino W. Williams
Sheriff Stacey Kincaid
Ms. Pat Eggleston
Mr. Anthony Carmichael
Ms. Robyn Allen

Staff:

Ms. Angela D. Coleman, Executive Director

**COMMISSION ON VASAP
QUARTERLY MEETING**

Friday, October 30, 2020

Minutes

Attendance:

Commission Members:

Senator Richard H. Stuart, Chairman
Mr. John L. Saunders, Vice Chairman
Senator Scott A. Surovell
Delegate James A. Leftwich, Jr.
Delegate Jennifer D. Carroll Foy
Delegate Mark H. Levine
The Honorable George D. Varoutsos
The Honorable Mary Jane Hall
The Honorable Gino W. Williams
Sheriff Stacey A. Kincaid
Mr. Anthony Carmichael

Commission Staff:

Ms. Angela Coleman, Executive Director
Ms. Rosario Carrasquillo
Mr. Richard Foy
Mr. Christopher Morris
Ms. Charlene Motley

Office of the Attorney General

Ms. Janet Baugh

Absent:

Delegate Don L. Scott, Jr.
Ms. Pat Eggleston
Ms. Robyn Allen

Time and Place

The quarterly meeting of the Commission on Virginia Alcohol Safety Action Program (VASAP) was conducted via electronic communication in accordance with the Virginia Freedom of Information Act, § 2.2-3708.2, Section 3, on October 30, 2020 at 10:00 a.m. Senator Stuart welcomed everyone. Commission member attendance was confirmed by roll call.

Approval of the Minutes

Mr. Saunders moved that the minutes from the September 11, 2020 Commission meeting be approved. Judge Hall seconded the motion. All were in favor; none opposed.

Executive Director's Report

Ignition Interlock Program Award

Ms. Coleman announced that on October 7, 2020 the Commission on VASAP received the Richmond Technology Council, (RVAtch) Award in the public sector category for creation of an ignition interlock application. Ms. Coleman recognized the entire VASAP staff for this accomplishment, with special recognition going to Mr. Christopher Morris for his creativity and project vision.

Valley ASAP Award

Ms. Coleman also informed the Commission of Valley ASAP's receipt of the Excellence in Driver Safety Training Award from the National Safety Council, offering her congratulations to the director, Miles Bobbitt, and his staff.

Local ASAP Revenue and Expenditures

Ms. Coleman stated that the Commission office continues to monitor revenue collections and the general financial conditions of the local ASAPs during the pandemic. A complete report will be provided to the Commission at the December, 2020 meeting.

Ignition Interlock Program

Ms. Coleman directed the attention of the Commission members to a couple of reports in their meeting packets about the ignition interlock program. She asked Mr. Morris to give details.

Mr. Morris stated that as a result of recent updates in Virginia, the Commonwealth will now have the strictest ignition interlock regulations in the country. Richard Phillips, of the Commission staff, inspects over 100 ignition interlock service centers in the state at least annually, often more frequently. The aforementioned, award-winning application is used to make the service center inspections more efficient and effective. In response to a question from Judge Hall, Mr. Morris explained that the application currently incorporates many features to include the ability to record inspection information directly into a cell phone and to transmit the inspection report to the ignition interlock vendor for immediate response. It also includes an inspection wizard to assist persons unfamiliar with the inspection process.

Mr. Morris reiterated information previously conveyed during the last Commission meeting regarding how interlock violations are processed. Whenever a local ASAP identifies a potential ignition interlock violation and the BAC reading is low (0.02-0.04), the Commission office performs a secondary review of the data, and double-checks the device calibration to ensure it is accurate before the case is sent to court.

Mr. Morris also stated that since cameras became mandatory in 2016, the identification of ignition interlock circumventions has continued to rise. The Commission staff investigates all of these cases to include interviewing offenders and witnesses, obtaining arrest warrants and testifying in court.

Mr. Morris concluded by reviewing the Ignition Interlock Summary Report, noting that the number of pre-COVID installations tended to range between 7,700-8,000 per month, but now are approximately at 6,000. As the courts have begun to open back up, the backlog of DUI cases is being addressed, so it is anticipated that the number of installations will increase soon.

Senator Surovell suggested that the Commission staff analyze the breath test data from the Department of Forensic Science, since it might be helpful to the local ASAPs. He indicated that he would provide a link to the data for review.

VASAP Directors' Association Report

Ms. Jaime Moran, VASAP Directors' Association President and Director of Bull Run ASAP, presented the VASAPDA report.

Ms. Moran stated the Directors' Association approved an updated version of the license restoration guidelines on October 23, 2020. Officer elections were held on October 2, 2020, and Mr. Miles Bobbitt, Director of Valley ASAP, is the new president.

Virginia Regulatory Petition 331

Prior to consideration of the petition, Senator Stuart provided procedural guidance on petitions filed under § 2.2-4007 of the Code of Virginia. He noted that there is a process in place via the Virginia Regulatory Town Hall for submitting and reviewing these petitions in writing, but the procedures lack any information regarding oral testimony of the petitioner. After consultation with the Attorney General's Office, Senator Stuart expressed some concern that the practice of allowing all petitioners to make oral testimony regarding their petitions may establish such a precedent for VASAP and other agencies when the statute does not call for this. Accordingly, Senator Stuart stated that the prudent course of action going forth will be for petitioners to submit the petition and all subsequent comments in writing via the Town Hall unless either (1) a Commission member requests to hear oral testimony from the petitioner, or (2) Commission staff, after review of the petition, recommends that oral testimony be presented to the

Commission. In the future, whenever a petition is submitted, Senator Stuart will ask staff to gather the information and send it out to all the Commission members in advance of the meeting, along with the staff's recommendation, to afford the Commission time to carefully consider the petition.

With regard to Petition 331, the petitioner, Ms. Cynthia Hites, expressed concern that the presence of an ignition interlock in vehicles, especially manual transmission vehicles, poses a dangerous distraction to drivers during rolling retests. Her petition requested that Virginia's ignition interlock regulations be amended to prohibit the installation of ignition interlocks in manual transmission motor vehicles.

Senator Stuart stated that based upon his analysis, the requirements to install the interlock and for it to perform rolling retests, are statutorily prescribed mandates, and that accordingly, the authority to change these requirements rests with the General Assembly and not the Commission on VASAP.

Senator Stuart asked Ms. Baugh of the Attorney General's Office if the Commission even needed to make a decision on a petition which requests an action upon which the Commission has no authority to act. Ms. Baugh stated that past practice has been to deny the petition based upon the Commission's lack of authority to act.

Delegate Leftwich made a motion to deny the petition based upon the Commission's lack of authority to take any action. The motion was properly seconded. All were in favor; none opposed.

Meeting Dates

The last Commission meeting for 2020 is scheduled for December 11, 2020.

Adjournment

A motion was made to adjourn the meeting by Judge Williams, and seconded by Judge Hall.
All were in favor; none opposed.

DRAFT

Certification

- All ASAP programs are required to be certified by the Commission on VASAP every third year and at any such time as the Commission deems necessary in order to ensure continued compliance
- The current certification for all ASAPs will expire on June 30, 2021
- In an abundance of caution due to the COVID-19 Pandemic, the certification review will be conducted remotely
- Certification reviews will begin in late January
- The ASAP Director and Policy Board Chair will be notified of the certification date at least 30 days prior to the review date
- A certification training video was released to the field in October

2021 Training Grant

The Commission on VASAP has been awarded a training grant for 2021. This grant will provide funding for three events:

- 1) The annual VASAP conference scheduled for August 16-17 will cover a variety of policies, procedures, best practices and other useful information for all VASAP system staff. This conference is tentatively planned to be conducted in person in the Tidewater, VA area.
- 2) An online recorded webinar for ASAP instructors to provide them with curriculum updates and pedagogy for facilitating the new 5-week intensive education program. Date TBD.
- 3) A joint DMV/VASAP/Clerks of Court training. This training provides useful information sharing, problem solving and networking to better coordinate the processing of DUI cases. The tentative plan is for the conference to be held in person in the late spring in Richmond, but COVID-19 protocols may require this training to be provided virtually. Date TBD.



Your Doorway to Safe & Sober Driving

Ignition Interlock Summary Report

ASAP	August	September	October
Alexandria	87	80	71
Arlington	111	113	118
Bull Run	567	585	568
Capital Area	274	267	264
Central Virginia	237	231	246
Chesapeake Bay	723	721	738
Court Community	259	265	275
Dan River	117	121	118
District Nine	181	174	170
Fairfax	445	419	426
James River	163	166	178
John Tyler	836	855	868
Mount Rogers	89	85	93
New River Valley	158	159	162
Old Dominion	237	217	229
Peninsula	323	325	330
Piedmont	81	76	77
Rappahannock	276	260	277
Rockingham/Harrisonburg	90	96	103
Southeastern	377	382	388
Southside	99	93	91
Southwestern	77	74	71
Tri-River	151	146	159
Valley	97	101	102
Total	6058	6011	6122

Interlock Vendor	Interlock Facilities
Drager	29
Intoxalock	14
LifeSafer	26
Smart Start	20



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Ignition Interlock & Public Information Campaign Summary

Ignition Interlock Update: As of October, 2020, the number of individuals with an ignition interlock installed in Virginia has increased by approximately one hundred. Prior to COVID, installed interlocks in the Commonwealth of Virginia averaged around 8,000 each month. Currently those numbers are at approximately 6,122.

The changes to the ignition interlock regulations, as well as the brand-new remote alcohol monitoring regulations, continue to move through the regulatory process.

Ignition interlock circumvention continues to be a widespread problem throughout the Commonwealth. The Commission office is actively working with the local programs in a coordinated effort to investigate each circumvention and hold offenders accountable through the court system.

Ignition Interlock Public Information Campaign: in a multi-faceted effort to combat the continued problem of individuals circumventing the interlock system, Commission staff, in partnership with the Virginia Department of Motor Vehicles and Visual Impact Productions, worked relentlessly on a public information campaign over the summer. COVID19 presented many unprecedented obstacles to include last minute replacement of actors and actresses, adherence to strict COVID19 safety protocols, and finding shooting locations with large indoor and outdoor spaces.

We are happy to report that coordinated teamwork among staff members, our strong relationship with the Virginia Department of Motor Vehicles, and Visual Impact Productions relentless pursuit to get the project completed through the various obstacles, seven videos were completed by the grant deadline. Two of the videos were placed as commercials on Cox Cable in the Richmond, Northern Virginia, and Tidewater areas and the remainder are being held for use in future campaigns. In addition, a “Public Information” page has been added to our website that captures all of the videos and a brief summary of each one.

To view the videos, please click the following link:

<http://www.vasap.state.va.us/publicinformation.html>

The Commission on VASAP

Holiday Statement

December, 2020

As the holiday season approaches and we usher in a new year of hope and promise, the Commission on VASAP reminds you that if you plan to serve or consume alcoholic beverages to celebrate, please do so responsibly. We encourage you to plan ahead and use good judgement to ensure your safety and the safety of others.

Drinking and driving do not mix! Limit and monitor your consumption and make plans to guarantee safe transportation. Remember to never get into a vehicle with an impaired driver.

In Virginia, in calendar year 2019, 264 persons were killed in 7,048 alcohol-related crashes. Please don't become the next statistic. Last year, 18,648 motor vehicle operators were convicted of driving under the influence in Virginia. Those offenders who were fortunate enough to avoid a traffic crash still suffered many adverse consequences to include fines, attorney fees, jail time, increased insurance premiums, ignition interlock requirements, loss of license, education and treatment fees, and social embarrassment. On average, DUI offenders can count on the experience costing them a minimum of \$5,000. Sadly, irresponsible drivers who kill or maim others will bear the guilt daily.

The pandemic of 2020 has presented unique challenges and hardships. We have modified our habits and behaviors to address this public health threat. Surely, with a little forethought and effort we can respond in like fashion to prevent impaired driving.

Happy Holidays from the Commission on VASAP!



VCU

Performance Management Group

L. Douglas Wilder School of Government and Public Affairs

December 8, 2020

The **Commission on Virginia Safety Action Program (VASAP)** contracted the **Performance Management Group (PMG)** to perform an organizational assessment of the ASAP offices which would include options for potential consolidation as well as a strategic plan. The organizational analysis would require interviewing ASAP Directors, gathering financial data, and making recommendations. The strategic plan would include several meetings with the Commission members to revise any previous plans and include new data. To date the following actions have been taken by PMG:

- Met with VASAP Director Angela Coleman and Field Services Director Charlene Motley in July to kick off the project.
- Drafted a letter advising the ASAP Directors about the interview process and requested data for review prior to the session.
- Interviewed ASAP Directors from September 16 - 29, 2020 via telephone and Zoom. Reviewed results for common themes; these will be included in the final report.
- Reviewed ASAP program financial information from 2015 through 2019 to identify available metrics and developed charts for comparing program operations.
- Completed analysis of the demographics of the counties comprising the ASAP programs including poverty rate, population density, bandwidth availability and alcohol sales.
- Conducted analysis of Blood Alcohol Content tests from 2015 through 2020 (as of November 24, 2020) as reported by the Virginia Department of Forensic Science to identify possible trends in the number of cases. Focused review on 3 ASAP programs: Bull Run, Fairfax and Rappahannock Area as well as at the state level as a whole
- Met with the strategic planning team comprised of Commission leadership, board members, and stakeholders to review previous strategic plan elements and develop a revised plan for 2021-2026

Next Steps:

- Finalize and obtain board approval of the 2021-2026 strategic plan (mission, vision, goals, objectives, and core values) and develop an implementation "Action Plan"
- Consolidate all organizational and business analysis into a comprehensive report with recommendations.
- Review draft report with Commission leadership; make revisions as needed
- Present the strategic plan and organizational analysis report to the Board in March, 2021.



Secretariat

Other Agencies

Agency

Commission on the Virginia Alcohol Safety Action Program

Board

Commission on the Virginia Alcohol Safety Action Program

Petition 332

Petition Information

Petition Title	Petition to amend Virginia Administrative Code 24VAC35-30-150
Date Filed	10/1/2020 [Transmittal Sheet]
Petitioner	Cynthia Hites
Petitioner's Request	<p>I, Cynthia Hites, as a citizen of the Commonwealth of Virginia, pursuant to Virginia Code § 2.2-4007, do humbly submit this petition for the following amendment, in the form of addition, to Virginia Administrative Code 24VAC35-30-150 (VASAP Policy and Procedures Manual).</p> <p>The Virginia regulations state the following:</p> <p>Section 150, Paragraph A:</p> <p>"Noncompliance reporting. When the offender has been deemed noncompliant by the case manager, that case manager, within five working days, shall notify in writing the referring court or agency and the offender."</p> <p>A major problem facing innocent citizens accused of interlock violations is simply the lack of information presented to them by ASAP.</p> <p>Currently, the offender is given an accusation sheet from an ASAP that generally includes the time of the high reading, along with an accusation of not reaching zero, or "clearing out" within an allotted time. But the only way clients can obtain data-log readings from the machine is to proactively request them, or have an attorney obtain them, and most people don't know enough to do this.</p> <p>VASAP consistently fails to understand that the vast majority of high IID readings are not due to consumed ethanol. You're just measuring biomarkers for disease and routine metabolic byproducts.</p> <p>This is also a HIPAA violation, as the only, the <i>ONLY</i> substance the government should be analyzing someone's waste for is C₂H₆O. To invasively examine personal medical waste, and misconstrue ALL hydroxyl compounds as "ethanol" is criminal.</p> <p>This is why the offender must be presented with the facts of the accusation and the opportunity to review the entire data-log from each alleged violation event is necessary. If a non-ethanol specific device is now an acceptable standard in VA, and a warning indicator is not mandated between the .000 and .02 window, the potential for fraud is omnipresent.</p> <p>Only when one is armed with their complete interlock data-logs can a person begin to understand what occurred. In many cases, ketogenesis, and other metabolic processes create internal hydroxyl compounds detectable on sober</p>

breath. The \"fail\" point then becomes a \"pass\" point, as people must wait for their bodies to cease alcohol production.

Several of my events took over 45 minutes to \"clear out,\" but when presented with the full data logs, it's clear to see that if you start a car at zero, rise to .07 BrAC, then are back to zero in 24 minutes, the machine is not measuring ethanol.

7 of the 9 times I was accused, I actually started the car at .000 BAC, had high readings, then was back to .000 BAC in scientifically impossible spans of time. Each of these 9 days' worth of readings are published on the FaceBook page entitled Virginia Ignition Interlock Forum.

Since a warning indicator is now not required between .000 and .02, the client will get a green light and assume they're at zero. In this case only the data logs, and nothing else, can prove innocence by showing the readings were passing below .02. This is fraud and since the breath tests are unsupervised, the only evidence that can exonerate the client is the data shown in the full IID logs.

I propose the following language be added to amend this statute:

\"All clients shall be presented with full interlock log information, to include all data within 24 hours prior to and after the alleged violation.\"

Section 150, Paragraph A:

\"Noncompliance reporting. When the offender has been deemed noncompliant by the case manager, that case manager, within five working days, shall notify in writing the referring court or agency and the offender. **All clients shall be presented with full interlock log information, to include all data within 24 hours prior to and after the alleged violation.**\"

Every reading during the 24 hour period must be included because many times data recorded hours prior to and subsequent can disprove ethanol use, as opposed to only showing readings immediately around the high BrAC.

This system should never have been adopted for use on sober individuals. The fuel cell does not solely measure ethanol, and most high readings are not liquor.

Due process is denied every single time someone is \"restarted\" without going to court. False confession is ignored, and the entire IID system is, for lack of a better term, absolutely \"rigged\" against the offender.

If you're going to totally abuse and misconstrue science, you must provide clients the exculpatory evidence to protect themselves.

Please amend the law to begin to protect Virginians from the unethical use of non-alcohol specific electrochemical fuel cell technology.

Sincerely,

Cynthia Hites

Agency's Plan

The Commission on VASAP will consider this petition at its December 11, 2020 meeting.

Comment Period

◆ **Last Day for Comments!**
Ends Today! (12/4/2020)

	<u>Currently 0 comments</u>
Agency Decision	Pending

Contact Information	
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Agency

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Chapter

VASAP Case Management Policy and Procedure Manual [24 VAC 35 - 30]

Public Comment ForumPublic Petition for Rulemaking: **Petition to amend Virginia Administrative Code 24VAC35-30-150****[View petition details](#)****◆ In Progress!** Opened on **10/26/2020** and **Closes Today! (11:59pm)****[More about public comment forums and policies](#)****● [Enter a comment](#)**

No Comments have been entered yet on this forum.



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Chapter

VASAP Case Management Policy and Procedure Manual [24 VAC 35 - 30]

Public Comment ForumPublic Petition for Rulemaking: **Petition to amend Virginia Administrative Code 24VAC35-30-150****[View petition details](#)**

CLOSED Opened on 10/26/2020 and Ended on 12/4/2020

[More about public comment forums and policies](#)**[View all comments on one page](#)****Comment Title****Commenter****Date****[Approve this petition](#)**

Hites Research Group

12/4/20 11:36 pm

1 comments

Trouble posting comments? These pages have been tested with multiple versions of all the major browsers. If you have trouble: (1) try another computer if you have access to one, (2) try another browser if your computer has one installed (3) contact **Town Hall support staff** for assistance.

**VIRGINIA**
REGULATORY TOWN HALL

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Chapter

VASAP Case Management Policy and Procedure Manual [24 VAC 35 - 30][Back to List of Comments](#)**Commenter:** Hites Research Group

12/4/20 11:36 pm

Approve this petition

This petition asks for nothing more than to arm offenders with information they should have anyway. If an ASAP client is accused of a violation, they should have all the evidence being used against them, to include at the very least, the interlock data logs as the vendor recorded them.

I have every confidence the Commissioners will deny this petition as they have every previous petition submitted by this petitioner over roughly the past three years. The question is why? The staff will likely try to convince the Commissioners that the current system is adequate and that no changes are needed. The staff would be wrong.

The only way to hold a case manager accountable for an interlock violation is to FORCE them by statute to give the evidence (interlock data logs) to the client so that the client can understand why they are being accused. It needs to be mandated and automatic in order to treat every client equally across the state, while promoting program transparency. It should not be a choice for any particular ASAP to follow this policy. Every accused client should have the same opportunity to defend themselves.

Please approve this petition, giving ASAP clients accused of an interlock violation automatic access to their interlock data logs without having to ask for them. Thank you.

Respectfully,

Dave Hites

US Navy retired

CommentID: 87592

Petition #332

(Commission Response and Recommendation)

Whenever an offender is returned to court for an alleged ignition interlock violation, the ASAP completes a noncompliance report that contains specific, but limited, information from the ignition interlock datalogger such as the date, time, and BAC of the violation. Full datalogger information can be obtained by offenders upon their request should they desire the information for the purpose of rebutting the noncompliance report.

§18.2-270.1 (F) of the Code of Virginia states that offenders shall pay the cost of leasing or buying and monitoring and maintaining the ignition interlock system and the remote alcohol monitoring device. Since offenders contract with the ignition interlock vendors and pay for the monitoring of the devices, they are entitled to obtain copies of their own detailed datalogs directly from their ignition interlock service provider. Virginia courts have consistently ruled that the ignition interlock vendors are the custodian of record for this information.

In addition, it has always been the practice of the ASAPs and the state office to provide the applicable ignition interlock datalogs, upon the request of the offenders or their attorneys, whenever the datalogs are being used by VASAP to substantiate an alleged violation.

VASAP will continue to provide these datalogs when requested by offenders, but is opposed to the automatic, routine distribution of this information. The ignition interlock datalogs contain confidential information to include photographs that often show passengers other than the offender, such as children. Also, many probationers do not want records of violations being mailed to their homes without their consent since other residents may open their mail.

We believe the dissemination of ignition interlock data warrants a more controlled approach than requested by the petitioner. Therefore, our recommendation is that the petition be denied.

The Commission on Virginia

Alcohol Safety Action Program

Quarterly Meeting

Remaining Meeting Dates for 2021

Dates:

- March 26th
- June 4th
- September 17th
- December 10th

Time: 10:00 a.m.

Location:

TBD

For additional information contact the Commission on VASAP office at 804-786-5895.

