

COMMISSION ON VASAP
QUARTERLY BOARD MEETING
Friday, December 8, 2017

Minutes

Attendance

Commission Members

Delegate Jackson H. Miller, Chairman
Sheriff Michael L. Wade, Vice Chairman
Senator Glen H. Sturtevant, Jr.
Delegate David J. Toscano
The Honorable Mary Jane Hall
The Honorable George D. Varoutsos
The Honorable Gino W. Williams
Mr. John Saunders
Mr. Anthony Carmichael
Ms. Mary Read Gillispie

Telephone Conference

Senator Richard H. Stuart

Absent

Delegate G.M. "Manoli" Loupassi
Ms. Pat Eggleston
Ms. Mellie Randall
Mr. Oscar Brinson, Legal Counsel

Commission Staff

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

Office of the Virginia Attorney General

Ms. Janet Baugh, Senior Assistant Attorney
General

ASAP Directors

Ms. Robyn Allen
Mr. Miles Bobbitt

ASAP Directors Cont.

Ms. Andrea Cosans
Ms. Sharneé Eure
Mr. James Hatcher Johnson
Mr. Elwood Jones
Mr. Roy-Keith Lloyd
Ms. Jaime Moran
Ms. Deborah Morgan
Ms. Laura Offield
Mr. Kevin Ortegel
Ms. Cindy Sheffield
Ms. Tara Smith
Mr. Rick Wilkins

Guests

Ms. Linda Aldridge
Mr. Pete Andrews
Mr. Bill Chastain
Ms. Debra Coffey
Ms. Michele Denhoff
Mr. Frank Girgenti
Mr. Chad Goodwin
Mr. Joseph Hill
Ms. Cynthia Hites
Mr. David Hites
Mr. John Honea
Mr. John Lamper
Mr. Cory LeBlanc
Mr. Scott Mason
Ms. Jennifer O'Brien
Mr. Matt Strausz
Mr. Toby Taylor
Ms. Ana Villatoro
Ms. Harlan Williams

Time and Place

The quarterly meeting of the Commission on the Virginia Alcohol Safety Action Program (VASAP) was held on December 8, 2017 at the Virginia State Capitol Building in House Room

1. The meeting was called to order by Sheriff Michael L. Wade, Vice Chairman.

Welcome

Sheriff Wade welcomed and thanked everyone for attending the meeting.

Recognition

The Honorable Jackson H. Miller, Virginia House of Delegates from the 50th District, was recognized for his service as a member to the Commission on VASAP.

Delegate Miller was appointed as a member to the Commission on VASAP in 2008; he was then selected to serve as its Chairman on September 12, 2013. During the time he served as a member for the Commission, Delegate Miller assisted with creating policy and law changes which enhanced the safety of the citizens on the roadways in the Commonwealth of Virginia. Therefore, VASAP's model of legislative oversight serves as a template for a number of other states around the country.

On behalf of the entire Commission, the staff of the state office and the 24 local programs, Sheriff Wade expressed his gratitude to Delegate Miller for his service to the Commission on VASAP.

Delegate Miller was very grateful for the recognition.

Approval of Minutes

A motion was made by the Honorable Mary Jane Hall, and properly seconded by the Honorable Glen H. Sturtevant, Jr, to approve the minutes from the September 15, 2017 Commission meeting. All were in favor.

Executive Director's Report

Ms. Angela Coleman presented the Executive Director's report.

Ignition Interlock System Circumvention

Ms. Coleman stated that in the past year, the Commission has partnered with the Department of Motor Vehicle's Law Enforcement Division to prosecute individuals who circumvent the

ignition interlock system while they are in the process of satisfying their DMV administrative interlock requirement. Ms. Coleman explained that the Commission and local ASAPs identified multiple instances where third-party individuals provided initial breath tests and rolling retests for ASAP offenders to be able to drive their vehicles impaired. The Commission routed the ignition interlock circumvention cases to the DMV Law Enforcement Division to identify the third-party individuals, build a case, and prosecute all parties involved. Ms. Coleman reported that to date, approximately 13 cases have been routed to the DMV Law Enforcement Division. Three of the reported cases were closed with a guilty plea, several are pending in court, and unfortunately, the remaining cases were not able to be prosecuted due to the inability to establish a venue for the offense.

Ms. Coleman introduced Mr. Joseph Hill, Assistant Commissioner with the Virginia DMV Office of Law Enforcement and Compliance Division, and Mr. John Lamper, Assistant Special Agent in Charge with the Virginia DMV Law Enforcement Division, who presented details about several ignition interlock circumvention cases. Mr. Hill offered his services to the Commission to assist in the prosecution of these cases. Mr. Lamper has conducted thorough investigations of all cases referred by VASAP. Some of these cases have resulted in offender self-admissions and convictions.

Mr. Hill appreciated and thanked the Commission on VASAP for the opportunity to speak during the meeting. He specifically thanked Ms. Janet Baugh, Senior Assistant Attorney General from the Virginia Attorney General's office, for commencing this collaboration between the DMV Law Enforcement Division and the Commission on VASAP. Additionally, he thanked Mr.

Christopher Morris, Special Programs Coordinator for the Commission on VASAP, for his assistance. Mr. Hill stated that he was asked to give a review of several ignition interlock circumvention investigations that have been successful and discuss obstacles that have encountered while trying to prosecute the cases.

As Mr. Hill presented the first case, he stated that the partnership between DMV Law Enforcement and the Commission on VASAP began in September of 2016. Ms. Baugh approached one of his DMV directors for assistance to determine if DMV Law Enforcement could prosecute the cases. Once Mr. Hill contacted Ms. Baugh, she directed him to Mr. Morris. Mr. Morris had completed an extensive background work on the case. Mr. Hill, then assigned the offender to one of the DMV Law Enforcement investigators. Mr. Morris sent the investigators photographs of the offender circumventing the device by having his wife blow into the device for him. The investigator determined the location of the offender by interviewing him, the offender admitted that his wife blew into the device for him. The investigation resulted in a conviction.

Mr. Hill stated the second case was very similar. Mr. Morris provided DMV Law Enforcement with the photographs. According to Mr. Hill, after reviewing the photographs, he found them to be disturbing. Mr. Hill stated the photographs showed a young female sitting on the lap of the offender, activating the device for the offender. The investigator interviewed the offender, who admitted the young female blowing into the device was his daughter, and disclosed the location where the circumvention occurred. This was another case in which a conviction was secured.

In the third case referred to DMV, Mr. Morris supplied the same background work as provided in the other cases; however, Mr. Hill stated that DMV Law Enforcement encountered an obstacle. DMV Law Enforcement was provided with the photos of the offender and the third-party individual circumventing the device on the vehicle. However, when DMV Law Enforcement spoke to the offender, the offender was unable to recall where the event occurred. DMV Law Enforcement conducted a neighborhood canvas, but was unable to identify the male subject who was blowing into the device for the offender. When the offender was presented with the photograph to determine if she could identify the individual, she denied having someone assist her in circumventing the device. In this case, DMV Law enforcement was not able to pursue prosecution because they were not able to establish jurisdiction.

Mr. Hill discussed a fourth case, which appeared to be successful based on the evidence provided by the Commission staff. The photographs that were provided detailed a young female who blew into the device while someone else was driving. The offender was interviewed, and he admitted that his girlfriend had blown into the device for him on three occasions. Additionally, the offender disclosed the locations where the circumventions occurred. DMV Law Enforcement was able to obtain warrants for both of these individuals. Mr. Hill informed that this particular case is still pending.

In the fifth case reviewed by Mr. Hill, an offender had been issued many warning letters, but did not respond to VASAP's repeated attempts to contact him. Mr. Morris provided the photographs of the offender committing multiple violations. DMV Law Enforcement was able to locate and interview the offender, who told the investigators she must have eaten something

that affected the device. After presenting the photographs to her and the timeline, she confessed to the circumvention and disclosed the location where the event had occurred. Mr. Hill stated that DMV Law Enforcement has not been able to obtain all warrants, because the individual who activated the device for the offender has relocated to another state.

In the sixth case presented by Mr. Hill, Mr. Morris spoke to the offender, at which time the offender admitted to circumventing the device and disclosed the location of the circumvention. DMV Law Enforcement still had the task of finding the person who assisted in the circumvention. Investigators visited the offender's residence and identified someone who resembled the person in the interlock photo who aided the circumvention. The investigators contacted the deputy sheriff who worked the sector in that area and provided him with the photos. The deputy referred the DMV investigators to someone who possibly could identify the third-party individual. Investigators were able to speak with a resource police officer who through several contacts was able to help identify the person who had assisted circumventing the device. The identified individual who circumvented was already incarcerated for another matter. Investigators spoke with him at the correctional facility and were informed that other individuals had assisted the offender in circumventing as well. DMV Law Enforcement notified Mr. Morris, who then reviewed the interlock history of that offender and retrieved additional photographs of other people activating the device. DMV Law Enforcement was able to pursue those who assisted in circumventing the device.

The last case that Mr. Hill presented was of an offender who was viewed circumventing the device. Mr. Morris made attempts to contact the offender. The offender did not provide any

information to assist in determining the location of the circumvention. DMV Law Enforcement was unable to acquire information as to the jurisdiction of the offense; therefore, the case was closed unsuccessful.

Delegate Miller asked if there were any questions or comments from the Commission members.

Delegate Miller stated that the Commission would be moving forward with some legislative ideas to address the instances where third-party individuals provide initial breath tests and rolling retests for ASAP offenders, but prosecution is hampered due to an inability to establish venue for the offense.

Delegate Miller will be appointing a sub-committee to work on legislation.

As a result of the presented cases by Mr. Hill, the Commission will seek a patron to propose the drafted legislation at the 2018 General Assembly.

Judge Hall asked, what are the specific charges for both the offender and the third-party individual who blows into the device for them.

The Code of Virginia §18.2-270.1, states that violation of this code is a class one misdemeanor.

Senator Sturtevant asked whether the Commission, when it heard from DMV Law Enforcement about one of the offenders having his young daughter sit on his lap and blow into the device completed an investigation on the device to make sure that the offender's complaints had merit.

Mr. Morris responded that the Commission always completes a thorough check of the device, and that some complaints received are just unfounded.

Delegate Toscano asked if the people who have the interlock installed in their vehicles sign something which indicates that they are going to be punished if someone blows into the device for them.

Mr. Morris responded that all offenders sign an ASAP Ignition Interlock Agreement, which discusses circumvention of the device.

Delegate Toscano inquired as to whether the agreement states the offender is consenting to jurisdiction.

Mr. Morris stated that it is not written in the agreement that they are consenting to jurisdiction.

Delegate Toscano asked if including such a statement in the agreement would solve this of the problem.

Ms. Baugh stated that adding the additional language to the ignition interlock agreement form will not correct the issue. She added that to prosecute these individuals the Commonwealth Attorneys have to prove the location where the offense occurred, or there needs to be a change to the statute. Ms. Baugh noted there are other statutes that discuss continuing jurisdiction for crimes such as larceny and homicide when it cannot be determined where the actual offense occurred. She added, that it is the goal of the Commission on VASAP to recommend legislation to change the statute and the interlock agreement in order to get a successful prosecution. The Honorable Richard H. Stuart asked why can the Commonwealth's Attorney could not prosecute the offender and the third-party individual if the circumvention violates the conditions of their suspended sentence.

Ms. Baugh responded that if the offender is still under the supervision of the General District or Circuit Court, certainly, the ASAP may take the offender back to court for violating its restrictions. However, she stated that there are offenders who are referred as DMV administrative ignition interlock cases where either the court did not order an ignition interlock device, or the 12-month court supervision. Offenders who are outside of that 12-month period may be required by DMV under Virginia Code §46.2-392.1 to install an ignition interlock even if the court did not order it. Ms. Baugh stated that VASAP has referred all administratively required circumvention cases to DMV Law Enforcement because the offenders are not under a court order and are no longer under the supervision of the court.

Mr. Morris stated that the Commission on VASAP has referred approximately 13 to 14 cases to the DMV Law Enforcement Division.

Ms. Baugh explained that there are several reasons why individuals continue to be subject to the interlock requirement after the 12-month court supervision. Individuals must have the interlock installed for six consecutive months without violations. Some offenders install an interlock at month one, and then have one or more violations during that time. Therefore, the interlock requirement time resets from the time of the violation, making it possible for the interlock requirement to go beyond the normal 12-month ASAP suspension period. She also stated that offenders may decide to install an interlock device at month eight of their 12-month suspension.

In addition, Ms. Baugh explained that the Code of Virginia states that if the court does not order an ignition interlock as part of the conditions of a restricted license, DMV is required to administratively impose the interlock requirement. She stated that there are occasions when the court does not order individuals to install an interlock device; therefore, individuals cannot be sent back to court for circumventing the interlock because they become DMV administratively required cases. Ms. Baugh stated that when an offender illegally circumvents the ignition interlock, there is no court of jurisdiction to send the offender back to if the device was installed pursuant to a DMV Administrative requirement. Ms. Baugh added that if the offender does not cooperate and reveal where the circumvention took place, then the venue of the offense cannot be determined.

Delegate Toscano stated that since the Commission on VASAP is aware of the issue, it is assumed that DMV is also aware. Delegate Toscano asked if the Commission on VASAP should

request DMV to carry a bill to change the legislation, and whether the deadline for submitting a bill has already passed.

Ms. Baugh, who also represents DMV, stated that it is not a bill for the DMV agency. She stated that VASAP is the agency that is having the issue more than DMV. VASAP administers the interlock program and DMV assists. Ms. Baugh added that a similar bill was carried last year by the Honorable Leslie R. (Les) Adams; it passed through the House, but did not pass the Senate. During the 2018 General Assembly Session, the Commission believes it will be better able to address the questions.

General Assembly Session 2018

In anticipation of the legislative session, Delegate Miller appointed a committee to discuss potential legislation that could impact ASAP operations.

Delegate Miller appointed the following individuals to the Legislative Committee:

Senator Richard H. Stuart

Senator Glen H. Sturtevant, Jr.

Delegate David J. Toscano

Ms. Angela Coleman, Executive Director

Mr. Richard Foy

Ms. Charlene Motley

Mr. Christopher Morris

Holiday Statement

Ms. Coleman stated that for several years, the Commission office has been contacted by different media outlets for information on alcohol related deaths and injuries. The Commission on VASAP created a Holiday statement for distribution, which includes the consequences of DUI. The statement also encourages citizens to plan ahead, consider drinking non-alcoholic beverages and make provisions for a safe ride home.

Ms. Coleman stated that the number of alcohol-related fatalities for calendar year 2016 were 262, which was an increase of 21 persons from calendar year 2015.

VCU

The Commission office was approached by Learfield Productions to co-brand with Virginia Commonwealth University to distribute VASAP public information materials in hospitality areas at all VCU basketball games for the 2017-2018 season.

Ms. Coleman presented a mock-up of a napkin which reads “Don’t Drink and Drive”.

She stated that it is a unique opportunity to co-brand with a major university regarding the message against drinking and driving. The napkin is in production and will be ready to distribute within two weeks after the Commission meeting.

Proposed 2018 Meeting Dates

Ms. Coleman announced that the proposed 2018 Commission meeting dates are on Fridays except for Thursday, March 29th. Ms. Coleman informed the Commission that House Room 1 of the Capitol Building will not be available due to requirements for the General Assembly. The Code of Virginia requires that the Commission meets quarterly.

The Commission on VASAP will meet in 2018 on the following dates:

Thursday, March 29	10:00 a.m.
Friday, June 8	10:00 a.m.
Friday, September 14	10:00 a.m.
Friday, December 7	10:00 a.m.

Ignition Interlock Summary

Ms. Coleman presented the ignition interlock summary report. She explained that for August through October 2017, there were a total of 8020 interlocks installed throughout the Commonwealth.

Executive Finance Report

The Executive Finance Committee report was presented by Ms. Mary Read Gillispie, Director of the Central Virginia ASAP.

The Executive Finance Committee met on December 1, 2017.

Mount Rogers ASAP Budget Amendment

Ms. Gillispie reported that the Mount Rogers ASAP in Marion purchased their office building in January 2016. The policy board approved a withdrawal of funds in the amount of \$91,430.28 to pay off the balance of the building. Mount Rogers ASAP currently pays a monthly mortgage of \$1,091.00, adding that if the ASAP liquidates the mortgage in full by January 2018, the program will save \$38,368.00 in interest.

Ms. Gillispie stated that the program has ample reserves to pay off the building and would still maintain six months of reserve in the bank.

The Mount Rogers ASAP's Policy Board acknowledged that the Commission on VASAP would not be liable for any costs related to the property, and the program will not be eligible for deficit funding until all sources of revenue, including the sale of the property, have been exhausted.

The Executive Finance Committee recommended approval of the expenditure.

Delegate Toscano noticed that the program had over \$230,000 in the bank as of August 2017. He stated that it was a large amount and asked if it was typical of an ASAP to have large amounts of fund in reserves.

Ms. Coleman responded that not all of the ASAP programs have that amount of money. She concluded that Mount Roger's ASAP is one location that does have a large amount of funds; however, it is not typical for the ASAPs to have a large amount of funds in reserve.

It was moved by Judge Williams, and properly second by Judge Hall and Mr. John Saunders, simultaneously, to approve Mount Rogers ASAP's request to use reserve funds in the amount of \$91,430.28 to pay off the remaining balance on their building mortgage. All were in favor.

Smart Start

Ms. Gillispie reported that on November 13, 2017, the Executive Finance Committee exercised its option as allowed by the ignition interlock contract to institute a 30-day suspension of an interlock vendor. Smart Start was suspended and invited to the Commission meeting to enter into discussion regarding issues related to device functionality and vehicle damage.

Mr. Morris provided a report of issues from Smart Start related to device functionality, vehicle damage and customer service.

Mr. Morris reported that the Executive Finance Committee suspended Smart Start from new ASAP installation referrals on November 13, 2017. He stated that the Executive Finance Committee does not take the action of suspending an interlock service provider lightly; however, due to the frequency and severity of Smart Start's interlock-related issues, it was imperative that immediate action be taken in order to protect the integrity of Virginia's Ignition Interlock Program and the citizens of the Commonwealth.

The first issue that Mr. Morris presented related to complaints about vehicle damage. The Commission became aware of eight incidents of vehicle damage by Smart Start in a short period of time, ranging in repair cost from approximately \$200 to \$2,400. In some instances, ASAP offenders were without their vehicles for a period of weeks, one lasting as long as 32 days. Although Smart Start did pay for the vehicle damages, the lost time from work and the inconvenience of not having a vehicle were additional consequences incurred with no remedy.

Mr. Morris stated that if Smart Start had a Commission-approved alternate light source, some of the damage could have been prevented. The auto industry is ever changing and technological advances can lead to challenging installations when connecting to a vehicle's light source. In the most recent ignition interlock regulations, effective on July 18, 2016, the Commission on VASAP permitted interlock vendors to use an alternate light source if it was pre-approved by the Commission and did not violate the Virginia Code. Smart Start submitted its first prototype for review on August 31, 2017 which VASAP denied. Guidance was given to Smart Start by the Commission after their first proposal and Smart Start submitted their second prototype for approval on November 14, 2017. Mr. Morris noted that the second prototype was submitted for

approval one day after the effective date of the suspension. The prototype submission received conditional approval on Thursday, December 7, 2017; however, it is still subject to minor changes. Mr. Morris informed the Commission that to date, two interlock vendors have fully approved alternate light sources, two interlock vendors have conditionally approved alternate light sources, and Intoxalock is in the process of opening their first facility in the state.

Mr. Morris provided a summary of complaints related to Smart Start's interlock functionality.

Mr. Morris stated that multiple offenders have reported interlock functionality issues due to faulty curly cords, firmware, and unidentified problems with the handset not permitting a breath test to be provided. He added that there were also instances where the handset and/or curly cord were replaced for an unidentified reason which corrected the original issue. Mr. Morris stated that the issues relating to interlock functionality would have been better resolved if Smart Start had been fully transparent and shared information with the Commission.

Additionally, a number of Smart Start's interlock devices have been found to be outside of the permitted calibration range per the Virginia Ignition Interlock Regulations.

Mr. Morris stated that the Commission made Smart Start aware of these problems months ago. At that time, Smart Start brought employees into Virginia to do a full quality control analysis. The last point that Mr. Morris addressed focused on missing calibration data and/or photos. The Commission incurred multiple instances, especially over the past few weeks, of important data

not being available in the Smart Start reporting system, Smart Web 3.0. When this occurred, offenders were inconvenienced by obligating them to return for a second interlock service in an effort to retrieve the data. In one instance, even after a second trip to the facility, an habitual offender's interlock violation could not be found even though the self-reported the date of the event to the ASAP case manager. As a result, the ASAP notified the court that the violation data could not be retrieved. Additionally, in some instances, Smart Start's database was not able to provide a photo with an interlock event; therefore, it was difficult to determine if the interlock event was truly a violation tied to the offender.

On November 29, 2017, Smart Start rolled out several virtual training dates to the local ASAPs for their reporting platform, Smart Web 3.0. Before training commenced, the Commission requested to speak to Smart Start about these issues, since this platform had incurred issues related to missing data, photos, and alerting case managers of potential violations. Smart Start did not reply to this request.

Mr. Morris stated that Virginia has one of the tightest calibration requirements in the country.

Mr. Morris stated that as a result of a DUI conviction, Virginia residents are subject to multiple consequences under the law, none of which should include damage to their vehicles, additional incurred expenses, lost time from work, and frustrating customer service issues based solely on their choice of an ignition interlock service provider. These offenders, therefore, are incurring additional consequences beyond what is intended by the law.

In addition to the vehicle damages caused by Smart Start's faulty workmanship, missing data and calibration issues leave the Virginia Alcohol Safety Action Program with the inability to present interlock reporting information to the courts with confidence, thereby, negatively impacting the integrity of the Virginia Ignition Interlock Program and compromising highway safety.

Delegate Miller introduced a representative from Smart Start to provide a presentation to the Commission.

Mr. Matt Strausz, Smart Start's CEO, provided a presentation to the Commission. Mr. Strausz thanked the Commission and stated that he appreciated the opportunity to present Smart Start's responses to some of the issues, and certainly wished that it was under totally different circumstances.

Mr. Strausz stated that he has worked with Smart Start for 16 years. He has worked in different levels of positions within the company, from a technician, to operation's manager, regional manager, and CEO of Smart Start, his position for the past three years. Mr. Strausz provided the Commission with a brief history of Smart Start. He stated that Smart Start has been in business for 25 years. Mr. Strausz announced that recently Smart Start serviced its one millionth customer; the company provides ignition interlock services to 45 states in the U.S. with more than 2,000 service areas. He stated that in Virginia, Smart Start has 25 locations with 25 full-time employees. Smart Start is proud to be part of the interlock program in Virginia.

Mr. Strausz stated that Smart Start was surprised to receive a one-and-a-half-page suspension notice from the Commission on VASAP on November 9, 2017. The suspension was result of the

VASAP Executive Finance Committee exercising its option, as allowed by the ignition interlock contract, to institute a 30-day suspension of an interlock vendor. He continued by saying that historically, Smart Start believes it has been a good partner of the Commission on VASAP, quickly addressing issues when they have arisen.

Mr. Strausz stated that last year Smart Start was approached by the Executive Finance Committee informing the company that there was an issue with the ignition interlock handset cords. Smart Start replaced the cords in every device in the Commonwealth of Virginia in a short period of time. Mr. Strausz reported that now a problem with the cord only arises in one of every 14,000 services.

Mr. Strausz stated that the one-and-a-half-page suspension letter did not provide a lot of detail about why Smart Start was suspended; furthermore, the suspension went into effect after one working day. Thinking there was an appeal process, Smart Start filed an appeal with the Commission on VASAP office. The appeal was denied. Smart Start submitted a Freedom of Information Act (FIOA) request of VASAP's emails regarding interlock complaints received between July 1, 2017 and the date of suspension. Smart Start had a total of 18 logged email complaints in the VASAP System. Smart Start was surprised with the way the Commission email complaints were laid out. Mr. Strausz admitted that by the end of October, Smart Start had an increase of workmanship issues in the Commonwealth of Virginia. Mr. Strausz stated that workmanship is something Smart Start takes very seriously. He added that when working on different types of high-tech vehicles, it does not take a lot to cause damage. While Smart Start did have an increase in workmanship issues, it was a small percentage overall.

Mr. Strausz stated that Smart Start takes suspension very seriously. He noted that in the 45 states and 18 different countries where Smart Start conducts business, of which many contracts are a result of Requests for Proposals (RFPs), the company has been adversely impacted because Smart Start is required to notify every state or jurisdiction of the suspension in Virginia.

Additionally, Smart Start will have to disclose the suspension in every contract they make with other businesses in the U.S and worldwide, affecting future contracts for the next ten years. The long-term impact does not stop there. Mr. Strausz stated that one day of suspension costs Smart Start several hundred customers, with eight to twelve months of impact on the company. Mr. Strausz highlighted that Smart Start has been suspended twice in the history of the company; both instances have been in the Commonwealth of Virginia.

Smart Start identified two additional issues from the FOIA request from the Commission on VASAP. These two issues, which were not logged in their original sheet, brought the total number to 20 issues.

Mr. Strausz presented a high-level, pre-suspension summary to the Commission, which covered issues from July 1, 2017 to the date that Smart Start received the letter of suspension. The presentation included all 20 issues. According to Mr. Strausz's report, ten of the twenty issues were workmanship related. While there were ten workmanship related issues, 99.2% of installations were completed without a problem. From the ten workmanship related issues, six were self-reported by Smart Start and four were issues due to the alternative light source. Mr. Strausz stated that the Commission has conditionally approved his alternative light source.

Mr. Strausz stated that six of the other issues were related to the device and those occurrences were out of 15,000 total customer services July through the suspension date. Smart Start had a 99.9% success rate during this period. Mr. Strausz stated that just four out of 11,000 customer interactions resulted in a Commission report regarding customer service issues. Mr. Strausz presented two slides to further breakdown the numbers, one slide presented the workmanship issues, explaining that those issues were just standard workmanship issues. He stated that Smart Start completed almost 1200 installations during that period of time. He reported that of those 1200 installations, they had six workmanship type issues. Mr. Strausz discussed one issue involving control modules in vehicles. He described the control module as being similar to a cell phone, stating it plugs into a socket.

Smart Start is working on vehicles with push-button-starters and newer vehicles with light sources that are difficult to find. Mr. Strausz stated that the wires are no longer copper wires. Currently, many vehicle light source cables are fiber optic, and sometimes the mere operation of testing the wire to determine if it is the correct wire is enough to damage the control module. He stated that is what happened to the vehicles with this issue. The cost of repairs for the two vehicles with the most extensive damage was \$2,400 and \$1,345. The vehicle with the costliest repair was damaged by one of their top technicians in the Virginia. The technician was looking for the light source and probed an incorrect wire. All of the repair costs were taken care of by Smart Start. Mr. Strausz stated that all of the other damaged vehicles cost under \$500 to repair. Three of the vehicles were repaired at no cost. Six cases were reported by Smart Start.

Mr. Strausz stated that there was an issue that Mr. Morris brought up in his report about the inconvenience to the end user. Mr. Strausz stated that at the end of his presentation he wanted to make several suggestions, and one of those suggestions is for the Commission on VASAP to put some interlock processes in place. Mr. Strausz communicated to the Commission that he thinks that it would be foolish for him to tell them that in the future they will avoid damaging any vehicle. He stated that new model vehicles are being released continuously, making it more challenging to access and test wiring. Smart Start has trained technicians and spends a lot of time performing training; however, when the actual act of testing a wire can cause damage that fast, there is no way to be perfect. Mr. Strausz believes that Smart Start has good processes in place, so if a workmanship issue occurs, Smart Start may be able to lessen the inconvenience to the end user.

Mr. Strausz stated that “currently, the options that we give end users are reimbursement of taxi and Uber fees.” The idea of renting a car was brought up; however, rental car companies generally do not allow interlocks to be installed on their vehicles. Mr. Strausz stated that Smart Start “definitely welcomes alternative ways of dealing with this,” adding that “In each of these instances, the cost was taken care of and in many of these instances Smart Start also issued account credits to these folks to offset some of the inconvenience they experienced.”

Mr. Strausz presented the additional ten issues that were identified in the FOIA request, dividing into two separate sections, customer service and product. He identified that customer service was divided into two additional cases, one issue involving a user incorrectly blowing into the device who Smart Start was able to assist over the phone; and a second customer who claimed

that Smart Start did not have mouth pieces, or would not furnish them. A review of the photographs revealed that, the client had mouth pieces for the first several days, but lost them, so she may have been without mouth pieces for six to ten days. Mr. Strausz explained that the service location where the client installed the interlock had mouth pieces. During the period of time when the client claims that Smart Start did not have mouthpieces, there were several interlock device installations.

Mr. Strausz stated that scheduling accounted for two of the issues. One delay was due to a change in their schedule. He explained that Smart Start eliminated a service day or two and they had communication issues with their phone system and were not able to reach clients through robocall. Mr. Strausz stated that the second delay occurred when a technician in a small shop became sick and could not make it to the shop in time. Smart Start had to switch a to different technician who had to drive a longer distance. Mr. Strausz explained that in the small shops, some technicians work minimal days per week. Some technicians travel back and forth among different shops at times so that resources can be shared due to the number of locations Smart Start covers in the Commonwealth of Virginia.

On the second slide, the product related issues were presented. Mr. Strausz explained that there are a few handset power cord issues, as Mr. Morris mentioned. Mr. Strausz informed the Commission that the handset cords that are on the current devices have almost quadrupled in price. He stated that Smart Start made a real investment in Virginia when it replaced all cords during 2016. Mr. Strausz explained that when the cords are in an uncontrolled space, they are

going to be moved around and pulled; there is no way to control all damage. He stated that at some point the cords are going to sustain some damage.

Mr. Strausz presented two calibration accuracy check issues. He reported that Smart Start will not release vehicles to the clients with an uncalibrated device. He stated that Smart Start uses a checks and balances system for all levels within the company, even at the highest level, to make calibration accuracy checks. Mr. Strausz stated that Smart Start technicians cannot complete an ignition interlock installation service in their system until the handset is calibrated properly; therefore, all Smart Start clients leave the facilities with a fully calibrated handset. There are instances when the device returns for calibration and the accuracy check report shows the device outside of the permitted range per the Virginia Ignition Interlock Regulations. Smart Start conducts calibration on interlock devices every thirty days because the device can fall out of calibration. Mr. Strausz stated that any device that is used to measure something will have to be calibrated over time. Mr. Strausz informed the Commission that when the two clients came to the interlock facilities with the issue, it was identified that the device needed an adjustment. The technicians made the adjustments, and the clients left with fully calibrated devices. He clarified that the interlock devices discussed were never sent out on the roads uncalibrated since this could potentially present a hazard to the public. He stated that the issue was identified once the clients returned to the Smart Start facility. Once there, the technician made the adjustments to properly calibrate the devices.

Mr. Strausz concluded his review of the 20 ignition interlock complaints received by VASAP between July 1, 2017 and the date of suspension.

Mr. Strausz added that Smart Start was not certain whether to address several other items that Mr. Morris presented in his report. Smart Start decided to address every issue they are aware of to be transparent to the Commission on VASAP.

Mr. Strausz stated that since the suspension was issued, Smart Start received 34 standard email reports. He explained in what category each issue fell into in the past 30 days. Eight issues are related to the cameras on the interlock device. He stated that half of the camera issues are corrected when the issue is brought to Smart Start's attention. Mr. Strausz stated that once the camera issue is corrected for the majority of devices only small amounts of time are lost; however, the issue that Mr. Morris reported, had missing data for more than a couple of days. Mr. Strausz explained that Smart Start is in the process of recovering the missing data. Mr. Strausz stated that Smart Start has a few issues with customer service. One issue was a tampering event an individual removed the device from its vehicle. Another client claimed that the interlock caused his battery to become faulty, which Mr. Strausz stated that is Smart Start's number one customer complaint. He stated that anybody in the ignition interlock industry would say that once the interlock is installed, it does not cause the battery to malfunction.

Mr. Strausz stated that Smart Start has considered general questions as issues to disclose as well. One of the inquiries were asking the meaning of the icons on the device. Smart Start has received nine questions since July as it relates to ignition interlock service out of the State of Virginia. Mr. Strausz stated that Mr. Morris has been the national champion for reciprocity and establishing options to provide clients that have an out of state or dual state interlock requirement

in throughout the country. Reciprocity is an ongoing issue especially for the vendors. Virginia allows its offenders to travel out of state. On one occasion, Smart Start had a client that traveled and serviced his vehicle outside of Virginia, Smart Start was not able to download the photographs from the device. The service facility in the state he traveled to did not require cameras as part of the interlock restrictions; therefore, Smart Start did not have the proper equipment needed to calibrate and properly download the photographs from the device at that facility. Smart Start was notified of the situation and shipped the needed equipment to service the client. Mr. Strausz stated that Mr. Morris has taken the initiative on ignition interlock reciprocity among the states. Smart Start looks forward to working with the Commission on VASAP on processes to address out-of-state clients going forward.

Mr. Strausz stated that of the remaining issues, half are calibration accuracy checks. He added that the calibration accuracy issue did not create a risk to public safety. He stated that every device is properly calibrated at the time of installation. Mr. Strausz reported that 27 of the 34 emails received by VASAP between July 1, 2017 and the date of suspension have been responded and resolved. The remaining seven require more research and some were recently received.

Mr. Strausz stated that Smart Start has taken proactive steps. Over the last year, the company increased oversight, commenced employee trainings, and changed the operational management. Smart Start began onsite trainings throughout the state and has traveled to different facility locations, reaching out to technicians for training on various types of installations, processes and checklists. Smart Start has also begun an internal audit process. In the audit, corporate

employees monitor each individual location and employee to measure success rates. Mr. Strausz expressed that having Smart Start develop an alternative light source and be conditionally approved by the Commission on VASAP, will significantly reduce the number of complaints due to poor workmanship and damaged of vehicles. Mr. Strausz stated that they have discussed with the Commission staff how some changes to their reporting will hopefully clarify and standardize Smart Start's reporting of accuracy checks to avoid confusion.

Mr. Strausz thanked the Commission members for the opportunity to discuss Smart Start's issues and suspension. He added that Smart Start takes the suspension extremely seriously, and they look forward to solving all of the issues in order to have the suspension lifted.

Smart Start respectfully requested for the Commission to consider suggestions from Smart Start that may assist to prevent these events from reoccurring in the future.

Mr. Strausz suggested for the Commission to identify and establish uniform standards. Mr. Strausz stated that Smart Start was unclear of the difference between a regular email correspondence exchange and a formal violation notice to the program. He recommended that the Commission clearly notate on the correspondence the nature of the correspondence and the severity of the client issue so Smart Start can determine the level of importance. Mr. Strausz reiterated that when Smart Start received the suspension letter, they were surprised. He stated that before the Commission sent the suspension letter, company representatives should have had an opportunity to meet with the Commission staff to address the issues and go through the process.

Mr. Strausz also suggested that the Commission consider establishing a VASAP vendor working group. Mr. Strausz envisioned the VASAP vendor working group meeting on a quarterly basis like the Commission meeting. The purpose of a VASAP vendor working group would be for vendors to have the opportunity to meet with Commission staff and discuss issues related to new and atypical vehicles, vehicles that present difficult challenges during installation. Members of the VASAP vendor working group would assist each other in identifying the solutions. Additionally, the VASAP vendor working group would provide an opportunity to discuss upcoming changes, challenges and developments that are coming to the VASAP Ignition Interlock Program. Mr. Strausz stated that by creating a vendor working group the vendors would have an opportunity to learn from each other and share information. Mr. Strausz believes that the VASAP vendor working group would be advantageous to all the vendors and advance VASAP as a nationally respected program.

Mr. Strausz stated that Smart Start considers the Commonwealth of Virginia and the Commission on VASAP to be a valued partner; they are committed to getting past the suspension and continuing the relationship.

Sheriff Wade stated that Smart Start, in its presentation, communicated to the Commission about how to correct the problems in the VASAP Ignition Interlock Program; however, Smart Start did not communicate how they plan to correct their problems. Sheriff Wade asked Smart Start, “How are you going to fix your problems?”

Mr. Strausz responded that the majority of the issues are related to the calibration inquiries. He stated that Smart Start has implemented several changes as discussed previously with Commission staff. The changes would be making the calibration accuracy check report standardized to be the same format as the other interlock vendors in Virginia. He added that by changing the accuracy check report it will minimize confusion at the VASAP level. It will no longer give the impression that vehicles are leaving the service facility with an uncalibrated device at the time of installation. Mr. Strausz stated that interlock devices do go out of calibration. He believes that the report should show when there are instances when the device could not be calibrated and the reason why.

Mr. Strausz stated that as it relates to the alternative light source's conditional approval, Smart Start believes that it can make the corrections needed to get the VASAP approval within the next seven to ten days. Once the Commission on VASAP approves the alternative light source, 50% of the workmanship issues will be resolved. He also recommended for the Commission to make a determination as to whom vendors should self-report an issue, so there is an "apples to apples" comparison among other vendors. He stated that he is not sure of what approach needs to be taken as to self-reporting an issue. Mr. Strausz questioned whether Smart Start would need to self-report a vehicle damaged that they were able to correct with no repair cost. He stated that "maybe we do; maybe we don't; we have taken the approach that we should not report those." Mr. Strausz stated that having a standard on what should be, and should not be, reported would be ideal. He stated that the self-report issues and the light source constituted 70% of the Smart Start workmanship issues. Smart Start has also started providing training and invested in continuing education.

According to what Mr. Strausz presented, Smart Start received twenty or thirty complaints out of about 2,700 clients. Senator Sturtevant asked if those complaints were for a three month or four-month period and if the percentage of complaints was consistent with the levels experienced by the other vendors, or if this was a spike in the number of complaints.

Mr. Morris responded that up to the date of the suspension, the number of complaints about Smart Start received by the Commission on VASAP approximated the number of complaints received about the other three vendors combined.

Senator Sturtevant stated that if Smart Start has 30 complaints out of 2700, it seems like a low complaint percentage, like about around one percent. Senator Sturtevant asked if the Commission had a target to meet and what is the metric or standard by which the Commission holds the vendors accountable.

Mr. Morris responded that there is no specific target. Mr. Morris addressed that frequency is important; however, severity is also really important. He stated the suspension was prompted when Smart Start damaged eight vehicles in a short period of time, and offenders expressed dissatisfaction to the Commission staff regarding Smart Start's customer service. The Commission felt that if the suspension had not been put into effect, many more cars would have been damaged.

Senator Stuart asked Mr. Morris if Smart Start had multiple complaints where offenders were losing their vehicles for weeks at a time while trying to get these issues resolved.

Mr. Morris responded that there were some offenders who did not have access to their vehicles for weeks, and one offender reported not having his vehicle for 32 days.

Mr. Strausz responded that once the vehicle is delivered to a referred facility for repair in that type of situation, they no longer have control of the car. Smart Start will pay the bill; however, they cannot force the repair facility to move faster. He added that he welcomes discussion on how Smart Start may lessen the inconvenience to the client.

Mr. Strausz reported that the majority of Smart Start's installation referrals are a result of client-to-client recommendations, and this situation is not good for the company's reputation. Smart Start values customer service and satisfaction. Ideally Smart Start would like to have oversight of the vehicle's repair timeline and be able to work with the repair facility to deliver the vehicle quicker to the client. Mr. Strausz stated that Smart Start understands that it was a very long delay for the offender that waited for his vehicle for 32 days, and that once the vehicle was repaired, Smart Start returned it to the client. He explained that another client, who was inconvenienced more than a couple of days, was a client who chose to switch to another vendor with a different vehicle; therefore, Smart Start felt that the offender was not inconvenienced during the period in which the vehicle was being repaired. He added that the repair was delayed because the client was not using the vehicle; consequently, Smart Start did not request that the

repair facility rush the repair to get the vehicle to the client. Mr. Strausz stated that he wanted to clear up those two issues.

Mr. Strausz explained that according to Smart Start, the complaints received in Virginia are not always compared “apples to apples” equally with other vendors. Mr. Strausz stated that there is no standard in place which they can follow. He explained that when Smart Start reviewed the FIOA response of VASAP’s emails regarding interlock complaints received between July 1, 2017 and the date of suspension, another vendor mentioned that they only report complaints that rise to significant levels. Mr. Strausz stated that some kind of standard needs to be set.

Senator Stuart stated that Mr. Strausz was blaming everyone but Smart Start for their issues and damaging offenders’ vehicles. Smart Start has caused offenders to lose their vehicles and stop their interlock service for weeks at a time. In some cases, the inconvenience that the offenders have endured has also put their jobs in jeopardy. Some offenders could be at risk of going to jail because of Smart Start’s discrepancies. Senator Stuart stated that Smart Start’s problems are incredibly serious and strike hard at the integrity of the VASAP program. Despite the excuses Senator Stuart stated he found the situation to be absolutely unacceptable.

Mr. Strausz apologized, stating his intent was not to make excuses adding that Smart Start does not believe in blaming anyone else.

Delegate Toscano inquired about Smart Start’s technology issues. He asked if Smart Start uses different technology than other vendors in Virginia, such as different types of handset cords or

light sources and whether there is something unique about Smart Start's technology that differs from other interlock companies.

Mr. Strausz stated that last year Smart Start made the investment of replacing the cords on the interlock devices in Virginia. Smart Start quadrupled the size of the wires which also quadrupled the price of the cords. The cords get moved around and bent whenever people pick them up to blow. The new cords also provide a separate place to unplug the cord. This removes the stress point on the handset when Smart Start conducts calibrations, which has made a significant difference. Mr. Strausz stated that there have been two cord-related issues out of the past 14,000 services. Mr. Strausz stated that Smart Start believes that the issues related to the cord are resolved. Mr. Strausz stated that he believes that the number one issue in interlock companies may be the cords because of the way clients treat and handle the cords. He added that people rarely disconnect the headsets, and when they do, because the cord has to be long enough for the client to be able to blow, the cords drop to the floor, resulting in cord damage. The cords are probably the most susceptible piece to damage.

Mr. Strausz explained that Smart Start submitted an alternative light source in August 2017. He stated that he understands that the alternative light source was needed as vehicles become more and more difficult to work on. Mr. Strausz stated that Mr. Morris announced that the Commission on VASAP approved the alternative light source for two Virginia vendors and the two other Virginia vendors have been conditionally approved. Smart Start looks forward to working with VASAP to get full approval of the alternative light source it submitted. He added that creating an alternative light source took time and during the process Smart Start made

several modifications with different models. The model submitted to the Commission on VASAP is Smart Start's attempt to strike a balance between safety, and prevention of device circumvention or tampering. It was recommended for Smart Start that the alternative light source be placed on the windshield. Smart Start felt this would enable easy circumvention by placing a band-aid over the windshield, thus blocking the alternative light source. A client could simply remove the band-aid when coming in for servicing. The approach that Smart Start took on the alternative light source was to create a flashing hardwired cover to go around the license plate. Mr. Strausz stated that the development took longer than expected and Smart Start should be operating with the conditionally approved alternative light source very soon.

Delegate Toscano stated that Smart Start's technology, as it relates to the handset cords and the alternative light source, are different from the other vendors in Virginia.

Mr. Strausz stated that the technology and the cords that the vendors use in Virginia are very similar. The main difference of the handset cords from others is the thickness of wires used by each vendor.

Mr. Strausz believed that all vendors were asked by the Commission on VASAP to develop a very similar style of alternative light source.

Delegate Toscano asked if the vehicle damage that offenders are having is related to the cord problems.

Mr. Strausz responded that the damage clients are having is not related to the cords on the device.

Delegate Toscano stated that there was serious damage to the electrical system of the vehicles.

Mr. Strausz responded that there was serious damage to three vehicles, each costing over \$400 to repair. He stated that control modules are computers used to control almost every function of the vehicle. When technicians are working on the light source, the wire connected to the light source runs into the switch that turns on the light, and if the wire is probed incorrectly, it can pop that piece. Once that piece is repaired, the vehicle returns to its original quality.

Sheriff Wade asked Mr. Morris how much time he spends working on Smart Start issues as opposed to other vendors problems.

Mr. Morris responded that before the suspension, Smart Start required 50% of his time. Since the suspension, the time spent on Smart Start is about 75%.

Sheriff Wade asked why the Commission staff thought that it was necessary to bring Smart Start before the Commission.

Mr. Morris responded that at this point the Commission staff can no longer manage the vendor.

Mr. Saunders expressed concern about the lack of response from Smart Start for information that the Commission was requesting. Mr. Saunders asked for the reason there is a lack of communication.

Mr. Strausz acknowledged that the number of issues reported to Smart Start have increased. He advised that a rollout period of the new Smart Start software training will be released next week. Mr. Strausz expressed that not informing the Commission staff of the training was not lack of communication. Smart Start will be conducting training in the Commonwealth of Virginia within the next year. The training modules will be completed in a form of webinars. Attendance is not mandatory. Smart Start will release one or two webinars for the next sixteen weeks. Mr. Strausz stated that in their normal correspondence, Smart Start is very quick to respond. He explained that communication is very important to Smart Start, and out of the 34 emails Smart Start has received within the last 30 days, Smart Start has responded to 27. Smart Start has not responded to several emails because they required more research. Mr. Strausz concluded that communication with the Commission staff is very important. The web training that was not communicated to the Commission staff was an oversight and was an isolated incident. Smart Start's intent was to inform the Commission staff of the training after the Commission meeting.

Executive Session

Sheriff Wade moved that members of the Commission convene into Executive Session under the *Code of Virginia*, pursuant to Section §2.2-3711, to discuss matters exempt under the *Virginia*

Code §2.2-3711(A), (7) and (A)(8), legal issues specifically those legal matters related to Smart Start's contract. The motion was properly seconded by Delegate Toscano. All were in favor.

Return to Open Session

Senator Sturtevant moved, and was properly seconded by Delegate Toscano, to certify by roll call vote that only matters related to receiving legal counsel regarding Smart Start's contract under Virginia Code §2.2-3712(7), (11), (8a) were discussed during the closed meeting and that no action was taken. All were in favor.

Delegate Jackson H. Miller, Chairman	YES
Senator Richard H. Stuart	YES
Senator Glen H. Sturtevant, Jr.	YES
Delegate David J. Toscano	YES
The Honorable Mary Jane Hall	YES
The Honorable George D. Varoutsos	YES
The Honorable Gino W. Williams	YES
Mr. John Saunders	YES
Mr. Anthony Carmichael	YES
Ms. Mary Read Gillispie	YES

Senator Stuart stated that members of the Commission have a wonderful staff. The Commission on VASAP works really hard, and are easy people to work with. Senator Stuart believes the Commission staff has made every effort to document and work with Smart Start.

Senator Stuart moved for the Commission on VASAP to terminate Smart Start's contract. No one seconded the motion; therefore, the motion died.

Delegate Toscano moved that the suspension of the contract with Smart Start continue through March 29, 2018, the next Commission meeting. The Commission on VASAP staff is directed to provide Smart Start with a list of conditions to meet prior to removal from suspension. The Commission on VASAP staff, acting on the advice of counsel, is authorized to remove Smart Start from suspension prior to March 29, 2018 upon satisfactory compliance with the list of conditions. The motion was properly seconded by Delegate Toscano. Nine approved. Senator Stuart opposed.

VASAPDA

Ms. Cindy Sheffield, President of the VASAP Directors' Association, presented the VASAPDA report.

Ms. Sheffield stated that VASAPDA had law enforcement training and they are in the process of ASAP certification.

Ms. Sheffield announced that the Commission on staff and VASAPDA will be working together to organize the training for administrative staff at the VASAP conference in 2018.

2018 Meeting Dates

The Commission on VASAP will meet in 2018 on the following dates:

Thursday, March 29	10:00 a.m.
Friday, June 8	10:00 a.m.
Friday, September 14	10:00 a.m.
Friday, December 7	10:00 a.m.

Adjournment

The meeting was adjourned by Delegate Miller.