
GOVERNOR'S COMMISSION ON PAROLE REVIEW



FINAL REPORT AND RECOMMENDATIONS

December 4, 2015

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Table of Contents

COMMISSION ON PAROLE REVIEW MEMBERS.....	3
EXECUTIVE SUMMARY	5
RECOMMENDATIONS	6
APPENDIX A: JULY 20, 2015 MEETING.....	51
Meeting One Agenda	52
Meeting One Minutes.....	53
APPENDIX B: AUGUST 27, 2015 MEETING.....	61
Meeting Two Agenda.....	62
Meeting Two Minutes	63
APPENDIX C: SEPTEMBER 28, 2015 MEETING.....	72
Meeting Three Agenda.....	73
Meeting Three Minutes	74
APPENDIX D: OCTOBER 26, 2015 MEETING	83
Meeting Four Agenda.....	84
Meeting Four Minutes	85
APPENDIX E: NOVEMBER 18, 2015 MEETING.....	94
Meeting Five Agenda.....	95
Meeting Five Minutes	96
APPENDIX F: SUBCOMMITTEE ASSIGNMENTS & CHARGES	108
APPENDIX G: FELONY LARCENY THRESHOLDS BY STATE	110
APPENDIX H: COVER LETTER FROM DR. TAXMAN.....	111
APPENDIX I: EXECUTIVE ORDER FORTY FOUR.....	112

EXECUTIVE SUMMARY

Twenty years ago, in 1995, the Commonwealth adopted legislation to abolish discretionary parole and adopted Truth-in-Sentencing (TIS), which required offenders to serve at least 85 percent of their sentences. On June 24, 2015, Governor McAuliffe issued Executive Order 44 establishing the Governor's Commission on Parole Review to review the 1995 decision to abolish parole and develop recommendations to enhance public safety and improve outcomes for offenders, their families and the Commonwealth. Governor McAuliffe tasked former Attorney General Mark Earley, Secretary of Public Safety and Homeland Security Brian Moran and Secretary of the Commonwealth Levar Stoney with co-chairing the Commission.

Since June 24, 2015, the Governor's Commission on Parole Review met five times and voted on the final recommendations contained in this report during the fifth meeting on November 18, 2015. The Commission heard presentations from various groups and stakeholders, including state agencies with an interest in shaping parole policies in Virginia. The Commission offered opportunities for public comment at each meeting and enjoyed hearing significant testimony from diverse stakeholder groups and members of the public.

In order to best address all components of Executive Order 44, the Commission's co-chairs created three subcommittees to consider various aspects of the decision to abolish parole, the Commonwealth's progress in meeting goals associated with the abolition of parole and other opportunities to enhance public safety. The subcommittees included: Efficiencies and Fiscal Impact, Best Practices for Reducing Recidivism, and Appropriate Classification of Offenses. The subcommittees met regularly and presented their recommendations to the full Commission on November 18, 2015.

The Commission did not specifically address reinstating discretionary parole due to the limited time for the Commission and the interrelated and complex issues (including incomplete data), which made this issue difficult to address in the time period allowed. The Commission considered a wide range of recommendations and adopted many that will enhance public safety and improve Virginia's criminal justice system. Major areas of consensus among the Commission members focused on providing additional funding for mental health and substance abuse services, diverting appropriate offenders away from the criminal justice system, and reviewing other policies including mandatory minimum sentences, good-time credits, sentencing guidelines and parole for juvenile offenders.

The final recommendations are not presented in priority order and are organized by subcommittee.

RECOMMENDATIONS

Recommendation 1 **Subcommittee on Best Practices for Reducing Recidivism**

Recommendation:

- There is a clear accumulation of research literature on effective practices, policies, and programs that have been shown to reduce recidivism, and practices that increase recidivism. This research has informed our perspective that the Commonwealth of Virginia should be exploring other practices and programs besides incarceration to increase the public safety of our communities.
- The incarceration of nonviolent offenders and individuals that do not pose a threat to the safety of the community have been found to increase criminal behavior (Nagin, Cullen, & Jonston, 2013).

Recommendation Summary:

Over the past 20 years there has been an accumulation of research literature on effective practices, policies, and programs that can reduce recidivism, and practices that increase recidivism. This research has informed our perspective that the Commonwealth of Virginia should be exploring other practices and programs besides incarceration to increase the public safety of our communities. The incarceration of nonviolent offenders and those who do not pose a threat to the safety of the community has been found to increase criminal behavior.

Need:

Since the 1974 Martinson's report on correctional effectiveness, there has been an increasing convergence in the research and policy arena about the effectiveness of policies, practices, and programs to reduce recidivism. A number of repositories document the effectiveness of various efforts, including [the Office of Justice Program's Crime Solutions](#), Office of Juvenile Justice Prevention and Delinquency *Blueprints for Violence Prevention*, Substance Abuse and Mental Health Services Administration's (SAMHSA) [National Registry of Effective Programs and Practices \(NREPP\)](#), [Cochrane Reviews](#) and [Campbell Collaboration](#). The following is a summary of our state of knowledge of correctional programs offered in prison and/or the community based on meta-analyses which consist of at least two studies that have similar findings; many of the meta-analyses are based on more than two rigorous and high quality studies.

Have been found not to reduce recidivism and may increase recidivism:

1. Psycho-Social Education Programming: Educational Programming to Inform Individuals of Various Psycho-Social Factors Such as Drug and Alcohol Use, Mental Health, Etc. (Sherman, et al., 1997; MacKenzie, 2006; NIDA, 2014)
2. Non-Directive Counseling: Counseling Programs That Focus On Free Form Discussions
3. Directive Counseling: Counseling That Focus On Topics In Each Section (Sherman, et al., 1997; MacKenzie, 2006; NIDA, 2014)
4. Intensive Supervision with No Treatment: Intensive Supervision Probation and/or Parole That Does Not Include Any Services, Treatment, Or Programs for Alcohol or Drug Abuse, Mental Illness (Sherman, et al., 1997; MacKenzie, 2006; Caudy, et al., 2013)
5. Boot Camps: In-Prison Programming That Replicates An Army Boot Camp Environment Without Any Programming Or Services (Sherman, et al., 1997; MacKenzie, 2006)

6. Case Management: Services to assessing an individual for need and referring to services
7. Incarceration: Period of confinement (Nagin, Cullen & Jonston, 2013)

Promising and have potential to reduce recidivism depending on how the programs or services are implemented. Specifically, the type of offender that participates in the program, dosage or intensity of programming, type of staffing, type of curriculum, or setting for the program:

1. Motivational Interviewing: Use of therapeutic strategies to interact with the client. (NIDA, 2014; Caudy, et al., 2013)
2. Moral reasoning: Emphasis on developing cognitive processing focused on the moral assessments (Sherman, et al., 1997; MacKenzie, 2006; Andrews and Bonta, 2010)
3. Emotional skills: Development of skills to learn to address, manage, and express control over his/her emotional states such as anger, sadness, excitement, anxiety or happiness. (Sherman, et al., 1997; MacKenzie, 2006; Andrews and Bonta, 2010)
4. 12 step with curriculum: Use of curriculum modeled after self-help groups consisting of 12 steps programming (NIDA, 2014)
5. Treatment Accountability for Street Crime: Specialized assessment services focused on referring to services, and providing some services ((Sherman, et al., 1997; MacKenzie, 2006; Caudy, et al., 2013)
6. Diversion to Treatment: Specialized programming to divert individuals from prison or incarceration by using intensive treatment programming such as residential services, etc. (MacKenzie, 2006; Caudy, et al., 2013)
7. Secondary education: Obtaining a GED or some type of high school diplomacy (Davis, et al., 2014).

Programs and Services that have been found to reduce recidivism:

1. Cognitive processing: Programs and services designed to improve cognition or thinking judgment and decision-making (Sherman, et al., 1997; MacKenzie, 2006; Andrews and Bonta, 2010)
2. Cognitive behavioral processing: Programs and services designed to improve cognition, behavior, and decision-making (Sherman, et al., 1997; MacKenzie, 2006; Andrews and Bonta, 2010)
3. Therapeutic community with aftercare programming: In-prison programming that focuses on therapeutic structured environments that focus on developing social relationships and improving behavioral responses. The in-prison programming needs to be complemented with continued programming in the community after release to reinforce the treatment (NIDA, 2014).
4. Medication assisted treatment: Use of medications for opioid or alcohol disorders to reduce the demand for using substances. The medications are designed to reduce the cravings (NIDA, 2014).
5. Drug treatment courts: Specialized courts that are designed to reinforce treatment, testing, rewards and sanctions. The drug treatment courts involve the judge as overseeing the status of the clients (Sherman, et al., 1997; MacKenzie, 2006; Andrews and Bonta, 2010)
6. Risk-need-responsivity supervision: Officers use the risk-need responsivity framework to supervise offenders which requires use of validated risk and need assessment tool, target

case planning based on needs, tailor supervision to risk and need factors, use of graduated sanctions and rewards, and improve working alliance (Drake, 2012).

7. Contingency management: Use of structured rewards and incentives to retain individuals in treatment and services (NIDA, 2014).
8. Multisystemic therapy: Use of intensive, family focused and community based treatment programs designed to address the offending and delinquent behavior (NIDA, 2014)

Many states have also passed legislation requiring justice and treatment agencies to use evidence-based treatments and practices.

Problem:

Programs and services offered by the Virginia Department of Corrections, local community corrections agencies, and Community Services Boards would need to assess the degree to which they use the effective programs. Many staff may need to be trained in cognitive processing strategies. Medical personnel (i.e. nurses, etc.) will be needed to administer medications.

Anticipated Challenges to Implementation of Recommendation:

Training staff and increasing capacity to provide more programming in prison, jail and community.

Implementation:

Efforts to expand programming will require staff to be trained in the programs, a team to verify quality assurance, and resources for the training and quality assurance.

Additional actions:

The Governor should encourage all Executive Branch Agencies to utilize evidence-based practices.

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- National Institute on Drug Abuse, (2014). *Principles of Drug Abuse Treatment for Criminal Justice Populations - A Research-Based Guide*. Bethesda, MD: National Institute on Drug Abuse: <http://www.drugabuse.gov/related-topics/criminal-justice-drug-abuse>
- Nagin, D.S. Cullen, F.T., Jonson, C.L. 2009. “Imprisonment and Reoffending.” In M. Tonry, ed., *Crime and Justice: An Annual Review of Research* (vol. 38). Chicago: University of Chicago Press.
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- Taxman, F. S. & Belenko, S. (2012). *Implementing Evidence-Based Practices in Community Corrections and Addiction Treatment*. New York: Springer.
- Taxman, F.S., Pattavina, A., & Caudy, M. (2014). Justice Reinvestment in the US: The Case for More Programs. *Victims & Offenders*, 9(1): 50-75.

Recommendation 2 **Subcommittee on Best Practices for Reducing Recidivism**

Recommendation:

Review data from other States, including Georgia, Texas, Kentucky, Florida, Missouri, California and New York regarding changes in the use of incarceration, sentence lengths, and other changes in the justice system.

Recommendation Summary:

- Expand programs in the community such as drug treatment, problem solving courts, reentry services, supportive housing programs, mental health services, day reporting programs with cognitive behavioral programming and employment services; short-term diversion and halfback residential programming.
- Explore the potential for reduction in sentence lengths and altering the criminal code to redefine the felony status of certain criminal behavior for nonviolent offenders.
- Reconsider using incarceration for probation and parole violators that have not committed new crimes by having more halfback, swift and certain programming, and other efforts to address compliance.

Need:

Other states have pursued policies and programs to reduce the use of incarceration for nonviolent offenders and felony offenders who do not pose a threat to the community. This work has been done as part of efforts referred under Justice Reinvestment Initiative (JRI). Since 2007, nearly half of the states in the U.S. have enacted reforms targeted at controlling the growth of the correctional population due to efforts to reduce or maintain taxpayer costs.

The Justice Reinvestment movement, which varies considerably from one state to the next, has a common goal of reserving prison resources for violent and career criminals who present public safety threats. But there is a recognition that lower risk and nonviolent offenders can be handled through more effective (in terms of reducing recidivism and dealing with the conditions that affect recidivism) and less costly options than incarceration. Justice Reinvestment is a multi-prong strategy which includes: 1) identifying key legislation that can address criminal penalties for certain types of offenders, expanding community based programming, and policies that support evidence based practices; 2) reallocating funding for evidence-based programming (see Recommendation 1 above) that is resigned to reduce recidivism; 3) establishing performance measures to track progress in implementing the legislation; and 4) focusing on quality improvements.

An important part of the initiative is to increase funding for community based programming. This effort is supported by the federal Office of Justice Programs and Pew Foundation Public Safety Performance Initiative which can provide technical assistance with all phases of the efforts. The technical assistance includes areas of improving interactions with stakeholders, working with legislators to develop legislation, working on public opinion and public support for policy development and public awareness.

Here are some of a sample of the experience of other states (and see Appendix A for a copy of the Pew Foundation’s Public Safety Performance summary chart of actions taken by different states to realign justice initiatives):

State	Est. Funds Saved	Efforts Created
Georgia	\$254 million	Revised criminal codes for burglary, forgery and theft (increasing penalties for serious offenses); Revised penalties for simple possession of illegal drugs; Relieved crowding in local jails by reducing the number of state-responsible inmates awaiting transfer to state facilities; Expanded reentry programming in the community to prevent recidivism Expanded sentencing options
Kentucky	\$442 million	Improve probation and parole to use RNR Supervision Use of prison beds for serious offenders Establishes efforts to evaluate government performance
South Carolina	\$172 million (construction) \$66 million (operating costs)	Established a goal to reduce recidivism through community programming; Use prison space for violent offenders
South Dakota	\$207 million (construction)	Redirected \$8 million to programs in the community to reduce recidivism
Utah	\$500 million	Redirected \$14 million to programs to reduce recidivism
Arkansas	\$875 million with some redirection to the community	Concentrated prison space on violent and serious offenders Steered lower-level offenders to intensive, evidence-based programming
Texas	\$2 Billion in prison construction with \$241 million directed to the community	Invested in residential treatment programming in the community Increased parole grant rate and expanded evidence-based programming

An important part of these efforts is the realization that length of sentences and types of offenders who are incarcerated affect recidivism rates. A series of studies have been conducted to examine the relationship of length of sentence and recidivism. As summarized by Pew Public Safety Foundation (see <http://www.pewtrusts.org/en/research-and-analysis/factsheets/2013/10/08/prison-time-served-and-recidivism>):

“An analysis of data from three states—Florida, Maryland, and Michigan—found little or no evidence that longer prison terms for many nonviolent offenders produced either incapacitation or deterrence effects. That is, the extra time behind bars neither prevented crimes during the period of incarceration nor kept offenders from committing crimes once released from prison.

The study found that significant proportions of nonviolent inmates released in these states in 2004 could have served three months to as much as two years less without any decline in public safety, dramatically reducing prison populations and costs:

- Florida: 14 percent of nonviolent offenders could have served shorter sentences, reducing the prison population by as much as 2,600 inmates and saving \$54 million.
- Maryland: 18 percent, with reductions of up to 800 inmates and savings of \$30 million.
- Michigan: 24 percent, with reductions of as much as 3,300 inmates and savings of \$92 million.

In sum, for many offenders, longer prison terms boost taxpayer costs but add little to no overall reduction in crime.”

The subcommittee recommends that more attention should be given to examining sentencing lengths given the poor relationship between length of sentence and recidivism. Shorter sentences will reduce the per capita incarceration rate, be cost effective, and achieve the punishment goals of sentencing.

Problem:

This would require examining sentence lengths for nonviolent offenses, expanding options in the community that judges can use for sanctions, and developing options for handling noncompliant offenders on supervision. This includes the need to build more community based programs and to expand substance abuse and mental health services.

Anticipated Challenges to Implementation of Recommendation:

It may be difficult to obtain consensus on an appropriate sentence length for nonviolent offenses and to develop new sentencing options in the community.

Implementation:

Identifying the major programs and capacity needed in each jurisdiction.

Additional actions:

Legislation would be needed to alter sentence lengths and funding is needed for expanding programming.

References:

Pew Charitable Trusts, *Time Served: The High Cost, Low Return of Longer Prison Terms*, June 2012, p. 13.

Recommendation 3

Subcommittees on Best Practices for Reducing Recidivism & Efficiencies and Fiscal Impact

Recommendation:

Conduct a needs assessment of the types of programs and services required in each jurisdiction to reduce the demand on incarceration.

Specific questions to be answered are:

- What is the current size of the justice-involved population (i.e. probation, parole, in jail, pretrial, prisoners expected to return to the community)?
- What are the needs that can be addressed through programming and services?
- What is the capacity of the system to serve those with needs and how many people are actually being served?
- What evidence-based programming and services are needed to reduce the need for incarceration?

Recommendation Summary:

Survey community capacity regarding the existence of “alternatives to incarceration” and reentry services in each Virginia jurisdiction and assess the types of programs and services needed per jurisdiction. At present, the Commonwealth of Virginia does not have a list of the available programs and services available in each jurisdiction of the Commonwealth. In order to build systems that can reduce the need for incarceration, it is imperative to ensure that the available programming addresses the dynamic needs of the population.

Need:

The Virginia Department of Corrections has a list for prison based programs but this list does not exist for programs/services offered in jails or in the community, and the list does not include the participation rate in each of these programs. At present, there is limited understanding of the capacity available in each community, and what the needs are.

Problem:

Expanding programming will advance public safety as well as provide community capacity to deal with substance abuse and mental illness. It would expand options and build capacity in the community which will be useful to local jails.

Anticipated Challenges to Implementation of Recommendation:

Funding is needed to conduct the needs assessment and survey.

Implementation:

Data is needed from the VA DOC and local community corrections agencies on offenders in their system. This data can be taken from assessment information and used to identify needed services. Use of the RNR Simulation Tool (Taxman & Pattavina, 2013) will provide a methodology for using the tools to identify needed programs.

Additional actions:

Funding will be needed for more programs.

References:

Taxman, F.S., & Caudy, M. (2015). Risk tells us who, but not what or how: Empirical assessment of the complexity of criminogenic needs to inform correctional programming. *Criminology and Public Policy*. 14(1): 71–103.

Taxman, F.S. & Pattavina, A. (2013). *Simulation strategies to reduce recidivism: Risk need responsivity (RNR) modeling in the criminal justice system*. New York: Springer.

Recommendation 4
Subcommittee on Best Practices for Reducing Recidivism

Recommendation:

Expand PAPIS Reentry Programs, and provide additional funding to support reentry services and programming.

Recommendation Summary:

Research exists that illustrates that recidivism rates can be significantly reduced if Evidence-Based reentry services are provided. Virginia already has in place a Pre- and Post-Incarceration Services consortium of reentry providers across the Commonwealth referred to as PAPIS. Almost all of the counties in Virginia have at least one reentry staff person to work with returning citizens. These are minimal service levels and there is a need to expand this infrastructure to better handle the reentry population.

Need:

The reincarceration rate for those coming home from Virginia state prisons is 23 percent. Nationwide, the recidivism rate after three years is above 58 percent. With the availability of risk assessment tools, justice organizations can best determine how programming should be applied to support the offender and reduce the likelihood of further criminal behavior. Studies of risk-levels have consistently demonstrated that utilizing evidence-based programs specifically tailored to medium or high-risk offenders dramatically decreases re-arrest rates. By reducing recidivism, these programs also reduce costs of re-incarceration and protect public safety by preventing future crimes. However, current budgets need to be doubled to meet needs associated with the new Evidence-Based program of providing Intensive Reentry Programming for medium to high-level risk offenders, as the program requires at least 300 clinical hours over the course of 12 months. By investing approximately \$2,500 in programming for each medium-to high-risk offender over 12 months, however, Virginia could see dramatic declines due to reduction in recidivism.

The Intensive Reentry Program is currently being implemented by most of the PAPIS members, and reports on the results of their work will be available by summer, 2016. It is already clear that with current level funding, PAPIS members are able to serve only a fraction of the number of medium to high risk inmates that need help making a successful transition back to the community. An investment in this programing, making Intensive Reentry services available to most, if not all, of those coming home from Virginia prisons could result in a 30 percent decline in recidivism, each year, according to the research results of the program in other locations. This would dramatically reduce the cost of the Virginia prison system over time.

Anticipated Challenges to Implementation of Recommendation:

This recommendation will require an increase in the budget.

Additional Action:

Funding will be required to implement this recommendation.

Recommendation 5
Subcommittees on Best Practices for Reducing Recidivism &
Efficiencies and Fiscal Impact

Recommendation:

Assess whether Community Services Boards (CSBs) adequately handle the needs for justice-involved populations. A concern was raised that CSBs are ineffective in providing services to justice-involved populations. This issue should be further studied including baseline standards for serving the justice population and how to use various sources to do so.

Recommendation Summary:

The subcommittee expressed concerns that the existing CSBs are not adequately addressing the behavioral health needs of those involved in the justice system. Since this is the main avenue for providing behavioral health services, it is imperative the CSBs be responsive to the unique needs of this population.

Need:

At present, there is limited understanding of the capacity available in each community, and what the needs are. It is also unclear whether the treatment programming provided uses evidence-based approaches. The CSBs have not been responsive to the needs of the justice involved population. Since many referrals come from the justice system, there needs to be attention to ensuring that the CSBs are adequately equipped with adequate resources and funding to handle the justice involved population.

Problem:

Expanding programming will advance public safety as well as provide community capacity to deal with substance abuse and mental illness. It would expand options and build capacity in the community. It is important that the CSBs be willing to address the needs of the justice populations.

Anticipated Challenges to Implementation of Recommendation:

Resources are needed to conduct the needs assessment.

Implementation:

There is a need to conduct a survey of justice agencies and CSBs to understand the demands for services and unmet needs.

Additional actions:

Results from the needs assessment must be reviewed in order to determine how to proceed.

Recommendation 6
Subcommittees on Best Practices for Reducing Recidivism & Efficiencies and Fiscal Impact

Recommendation:

Increase availability of behavioral health services to expand community corrections, alternative to incarceration and reentry services.

Recommendation Summary:

In FY 2014, only 38 percent of nonviolent offenders who were recommended for alternative sanctions were sentenced to these sanctions. The low rate is due in large part to a severe lack of appropriate alternatives, including addiction and mental health treatment programs. Further, the problem of prisoners (as well as inmates in local and regional jails and probationers/parolees) with untreated or undertreated mental health problems is widespread. Incarceration often worsens a mental health problem because treatment while incarcerated is limited.

Need:

Mental health and addiction services are critical components of successful reentry and recidivism reduction. Nationally, returning prisoners often have more than one type of health problem: Roughly 4 in 10 men and 6 in 10 women report a combination of physical health, mental health, and substance abuse conditions, including an estimated one-tenth of men and one-quarter of women with co-occurring substance abuse and mental health conditions.

There is a need for more behavioral health (mental health and addiction) services and programs so that more nonviolent offenders could be ordered to receive alternative sanctions.

Problem:

There is a lack of alternatives to which judges can order nonviolent offenders, including mental health and addiction disorder programs. This means that instead of receiving an alternative sentence, the person is incarcerated, which is costly to the Commonwealth. It is estimated that the cost of incarceration is over \$27,000 a year whereas behavioral health services and community corrections is less than \$10,000 a year. The potential cost savings for the estimated 3,000 individuals a year would be worth investing in more effective community programming which have a greater rate of recidivism reduction (see Recommendation 1).

One problem is that providers are not incentivized to provide much-needed addiction services because insurance reimbursement for addiction disorders does not exist on a widespread basis. Reimbursement is often the driver for the supply of services. If a service is not reimbursable, it does not exist (or is hard to come by). The problem of lack of mental health and addiction services very much affects people who are poor and disabled.

There are many evidence-based mental health and addiction services that would benefit those who are re-entering communities following incarceration. However, access to services, even in the public sector (at Virginia's Community Services Boards) can be challenging which means that there are often long waiting lists for even basic services such as mental health assessments, psychiatric services, medications, and outpatient services.

Anticipated Challenges to Implementation of Recommendation:

Increasing the availability of mental health and addiction disorder services requires money. Funding more services, particularly to target those who are re-entering communities, may not be seen as a priority for new funding.

Additional actions:

Funding is required.

References:

Virginia Criminal Sentencing Commission, 2014 Annual Report, page 37.

Mallik-Kane, Kamala; Visher, Christy A. Health and Prisoner Reentry: How Physical, Mental, and Substance Abuse Conditions Shape the Process of Reintegration, Urban Institute Justice Policy Center, Research Report, February 2008.

Recommendation 7 **Subcommittee on Best Practices for Reducing Recidivism**

Recommendation:

Expand Therapeutic Assessment “Drop Off” Centers or Crisis Intervention Teams (CIT) efforts.

Recommendation Summary:

Given the rate of mental health and substance abuse among the justice involved population, and the great need of Virginia communities for more community services, expand the use of CIT and therapeutic assessment “drop off” centers.

Need:

Diversion is an effective strategy to prevent individuals with mental illness from entering the criminal justice system. Therapeutic assessment centers are a growing part of the Commonwealth’s diversion strategy but more centers are needed and expansion of existing centers is needed to because not all operate at peak hours or 24/7. Police officers need access to these services to ensure that there is a response for those with mental illness that are not safe on the streets.

Problem:

People with mental illness and substance use disorders come into frequent contact with local law enforcement officers, often during a mental health crisis or when behavior is inappropriate, dangerous or violent. The law enforcement response may be to help the person receive mental health treatment voluntarily, or take the person into custody and seek mental health referral or incarceration for criminal acts. Law enforcement officers also execute emergency custody and temporary detention orders as part of the involuntary civil admission (commitment) process.

The therapeutic assessment, or “drop-off” location for law enforcement originated as part of the Crisis Intervention Team (CIT) model, a nationally-recognized “best practice” developed in Memphis 20 years ago. An important and critical component of CIT is a “*therapeutic assessment location (not a law enforcement or jail facility), or procedures, to streamline access to mental health treatment services in lieu of incarceration when appropriate.*” The drop-off centers provide important services to the community and offer law enforcement an alternative to arrest. It also serves to stabilize the mentally ill.

Goals of the therapeutic assessment location are:

- To provide a physical location, not a jail, lock-up or other criminal justice venue
- To provide a therapeutic location for assessment and evaluation that is not a law enforcement or jail facility
- To enable law enforcement officers to take a person in crisis for access to treatment and quickly return to regular law enforcement duties
- To enable law enforcement officers to connect individuals with needed treatment, in lieu of incarceration, consistent with the needs of public safety and addressing the underlying issue of mental illness
- To serve as a therapeutic, non-criminal justice-affiliated alternative to incarceration

- To reduce the time officers spend out of service waiting for MH assessment and disposition, and
- To decrease the use of arrest and detention of persons with mental health or substance use disorders by providing timely access to treatment.

Assessment centers are mostly located in separate space in hospital emergency rooms, reducing stigma, exposure, and law enforcement presence in a busy emergency room

Anticipated Challenges to Implementation of Recommendation:

Therapeutic assessment centers are most effective when combined with CIT (Crisis Intervention Teams). Not all localities have CIT programs. Therapeutic assessment centers also require long term buy-in and commitment from local criminal justice and mental health agencies.

Implementation:

Having a CIT program is the first step but each CIT needs to have a therapeutic assessment center.

Additional actions:

Funding is required.

References:

Therapeutic Assessment (“Drop-Off”) Locations for Law Enforcement and Crisis Stabilization Units in Virginia, Background and Current Status; DBHDS, February 2, 2012

Essential Elements for the Commonwealth of Virginia’s Crisis Intervention Team Programs (CIT), CIT Program Development Guidance Department of Criminal Justice Services and Department of Behavioral Health and Developmental Services Developed in Collaboration with the Virginia CIT Coalition Leadership Committee and Virginia CIT Stakeholders September 8, 2011 (Updated October 1, 2014).

Recommendation 8 **Subcommittee on Best Practices for Reducing Recidivism**

Recommendation:

Identify revenue sources to fund expanded behavioral health services.

Recommendation Summary:

The Commonwealth should identify and pursue revenue sources to fund behavioral health services and programming. Lack of health insurance or access to services creates a significant barrier to treatment for persons with behavioral health disorders. Identifying revenue sources and expanding access to services will allow these individuals to access the treatment they need and decrease the likelihood that they will interact with or enter the criminal justice system.

Need:

Studies demonstrate that over half of offenders incarcerated in local jails and prisons meet criteria consistent with mental health disorders, and nearly 20 percent of incarcerated individuals have a serious mental illness. Additionally, many offenders with mental health diagnoses also experience co-occurring substance use disorders. Offenders with mental illness are also more likely to recidivate compared to offenders with no history of mental illness. In fact, the Virginia Department of Corrections reports that 25 percent of offenders who recidivate have a mental illness. Expanding access to services and treatment would likely prevent individuals experiencing mental illness from cycling through the criminal justice system, which is costly to the Commonwealth. Because services and treatment options are limited, the Commonwealth must identify and pursue revenue sources to fund these services. One potential revenue source is Medicaid Expansion, as it would expand eligibility criteria and allow Virginians with behavioral health disorders to access treatment.

Anticipated Challenges to Implementation of Recommendation:

Although Medicaid Expansion would provide a revenue source for behavioral health services, it is a controversial issue in Virginia and has not been successful. Therefore, the Commonwealth should also identify other sources. Potential challenges related to other revenue sources include lack of options and challenging eligibility criteria.

Implementation:

Efforts must be made to continue to research, identify and pursue potential revenue sources.

References:

James, D. and Glazen, L, *Mental health problems of prison and jail inmates*, (Washington, DC:US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, September 2006).

Torrey EF, Zdanowicz MT, Kennard AD et al. The treatment of persons with mental illness in prisons and jails: A state survey. Arlington, VA, Treatment Advocacy Center, April 8, 2014.

Recommendation 9
Subcommittee on Best Practices for Reducing Recidivism

Recommendation:

Expand Virginia's supply of permanent supportive housing.

Recommendation Summary:

Permanent supportive housing is an evidence-based housing model that combines housing and wrap-around mental health and substance abuse services to people who are homeless or at risk of homelessness, including those re-entering the community following incarceration.

Need:

Housing is an essential component of successful reentry and recidivism reduction. Individuals involved in the criminal justice system are at increased risk for homelessness because of limited income and criminal history. One in five people who leave prison are likely to become homeless.

Stable housing has been shown to reduce recidivism. A 2010 analysis conducted by Virginia Supportive Housing of clients in their programs showed a decrease of 83 percent in the number of arrests. Further, between 85-100 percent of tenants in several permanent supportive housing programs in Virginia did not return to homelessness.

Problem:

There is an extreme lack of housing for justice-involved individuals, especially those who are reentering communities. Without housing, successful reentry is nearly impossible and the likelihood of recidivism is high.

Anticipated Challenges to Implementation of Recommendation:

Funding would be required to expand permanent supportive housing. Permanent supportive housing may not be seen as a priority for new funding.

Implementation:

Support efforts to expand permanent supportive housing.

Additional actions:

Funding is required.

References:

National Alliance to End Homelessness http://www.endhomelessness.org/pages/re_entry

The State of Permanent Supportive Housing in Virginia, November 2010.

<http://www.vceh.org/extras/Final%20Report.pdf>

Recommendation 10 **Subcommittee on Best Practices for Reducing Recidivism**

Recommendation:

Use savings/funds from closed prisons to fund needed programs, services, and reforms. Justice Reinvestment Initiatives are being used in other states to convert funds saved through reduced incarceration to build the community capacity to safely manage offenders in the community that they reside.

Recommendation Summary:

Nationwide Justice Reinvestment Initiatives are being used to convert funds saved through reduced incarceration to build community capacity to safely manage offenders in the community where they reside. The Subcommittee recommends that half of the savings from the closing of prisons and/or detention facilities should be used to build evidence-based programming, services, and practices in the community. These funds should be directly allocated to build community capacity to manage the offenders in the community.

Need:

Funding is needed to establish more community-based programming in Virginia. Future closing of prisons or reduction in prison capacity should be used to fund community operations. As discussed in Recommendation 2, states have identified funds saved from Justice Reinvestment. Some states have devoted a portion of the funding for community programming.

Problem:

Funding is needed for community programming.

Anticipated Challenges to Implementation of Recommendation:

Identifying the proportion of funds that can be transferred from prisons to community programming is a challenge. If we consider that a year of prison costs over \$27,000 and a year in quality programming in the community costs less than \$10,000 then we can essentially save costs by reducing the demand for incarceration. The challenge will be to earmark funds to build sufficient capacity in the community.

Implementation:

VA DOC may not be able to identify the costs for a particular prison.

Additional actions:

Legislation may be required to operationalize this recommendation.

Recommendation 11
Subcommittees on Best Practices for Reducing Recidivism & Efficiencies and Fiscal Impact

Recommendation:

Review current capacity for programming in facilities and determine whether it is feasible to increase the 15 percent cap on earned sentence credits available to inmates sentenced under no-parole provisions if they participate in programs that have demonstrated success in reducing recidivism. Like existing earned sentence credits, these additional credits be subject to revocation for cause. This recommendation is contingent upon adequate programming in facilities to meet the need.

Recommendation Summary:

Over 20 years ago, truth-in-sentencing (TIS) capped at 15 percent the maximum earned sentence credits available for felons sentenced under the new law, whether for “adherence to rules,” for “program participation,” or for “meeting such other requirements as may be established by law or regulation.” Va. Code §§ 53.1-202.2, 53.1-202.3. The General Assembly should revisit this cap given that earned credits are important for reducing recidivism and incentivizing inmates to participate in recidivism reduction programming.

Need:

The American Law Institute’s (ALI’s) ongoing review of the sentencing provisions of the Model Penal Code has recommended a separate credit for “satisfactory participation in vocational, educational, or other rehabilitative programs” – apart from “good time” credits awarded for adherence to rules. The ALI’s recommendation was influenced by the ABA Commission on Effective Criminal Sanctions, which recommended an additional 15 percent credit “for participation in work and other rehabilitative activities . . . to give prison authorities tools to encourage participation in reentry programming.”

The 15 percent cap established in 1994 was not evidence-based; instead it corresponded to the amount necessary to qualify for federal funding of prison construction. That funding is no longer available today. Increasing the cap will incentivize participation by existing and future inmates in vocational, educational, or other rehabilitation programs that have been shown to be effective in reducing recidivism. As the Vera Institute of Justice has recently reported in connection with a similar recommendation by the Governor’s Task Force on Sentencing and Recidivism in Tennessee, “. . . educational programming has been shown to decrease recidivism and be cost effective.” ALI similarly has noted that “In empirical research, completion of in-prison programming is often correlated with a reduced risk of recidivism following release.” A New York Department of Correctional Services study of 21,200 inmates released due to “merit time” between 1997 and 2005 found that they returned at a rate of eight percent less than all others: 11 percent (as opposed to 18 percent for all others) within the first year; 23 percent (as opposed to 31 percent) within two years; and 31 percent (as opposed to 39 percent) within three years.

There is a growing trend in the states toward recognizing these benefits. Earned time is available in at least 38 states for certain inmates who participate in or complete educational courses,

vocational training, treatment, work or other recidivism-reduction programs. From 2007 to 2013, at least 26 states expanded or created earned-time opportunities. The qualifications for earned and good time credits vary from state to state. For example, in Maryland good time credits range from 16.7 percent for violent to 33 percent for nonviolent offenses; additional earned sentence credits for work and vocational or other educational or training courses have the same range, with the top range limited to specially designed and approved programs. Seventeen states permit some form of earned time credits on top of good time credits: Arkansas, California, Delaware, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Mississippi, Nevada, New Jersey, New Mexico, Oklahoma, Rhode Island, South Carolina, and Tennessee.

Anticipated Challenges to Implementation of Recommendation:

Legislative action is required. It might be necessary to consider different good time credits for violent and nonviolent offenders. The Commission has not determined whether or how the amendment could be applied to existing inmates.

Additional actions:

As noted above, this recommendation would require an amendment to the 15 percent cap in the Virginia Code if adequate programming were in place to support the recommendation. Its budgetary impact would be favorable. A fiscal impact statement for SB 1496 in 2009 indicates that increasing the cap on earned sentence credits from 15 percent to 25 percent would have resulted in prison bed savings starting with 608 in FY 2010, 1,204 in FY 2011, and increasing to 1,313 in FY 2015. It could also have “significantly alter[ed] the need for new prisons.” The immediate effects of additional costs for DOC would have been largely offset by savings in per diem payments to localities for housing state responsible offenders. “For the longer term, there would be significant savings in future projected costs.”

References:

American Bar Association, Justice Kennedy Commission, Reports with Recommendations to the ABA House of Delegates 29-30 (2004).

American Law Institute, Model Penal Code: Sentencing, Tentative Draft No. 2 (Mar. 25, 2011).

42 U.S.C. § 13702.

GAO, Truth in Sentencing: Availability of Federal Grants Influenced Laws in Some States (1998).

Vera Institute of Justice to the Tennessee Governor’s Task Force on Sentencing and Recidivism, Summary and Analysis of the Task Force’s Recommendations to the Public Safety Subcabinet (rev. June 22, 2015).

National Conference of State Legislatures, Making Sense of Sentencing: State Systems and Policies, June 2015.

Maryland Department of Legislative Services, Office of Policy Analysis, Maryland Diminution Credit System (Dec. 2011).

National Conference of State Legislatures, Trends in Sentencing and Corrections: State Legislation (July 2013).

National Conference of State Legislatures, Good Time and Earned Time Policies for State Prison Inmates (Nov. 2011) (updated Jan. 2015).

Department of Planning and Budget, 2009 Fiscal Impact Statement, SB 1496, Feb. 4, 2009.

Recommendation 12 **Subcommittee on Best Practices for Reducing Recidivism**

Recommendation:

Introduce legislation to lift the federal ban on receipt of Temporary Assistance for Needy Families (TANF) and to amend the current provisions in the Supplemental Nutrition Assistance Program (SNAP, formerly Food Stamps) Code to mirror the TANF provisions with regard to possession of drugs.

Recommendation Summary:

This proposal recommends removing the federal ban on receipt of TANF for certain former drug felons convicted of possession pursuant to §18.2-250 of the *Code of Virginia*. Former felons who were convicted of distribution would continue to not be eligible for the benefit. However, those persons who illegally give, distribute or possess drugs as an accommodation and not with intent to profit thereby, shall also be exempt from the ban. The same restrictions regarding distribution would also apply to the SNAP benefit.

The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 imposed a ban on receipt of and TANF and SNAP. The federal law requires each state's legislature to pass state legislation if they want to lift the ban. In 2005, the General Assembly enacted legislation to lift the ban on receipt of SNAP for individuals convicted of drug possession in accordance with §18.2-250, but left in place the ban on TANF. The ban needs to be lifted to give these individuals access to financial assistance and the associated employment services supports.

Need:

As stated above, without legislative action, the ban on receipt of TANF benefits will remain in place, denying access to needed financial assistance and work support services. At the most recent count, 39 other states have lifted or modified the federal ban on receipt of TANF.

Anticipated Challenges to Implementation of Recommendation:

Legislative action will be required. Modifications to the state eligibility and benefit issuance system will be required. Since a new eligibility system for TANF and SNAP will be implemented in the fall of 2016, a delayed enactment clause is recommended.

Implementation:

The guidance used by local staff in the eligibility determination process will have to be modified. The guidance update will need to be coordinated with the effective date of the system change.

Additional actions:

There is a minimal increase in TANF benefit cost associated with lifting the ban. When similar legislation was introduced in the 2015 session, the Department of Planning and Budget estimated that first year costs would be under \$100,000 and ongoing costs under \$165,000 per year. These amounts can easily be covered by existing TANF block grant funding.

References:

Section 115 of Public Law 104-193

Recommendation 13

Subcommittee on Best Practices for Reducing Recidivism

Recommendation:

Remove questions regarding criminal history from all state and local government employment applications, making it clear that criminal history shall not be a determining factor in the initial screening process regarding employment decisions.

Recommendation Summary:

Amend the *Code of Virginia* by adding sections numbered 2.2-2812.1 and 15.2-1500.1, relating to inquiries by a state agency or locality regarding criminal convictions, charges, and arrests prohibiting state agencies from including on any employment application a question inquiring whether the prospective employee has ever been arrested or charged with, or convicted of, any crime, subject to certain exceptions. A prospective employee may not be asked if he has ever been arrested or charged with a crime unless the inquiry takes place after the prospective employee has received a conditional offer of employment. Further consideration should be given to circumstances which should result in a withdrawn offer, including but not limited to, potential barrier crimes and crimes related to the specific duties of the job.

Need:

Virginia takes great pride in having a diverse and thriving business environment. Every year many new businesses choose to relocate or open in the Commonwealth. Unfortunately, many people with criminal histories find it difficult to gain employment in Virginia. The National Employment Law Project estimates 70 million American adults have arrests or convictions in their past that can make it difficult for them to obtain employment.

Each year, over 10,000 individuals are released from Virginia's prisons, plus thousands more from local jails. Banning the box for state and local government employment applications not only opens the way for many of these individuals to find work, it signals to the private sector that hiring former offenders is good business and makes our communities safer. At least five large cities and counties within the Commonwealth have already banned the box on their local employment applications, indicating support for this statewide measure.

On April 3, 2015, Governor McAuliffe issued an Executive Order directing the Department of Human Resource Management (DHRM) to amend the state employment application on the appropriate use of criminal background checks. Legislation is needed to confirm the provisions of the Executive Order and expand it to local governments throughout the state.

Anticipated Challenges to Implementation of Recommendation:

Amending the Code of Virginia by adding sections numbered 2.2-2812.1 and 15.2-1500.1 requires legislative action.

References:

Virginia Code § sections numbered 2.2-2812.1 and 15.2-1500.1.

Recommendation 14 **Subcommittee on Best Practices for Reducing Recidivism**

Recommendation:

Allow individuals to have their driver's licenses reinstated prior to completing all payments of court fines and court costs.

Recommendation Summary:

Currently, § [46.2-395](#) of the *Code of Virginia* states that the failure of a person to pay fines, costs, forfeitures, restitution, or penalties assessed against him results in the suspension of such person's driver's license; and in order to remove a license suspension, a person must either pay all fines and costs in full or establish a payment plan pursuant to § [19.2-354](#) of the *Code of Virginia*. We recommend changing the *Code* to ensure that the failure of a person to pay fines, costs, forfeitures, restitution, or penalties can no longer be the sole reason for preventing an individual from regaining his or her driver's license.

Need:

The possession of a valid driver's license is often essential for persons to secure and maintain employment, and the loss of a driver's license often results in personal and familial hardships.

There are significant hurdles to removing a license suspension, as unpaid fines and costs accrue interest at a rate of six percent per year and, if a person owes fines and costs to multiple courts, each court's judgment must be satisfied or each court must agree to the establishment of a payment plan.

In fiscal year 2012, of the 401,504 suspension orders issued by the Virginia Department of Motor Vehicles, approximately 37.3 percent were for unpaid fines and costs, which constitutes the single largest cause of license suspensions.

The Supreme Court of Virginia reports that in fiscal year 2012 over \$352 million in fines and costs were assessed but that over \$164 million were uncollected. This suggests that the use of license suspension as a collection method may in fact adversely affect the ability to collect unpaid fines and costs; as such suspensions may limit a person's ability to obtain or retain employment and, therefore, his ability to pay.

Anticipated Challenges to Implementation of Recommendation:

Changing § [46.2-395](#) and § [19.2-354](#) of the *Code of Virginia* requires legislative action.

References:

Virginia Code §§ [46.2-395](#) and [19.2-354](#)

Recommendation 15
Subcommittees on Best Practices for Reducing Recidivism &
Efficiencies and Fiscal Impact

Recommendation:

The Commission identified geriatric release (including but not limited to medical clemency) as an existing procedure for which we recommend that the Governor consider whether relief should be granted, and if so, how it should be implemented.

Recommendation Summary:

Geriatric release (including medical clemency) was identified as an area where more equity and fairness should be considered. That is, Virginia would benefit from a commitment to review and amend the procedures for potential release to address issues of fairness.

Need:

In 1994, the truth-in-sentencing statute abolished parole, but in doing so the General Assembly relied on a safety valve for geriatric release. Va. Code § 53.1-40.01. Under this provision, any person serving a sentence for a felony (other than a Class 1 felony) may petition the Parole Board for conditional release once reaching age 60 (and having served ten years) or age 65 (having served five years). The Commission recommends that the Governor review procedures to allow for geriatric or medical necessary release.

Virginia does not have a compassionate release statute, and geriatric release is not confined to such considerations. However, the Governor's constitutional pardon authority extends to conditional clemency, which includes "medical pardons." These are available to inmates who are terminally ill, with a life expectancy of three months or less. The Commission recommends that the Governor also consider whether and how changes might be made in these medical pardon scenarios, administratively or by legislation.

While the grant rate for geriatric release has increased slightly in recent years, it remains very low. The Commission was presented with data highlighting the expense of caring for geriatric inmates. The Virginia Criminal Sentencing Commission (VCSC) noted in its 2009 report, the DOC cost, "particularly in medical expenses, is significantly higher for older inmates." Some geriatric prisoners require levels of medical care equivalent to that offered in assisted living, nursing homes, or hospice care. These expenses are likely to increase, as the number of state responsible offenders age 60+ has more than tripled since FY 2000. Yet, as the VCSC has found, those age 60+ are generally far less likely to recidivate.

With advancing age, geriatric inmates' prospects for suitable release plans also diminish. Accordingly, prompt administrative review of geriatric release policies and procedures is critical.

Anticipated Challenges to Implementation of Recommendation:

The policies of the Parole Board would need to be amended.

Implementation:

Executive action is needed.

Additional Actions:

Changes to geriatric release procedures fall within the authority of the Governor over Parole Board rules under Va. Code § 53.1-136(1). Any increase in geriatric release pursuant to acceptable release plans could well lead to cost savings, particularly in light of the rising medical costs of geriatric inmates described above.

References:

Va. Code §§ 53.1-136(1), 53.1-40.01.

www.commonwealth.virginia.gov/judicial-system/pardons.

Senate Document No. 2, Office of Governor Terence R. McAuliffe, List of Pardons, Commutations, Reprieves and Other Forms of Clemency (2015).

Virginia Criminal Sentencing Commission, Report on Parole-Eligible and Geriatric Inmates in State Correctional Facilities (2009).

www.vpb.virginia.gov.

Virginia Parole Board, Administrative Procedures Manual § 1.226.

Virginia Parole Board, Commission on Parole Review, July 2015 (slide presentation).

Report of the Vera Institute of Justice to the Tennessee Governor's Task Force on Sentencing and Recidivism (rev. June 22, 2015).

American Law Institute, Model Penal Code: Sentencing, Tentative Draft No. 2 (Mar. 25, 2011).

Recommendation 16
Subcommittee on Best Practices for Reducing Recidivism

Recommendation:

Correct unfair and uninformed jury sentencing that affects the length of incarceration for inmates sentenced by juries prior to 2000.

Recommendation Summary:

The Governor should recommend legislation providing an opportunity for sentence modification for those truth-in-sentencing inmates sentenced by juries prior to 2000 who were not given a jury instruction concerning the unavailability of parole. This will address fairness in the system.

Need:

In *Fishback v. Commonwealth*, 532 S.E.2d 629 (Va. 2000), the Virginia Supreme Court held that “it simply defies reason” to have excluded information from the jury that parole had been abolished. However, the court applied this rule only prospectively and not to prior cases. For those truth-in-sentencing inmates sentenced by juries before the court’s decision, between 1995 to 2000, their sentences were premised on the very same jury misconception criticized by the court – i.e., that defendants could shorten their time served through the availability of parole. This misconception likely had real consequences, since juries typically hand down harsher sentences than judges.

Extending equal justice to pre-*Fishback* trials where juries were not instructed regarding parole would appear to involve a relatively modest burden on the Commonwealth in comparison to the impact on defendants, who may well have been sentenced to shorter terms had the jury been properly instructed. From the outset of truth-in-sentencing to 2000, jury trials amounted to only about two percent of all cases. The Virginia Criminal Sentencing Commission provided the Commission with an estimate that 471 truth-in-sentencing inmates, who were sentenced by juries prior the 2000 Fishback decision, received a sentence of more than 20 years.

Anticipated Challenges to Implementation of Recommendation:

Providing the limited right in these circumstances to petition the court for modification of sentence following a final judgment would require legislative action. The courts could potentially be presented with a number of these petitions to shorten sentence, although such petitions would be distributed throughout the Commonwealth’s various circuit courts.

Implementation:

Legislation is necessary to address this issue.

Additional Actions:

None

References:

Fishback v. Commonwealth, 532 S.E.2d 629 (Va. 2000).
Virginia Criminal Sentencing Commission, 2001 Annual Report.
Mueller v. Murray, 478 S.E.2d 542 (Va. 1996).

Recommendation 17 **Subcommittee on Best Practices for Reducing Recidivism**

Recommendation:

Create an infrastructure for expanding evaluations of existing efforts in Virginia.

Conduct studies on effective practices and programs.

The Commonwealth should solicit support from public and private institutions of higher education in order to expand access to evaluation capacity for criminal justice programs and practices. Expanding the use of evaluation processes will ensure fidelity of evidence-based programs. Partnering institutions of higher education should collaborate with the Department of Corrections for the purposes of data analysis.

Establish a Committee to review recidivism reduction efforts in the Commonwealth.

Through collaborative partnerships on evaluation and data analysis, a committee should be established to regularly review recidivism efforts in the Commonwealth. The Committee would be responsible for reviewing:

- The definition of recidivism (many states are making revisions to the definition);
- The methods to measure recidivism; and
- The establishment of recidivism rates for existing programs, services, incarceration, etc. by risk level.

Recommendation Summary:

Virginia lacks an infrastructure to conduct studies and to adequately measure recidivism across the spectrum of justice agencies. Implementation of evidence-based programming and practices are advanced by having ongoing evaluation and partnerships with research organizations.

Need:

The criminal justice system in Virginia has been focused on the use of evidence-based practices (EBPs) to improve system outcomes. The “science” should be used to inform policies, practices, and procedures that are beneficial to producing successful outcomes. These outcomes are reducing recidivism, decreasing the number victims of crimes, and creating safer communities. These outcomes lead to long lasting public safety. While Virginia has moved in this direction, Virginia has not developed or consistently utilized metrics to measure the impact of these programmatic and policy shifts, and Virginia suffers from a lack of infrastructure to adequately evaluate the impact of current practices and policies.

At present, Virginia does not measure recidivism across the system. The Commonwealth only measures the return of offenders to state prisons. No statewide efforts are used to measure recidivism rates for jails, probation/parole, local community corrections or diversion programs. . It is essential that Virginia create and maintain an infrastructure for evaluation.

Virginia is fortunate to have an abundance of institutions of higher education that are well-equipped to engage in research-based program evaluations and make recommendations on system improvement. Funding is often provided and includes a coordinator at each agency and a

graduate student at each participating institutions who would be able to take leadership of this issue.

Anticipated Challenges to Implementation of Recommendation:

The VA DOC will need to provide data to other agencies or research groups on a routine basis.

Implementation:

The Commonwealth should pursue partnerships with institutions of higher education and leverage available resources to implement this recommendation.

Recommendation 18
Subcommittees on Best Practices for Reducing Recidivism &
Efficiencies and Fiscal Impact

Recommendation:

The Commission recommends a number of further studies. Its preference would be to have these conducted by a Virginia organization such as the Virginia Criminal Sentencing Commission or an independent research organization.

Need:

The following are recommended studies to advance reforms in the justice system and the use of costly and potentially unnecessary incarceration.

Length of Sentence

The first study is one of evidence-based sentence lengths for various crimes, to examine the impact of reducing sentence lengths on recidivism. The study should explore the length of sentences for violent offenses, nonviolent offenses, and limits on probation terms which other states have pursued to reduce the cost of corrections.

The American Bar Association Criminal Justice Sentencing Standards provide that “[a]t least once every ten years, the legislature should re-examine legislative policies regarding sentencing in light of the pattern of sentences imposed and executed.” The truth-in-sentencing law required the VCSC to establish midpoints for the sentencing guidelines designed to double, triple, or quintuple average time served by violent offenses from 1998-92. As confirmed before the Commission by both the Director of the VCSC and the Executive Director of the 1994 Commission on Parole Abolition and Sentencing Reform, these current midpoints have no evidence-based foundation. According to the American Law Institute, “There is wide agreement across disciplines that general deterrence is better affected through increases in the certainty of punishment following criminal conduct than through increases in the severity of threatened sanctions.”

Mandatory Minimums

The second study is to review the need for mandatory minimums given the overall 80 percent compliance by courts with the VCSC sentencing guidelines.

The current list of mandatory minimum sentences in Virginia, provided by the VCSC to the Commission from an appendix to the Virginia Sentencing Guidelines, includes over 170 offenses that are subject to mandatory minimums. While these may have been appropriate in the absence of a truth-in-sentencing law, after enactment of truth-in-sentencing in 1994 they are no longer necessary in light of the almost 80 percent rate of compliance by sentencing courts with the sentencing guidelines. Mandatory minimums place substantial limits on the discretion of sentencing judges to address the particular facts and circumstances of the offenses and defendants before them. Their goal of uniformity is also impeded by the effects of selective charging and plea bargaining by prosecutors, and evidence suggests that racial and ethnic biases sometimes influence their application. For these reasons, ALI has concluded that reliance on sentencing guidelines is a much more appropriate way to ensure uniformity of sentencing.

Second Look

The third study is to examine the American Law Institute's proposed "second look" recommendation, including its application to current old and new law inmates. Second look applies to inmates who have served 15 years and is intended to provide a mechanism for modifications of sentence.

After considerable work, the ALI has produced a draft sentencing provisions document which calls for legislatures to authorize a judicial panel or other judicial decision maker to hear and rule upon applications for modifications of sentence from inmates who have served 15 years, and at intervals thereafter not to exceed 10 years. Sentence modification would be analogous to resentencing in light of present circumstances. ALI suggests consideration of procedures for screening and dismissal of applications that are unmeritorious on their face.

In ALI's view, the need for such a provision stems from a number of factors. First, it seeks to make allowances for changes in the crime policy environment during the course of the much longer prison terms now in place in many states. Second, ALI supports the determinate sentencing approach reflected in the truth-in-sentencing law, and the reallocation of sentencing authority to the judicial branch. The proposal ensures the transparency of proceedings in open court, a fair and meaningful opportunity to be heard, offender accountability to the local community, a direct connection to the original sentencing decision, and the legitimacy of an impartial judiciary trained to issue reasoned decisions.

Modification of the Parole Board's Exemption from the Virginia Freedom of Information Act (FOIA)

Currently, with minor exceptions, the Parole Board is exempt from the application of the FOIA. Besides the interest of the individuals being considered for parole release, members of the public also have an interest in ensuring confidence in decisions of the Board, including their significant effect on Virginia's budget. A working group established by the National Conference of State Legislatures urged that such policies be "transparent to stakeholders and the public."

Because of the Parole Board's FOIA exemption, there is little information available about the nature of its decision-making process or policies. Virginia's Freedom of Information Advisory Council is currently reviewing all of the Board's existing exemptions from FOIA. Its review is scheduled to be completed by late 2016. The Governor should support a modification of the Board's exemption that would provide transparency as to Board policies and procedures, while retaining any necessary confidentiality that may be appropriate with respect to parole, parole revocation, or geriatric release decisions in individual cases.

Parole Board Appointment Requirements

Va. Code § 53.1-134 should be amended to increase the Parole Board's expertise, independence, and diversity. This provision currently provides only for a Parole Board of up to five members appointed by the Governor. The only requirement for Parole Board membership is that one member "shall be a representative of a crime victims' organization or a victim of crime."

Three leading experts on and advisors to U.S. parole boards have recently issued a call for a “ten-point reform plan,” the first point of which involves these issues of institutional structure. They urge steps to ensure that board members “possess the requisite education, expertise and independence relative to release decision-making.”

References:

American Bar Association, Justice Kennedy Commission, Reports with Recommendations to the ABA House of Delegates (2004).

Va. Code § 17.1-805.

Virginia DOC Research & Forecasting, Recidivism Trend: FY 1990-FY 2006, March 2011.

American Law Institute, Model Penal Code: Sentencing, Tentative Draft No. 2 (Mar. 25, 2011).

Clear, T & Austin, J. (2009) *Reducing Mass Incarceration: Implications of the Iron Law of Prison Populations*, 3 *Harv. L. & Policy Rev.* 307.

Virginia DOC, State Responsible Offender Population Trends FY 2010-FY2014.

VCSC 2014 Annual Report.

Va. Code §§ 2.2-3700, 2.2-3703(A)(1).

National Conference of State Legislatures, Principles of Effective State Sentencing and Correction Policy (2011).

Virginia Parole Board, Policy Manual (Oct. 1, 2006).

Office of the Secretary of Public Safety, Parole Risk Assessment Instrument Feasibility Report (2010).

Rhine, Petersilia, and Reitz, *The Future of Parole Release: A Ten-Point Reform Plan*, Sept. 16, 2015 (pre-publication draft), forthcoming in *Crime and Justice: A Review of Research* (M. Tonry ed. 2016).

Ark. Code Ann. 16-93-201.

Colo. Stat. 17-2-201.

La. Rev. Stat. 15:574.2.

Mass. Gen. Laws Ann. 27 § 4.

57 Okla St. Ann. 332.1B.

S.C. Stat. 24-21-10.

Hawaii Rev. Stat. § 353-61.

Florida Stat. § 947.02.

Recommendation 19
Subcommittee on the Appropriate Classification of Offenses &
Efficiencies and Fiscal Impact

Recommendation:

The Commission recommends raising the larceny threshold from \$200 to at least \$500.

Recommendation Summary:

The Subcommittee reviewed the classification of offenses and determined that raising the larceny and simple larceny threshold would result in fewer felons, a reduction in the prison population and system-wide criminal justice cost savings including prosecution, court and prison costs. Based on the Virginia Criminal Sentencing Commission's 2013-2015 Larceny and Fraud Study, 17.1 percent of the cases (excluding embezzlement) involved property valued at \$200-\$499. Additionally, 1.5 percent of the cases involved property of less than \$200. (certain crimes, such as larceny of a firearm, are defined as felonies regardless of the value of the item).

Need:

The felony larceny threshold was increased to \$200 in 1980, and has not been adjusted over the past 35 years. According to the Consumer Price Index, the \$200 threshold that was set in 1980 would now be worth \$577. Additionally, Virginia has the second lowest threshold in the country. See Appendix G for felony larceny thresholds by state.

Legislation to raise the threshold has been introduced several times over the past five years and has not passed. The Virginia General Assembly should adopt legislation to raise the threshold.

Anticipated Challenges to Implementation of Recommendation:

The Retailers Association and the Fraternal Order of Police opposed similar legislation last year. Work to engage law enforcement support for this effort would need to be a priority in order to ensure passage. As mentioned above, legislation has been introduced in previous years to raise the threshold to no avail.

References:

Virginia Code § 18.2-95 Grand Larceny Defined; How Punished.

Recommendation 20
Subcommittee on the Appropriate Classification of Offenses

Recommendation:

The Commission recommends examining the current eligibility criteria for participation in a drug treatment court and determining the extent to which the criteria exclude offenders from participating. The Commission further recommends examining and considering adult offenders who have been convicted of an offense listed in § 17.1-805 or § 19.2-297.1 within the preceding 10 years, or juvenile offenders who previously have been adjudicated not innocent of such an offense within the preceding 10 years, for participation in veteran and reentry courts.

Under existing *Code*, offenders who have been convicted under § 17.1-805 or § 19.2-297.1 are prohibited from participation in Virginia's drug treatment courts. While there is some overlap in offenses listed in the two statutes, § 17.1-805 is by far the broader of the two provisions and includes such offenses as burglary (§ 18.2-92, § 18.2-91) and possession of a firearm by a convicted felon (§ 18.2-308.2(A)). According to the Virginia Criminal Sentencing Commission, approximately one in five felony offenders receives a sentencing guidelines enhancement due a conviction for an offense listed in § 17.1-805. Consideration should be given to removing § 17.1-805 as an exclusionary criteria for the purposes of participating in a drug treatment court, or a veteran or reentry specialty docket. This is expected to expand the number of offenders who could be considered for participation and potentially benefit from the supervision and services these dockets provide.

Recommendation Summary:

Eligibility criteria for participation in drug treatment courts should be examined and consideration should be given to expanding the number of offenders eligible to participate in these specialized court dockets. Pursuant to § 18.2-254.1 Drug Treatment Court Act, adult offenders who have been convicted of an offense listed in § 17.1-805 or § 19.2-297.1 within the preceding 10 years, or juvenile offenders who previously have been adjudicated not innocent of such an offense within the preceding 10 years, are not eligible to participate in a drug treatment court in Virginia (see § 18.2-254.1). Section 17.1-805 contains the broadest definition of violent offenses found in the *Code of Virginia*. Using this definition in determining eligibility for participation in drug treatment courts excludes individuals who could otherwise benefit from the supervision and services provided through these specialized dockets.

Need:

According to DOC's *Quarterly Report to the Governor and General Assembly*, for CY2014, 21.5 percent of inmates in DOC facilities indicated they had used drugs heavily prior to their incarceration.

In Virginia, arrests for heroin offenses increased by 185 percent between 2005 and 2014. In addition, arrests involving other narcotics, such as prescription opioids, increased by 150 percent during the same time period.

Drug treatment courts have been found to be a cost-effective approach to addressing the needs of substance-abusing offenders. The Washington State Institute on Public Policy (WSIPP), a

widely-respected research organization, has included drug treatment courts in its inventory of evidence-based and research-based programs for adult corrections. The inventory is a list of programs shown through rigorous research to improve outcomes in a cost-effective manner. In a February 2015 report, WSIPP concluded that drug treatment courts accrue benefits worth \$3.06 for every dollar in cost. Moreover, the National Center for State Courts found that Virginia's adult drug treatment courts lower the recidivism rate of drug court participants relative to "business-as-usual" criminal justice processing, resulting in lower outcome and victimization costs for the drug court group relative to the comparison group studied.

Anticipated Challenges to Implementation of Recommendation:

Some Virginia policymakers do not support drug treatment courts.

Additional Actions:

Legislation to amend § 18.2-254.1 would be required.

References:

National Center for State Courts. *Virginia Adult Drug Treatment Courts - Cost Benefit Analysis* (October 2012).

Office of the Secretary of Public Safety and Homeland Security. *Presentation to the Offender Population Forecasting Policy Committee* (September 8, 2015).

Virginia Criminal Sentencing Commission. *2014 Annual Report* (December 2014).

Washington State Institute for Public Policy. *What Works and What Does Not? Benefit-Cost Findings from WSIPP* (February 2015).

Virginia Department of Corrections. *Quarterly Report to the Governor and General Assembly, for CY2014*.

Virginia Code § 17.1-805 Virginia Criminal Sentencing Commission, Adoption of Initial Discretionary Sentencing Guideline Midpoints

Virginia Code § 18.2-91 Crimes Against Property, Burglary and Related Offenses, Entering Dwelling House, etc., with Intent to Commit Larceny, Assault and Battery or Other Felony

Virginia Code § 18.2-92 Crimes Against Property, Burglary and Related Offenses, Breaking and Entering Dwelling House, with Intent to Commit Other Misdemeanor

Virginia Code § 18.2-254.1 Crimes Involving Health and Safety, Drug Treatment Court Act

Virginia Code § 18.2-308.2 (A) Possession of Transportation of Firearms, Firearms Ammunition, Stun Weapons, Explosives or Concealed Weapons by Convicted Felons; Penalties; Petition for Permit; When Issued

*Virginia Code § 19.2-297.1 Sentence; Judgement; Execution of Sentence, Sentence of Person
Twice Previously Convicted of Certain Violent Felonies.*

Recommendation 21

Subcommittee on the Appropriate Classification of Offenses

Recommendation:

The Commission recommends exploring increased earned-time credits for individuals incarcerated for drug-related offenses if they have been engaged in programming during their incarceration. In order to implement this recommendation, further study would be needed to ensure adequate programming is available and in place prior to the policy change. An increase in the availability of rehabilitative and reentry programs within the DOC should be made. Additionally, there should be an increase in the number of probation officers available to supervise offenders released under this rehabilitation initiative.

Recommendation Summary:

Giving drug offenders the ability to reduce their sentences by participating in reentry programs will create meaningful incentive for them to seriously address addiction, mental health issues and other root causes of crime. These programs will reduce costs in the short term, as they will reduce the prison population. They will also save money over the long term, as they will help these individuals address the underlying causes of their criminal conduct and not return to prison.

Need:

Many people are in prison due to alcoholism, drug addiction, untreated mental health issues, and other factors that prompted their criminal conduct. This recommendation is designed to address those root causes of crime. Specifically, the recommendation is intended to increase the availability of effective, evidence-based recidivism reduction programs within DOC, and help those enrolled in such programs address the underlying causes of their criminal conduct.

Problem:

The DOC reports that up to 15 percent of the state-responsible inmate population on June 30, 2014, was serving time for drug sales or drug possession. A substantial percentage of other offenders are serving time for offenses that were motivated by drug addiction or diagnosable mental health conditions. We will increase public safety by providing a means by which this population of offenders can focus upon and ultimately manage the issues that led them to the criminal choices underlying their convictions.

Anticipated Challenges to Implementation of Recommendation:

The following are anticipated challenges to the implementation of this recommendation:

- Funding for viable, evidence-based recidivism reduction programs
- Risk of offenders released early pursuant to this program committing other crimes
- Inconsistency with concept of “truth-in-sentencing,” which may impact crime victims

Implementation:

Implementation of this recommendation would require legislation amending the *Virginia Code* and currently applicable sentencing statutes. It would also result in the transfer of discretion in the amount of time served from judges to DOC.

Additional Actions:

To maximize the potential benefit, this recommendation should be accompanied by increased funding for effective treatment, prevention and reentry programs, both within DOC and available to community organizations.

References:

Virginia Department of Corrections. *State Responsible Offender Population Trends FY2010-FY2014*.

Recommendation 22
Subcommittee on the Appropriate Classification of Offenses

Recommendation:

The Commission approves evaluating the following offenses to determine if “Violent Crime” classification under § 17.1-805 is appropriate.

- Burglary/Breaking and Entering – Other Misdemeanors: § 18.2-92
- Burglary/Statutory – Other Felony, Assault and Battery: § 18.2-91
- Escapes/Correctional Facility/Escapes from a Correctional Facility: § 53.1-203 (1)
- Escapes/Other/Possess an Instrument to Aid Escape: §53.1-203(3)
- Prisoners/Destroy Property: § 53.1-203 (2), (8) and (9)
- Prisoners/Other: § 53.1-203(10)
- Riot and Unlawful Assembly/Governor’s Order: § 18.2-413
- Riot and Unlawful Assembly/Other: § 18.2-408 and § 18.2-414
- Treason: § 18.2-481 and §18.2-485
- Vandalism/Electricity, Oil, Phone, Gas Water Facility/Damage Over \$200: § 18.2-162
- Weapons/Felon/Convicted Felon (Non-Violent > 10 yr) Possess Firearms, etc.: § 18.2-308.2 (A)
- Weapons/Felon/Convicted Felon (Non-Violent w/in > 10 yr) Possess Firearms, etc.: § 18.2-308.2 (A)
- Weapons/Ineligible Person, Purchase/Provide to: § 18.2-308.2:1, § 18.2-308.2:2(M,i), § 18.2-308.2:2(M,ii), §18.2-308.2:2(N)

Recommendation Summary:

Certain offenses should be reexamined to determine if a conviction thereunder should brand a defendant a “Violent Offender”. The Commission reviewed evidence that persons convicted of an offense listed in *Virginia Code* § 17.1-805 (Violent Crimes) face major impediments to incarceration alternatives, and they often result in serving much longer prison terms. Being categorized a “Violent Offender” creates significant barriers to rehabilitative, self-improvement and reentry programs.

Need:

Eliminating these offenses from the list of violent offenses will reduce levels of incarceration, recidivism and difficulties associated with reentering the community by removing burdensome and counter-productive impediments to incarceration alternatives, and by eliminating obstacles to appropriate rehabilitative, self-improvement and reentry programs.

Anticipated Challenges to Implementation of Recommendation:

Removing these offenses from the list of Violent Crimes, *Virginia Code* § 17.1-805, requires legislative action.

References:

Virginia Code § 17.1-805 Virginia Criminal Sentencing Commission, Adoption of Initial Discretionary Sentencing Guideline Midpoints.

Recommendation 23
Subcommittee on the Appropriate Classification of Offenses

Recommendation:

The Commission recommends that the Virginia Parole Board coordinate with the Virginia Department of Corrections and the Office of the Attorney General to determine if those currently sentenced under the Three Strikes Law are in compliance with the current law and all amendments.

Recommendation Summary:

There are currently 284 people ineligible for parole under the Three Strikes Law and these cases should be reviewed in order to ensure that current inmates who otherwise would be parole eligible, have not been improperly designated as parole ineligible. Under the Three Strikes law, many offenders were declared ineligible for parole who allegedly did not commit the requisite three offenses and were allegedly not part of common act, transaction or scheme and without any reason to believe that these offenders would be recidivists should they be granted parole eligibility.

Implementation:

The Commission believes that much of the required data for this study already exists at DOC and the Parole Board. An assessment of the legislative intent of both the original Three Strikes law and the 1993 amendments will also be necessary.

Additional actions:

Further legislative action may be required if the study reveals that such action is necessary to ensure that only those offenders who warrant ineligibility under the Three Strikes law remain ineligible for parole.

References:

Virginia Code § 19.2-297.1 Sentence; Judgement; Execution of Sentence, Sentence of Person Twice Previously Convicted of Certain Violent Felonies and amendments.

Other Recommendations for Consideration
Subcommittee on Best Practices for Reducing Recidivism

(The content of the following recommendations was not adopted unanimously.)

Parole Policies and Procedures

The truth-in-sentencing law, enacted in 1994, abolished parole for felonies committed in 1995 or thereafter. However, according to data provided to the Commission by the Department of Corrections, there are 2,897 inmates who are currently eligible for parole, 84 percent of whom are still serving their first term of State Responsible (SR) incarceration. Except for certain non-felony offenses committed after 1994, all of these inmates have been serving time for offenses committed at least 20 years ago (i.e., prior to 1995).

The Commission heard from Delegate Mark Sickles, who discussed the need to address parole policies and procedures. The Governor is requested to review parole policies and procedures in the areas of application of candidates for both parole and geriatric release.

A: For candidates whose time served has already exceeded either 20 years, or the time set by the truth-in-sentencing guidelines for the same offense, the Parole Board should be required to issue a reasoned decision for any parole denial.

B: Review candidates with no recent record of major institutional infractions. The Governor should encourage at least three Board members to personally interview such candidates and meet to discuss them.

C: The Board should standardize its use of validated risk assessment tools and ensure that such tools include appropriate consideration of dynamic factors (such as age) at the time of parole review. Parole candidates should have transparent access to the information relevant to validation of these tools, as well as to the application of such tools to their case.

Need:

Operations of parole boards across the nation are currently being examined by a number of independent groups. The Marshall Project and others have found that parole boards often lack the independence, expertise, transparency, and obligation to engage in reasoned decision-making required of courts.

As early as 2009, 21 percent of parole-eligible inmates had already served longer for the same offense than the *high end* of the current truth-in-sentencing guidelines, which are crafted to account for the nature and circumstances of the offense. As DOC has recognized, “Typically, parole eligible offenders [in Virginia] were given much longer sentences than [today] because it was anticipated that these offenders could get paroled in the future.” But, parole grant rate has dropped from about 41 percent prior to abolition of parole to the current level of 3 percent.

Many parole denial form letters identify only the “serious nature and circumstances of your offense(s),” or words to that same effect. Delegate Sickles presented a former bill to the Commission that was intended to address this issue. Under his approach, the Board would grant parole to candidates who have already served longer than the mid-point of the current truth-in-

sentencing guidelines for the same offense, unless it issues a “reasoned decision” explaining why “there is a substantial risk” that the parole candidate poses to public safety. The bill failed in the General Assembly.

The Board is currently authorized to conduct parole interviews either “by the Board or its representatives.” The Board’s Policy Manual and Administrative Procedures Manual does not require that Board members interview candidates. Parole examiners most often conduct these interviews. The Governor should consider reviewing this process and determining whether any adjustments should be made.

In November 2010, the Office of the Secretary of Public Safety reported to the General Assembly that it had been working with Northpointe, Inc. to develop and implement by January 2011 a risk and needs assessment for parole eligible inmates, known as Correctional Offender Management Profiling for Alternative Sanctions (COMPAS). The Office noted that over time this tool would be evaluated “to determine [its] validity” and “whether modifications can and should be made.”

The Board reports that it now uses a COMPAS risk assessment tool in connection with its parole decisions, and any such use should be standardized, transparent, and validated with respect to how it may apply to parole release decisions. Any such tools should also take appropriate consideration of dynamic factors (such as age), given the lower risk older inmates generally pose to public safety. In order to ensure that parole candidates understand the nature and effects of such tools and have a fair and meaningful opportunity to address any issues related to their application in a particular case, they should be provided access to the information relevant to use and validation of these tools, as well as the application of any such tools in their case.

References:

Virginia Code §§ 53.1-134 *et seq.*

House Bill No. 2388 (Jan. 23, 2015).

Rhine, Petersilia, and Reitz, *The Future of Parole Release: A Ten-Point Reform Plan*, Sept. 16, 2015 (pre-publication draft), forthcoming in *Crime and Justice: A Review of Research* (M. Tonry ed. 2016).

Schwartzappel, *The Power and Politics of Our Parole Boards*, *The Washington Post*, July 12, 2015, at A1.

American Law Institute, *Model Penal Code: Sentencing, Tentative Draft No. 2* (Mar. 25, 2011).

Klinge, *Changing the Sentence Without Hiding the Truth: Judicial Sentence Modification as a Promising Method of Early Release*, 52 *Wm. & Mary L. Rev.* 465 (2010).

New York’s Broken Parole System, *The New York Times*, Feb. 17, 2014, at A16.

Virginia DOC, *Geriatric Offenders Within the SR Confined Population* (2011).

Virginia DOC, VADOC Demographics, July 20, 2015.

Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex, 442 U.S. 1 (1979).

Report of JLARC on Review of Virginia's Parole Process, Senate Doc. No. 4 (1991).

Virginia DCJS, Criminal Justice Research Center, *Crime in the Commonwealth* (1999).

Virginia Parole Board, Policy Manual (Oct. 1, 2006).

Virginia Parole Board, Administrative Procedures Manual.

www.vpb.virginia.gov.

Virginia Criminal Sentencing Commission, Report on Parole-Eligible and Geriatric Inmates in State Correctional Facilities (2009).

Virginia Criminal Sentencing Commission, *2014 Annual Report*.

Office of the Secretary of Public Safety, Parole Risk Assessment Instrument Feasibility Report, Nov. 15, 2010.

Letter from Stephen A. Northup to The Honorable Brian J. Moran, Oct. 16, 2015.

Letter from Virginia Parole Board Chair Helen F. Fahey to Senator Linda T. Puller, Feb. 7, 2008.

APPENDIX A

July 20, 2015

Commission on Parole Review Agenda and Minutes

Meeting One Agenda
Commission on Parole Review
Monday, July 20, 2015
1:00 p.m. – 4:00 p.m.

Virginia State Capitol – House Room 3
Richmond, Virginia

- 1:00 p.m. - 1:15 p.m.** **Welcome/Opening Remarks**
The Honorable Brian J. Moran
Secretary of Public Safety and Homeland Security
- The Honorable Mark L. Earley, Sr.
Former Attorney General of Virginia
- The Honorable Levar M. Stoney
Secretary of the Commonwealth
- 1:15 p.m. - 1:30 p.m.** **Introductions**
- 1:30 p.m. - 1:40 p.m.** **Swearing In**
Kelly Thomasson, Deputy Secretary of the Commonwealth
- 1:40 p.m. - 2:20 p.m.** **Overview of the 1994 Commission on Parole Abolition and Sentencing Reform**
Eric Finkbeiner, Former Executive Director, Governor Allen’s Commission on Parole Abolition and Sentencing Reform
- 2:20 p.m. - 3:00 p.m.** **Overview of the Department of Corrections**
Harold Clarke, Director, Virginia Department of Corrections
- Dr. Tama Celi, Statistical Analysis & Forecast Unit Manager,
Virginia Department of Corrections
- 3:00 p.m. -3:40 p.m.** **Current State of Parole in the Commonwealth**
Karen Brown, Chair of the Parole Board
- 3:40 p.m. -3:50 p.m.** **Public Comment**
- 3:50 p.m. -4:00 p.m.** **Next Steps & Closing Remarks**
The Honorable Brian J. Moran
Secretary of Public Safety and Homeland Security

Meeting One Minutes
Commission on Parole Review
Virginia State Capitol – House Room 3, Richmond, Virginia
July 20, 2015

Members Present:

The Honorable Brian J. Moran, Secretary of Public Safety and Homeland Security
The Honorable Levar M. Stoney, Secretary of the Commonwealth
The Honorable Mark L. Earley, Sr., Owner, Earley Legal Group, LLC; former Attorney General of Virginia
Bobby N. Vassar, Chief Counsel (Retired), U.S. House Judiciary Subcommittee on Crime
Faye S. Taxman, Ph.D., Professor, George Mason University
Gail Arnall, Ph.D., Consultant for Outreach and Development, Offender Aid Restoration
Jill Vogel, Member, Senate of Virginia
Dave Albo, Member, Virginia House of Delegates; Chairman, Courts of Justice Committee
William Richardson, Jr., Member, Virginia CURE; Retired partner, Wilmer, Cutler, Pickering, Hale and Dorr, LLP
David R. Lett, Public Defender, Petersburg Public Defender's Office
Tonya Chapman, Deputy Secretary of Public Safety and Homeland Security
Cynthia E. Hudson, Chief Deputy Attorney General, Office of the Attorney General
Francine Ecker, Director, Virginia Department of Criminal Justice Services
Marcus M. Hodges, President, National Association of Probation Executives
Kimberly Lettner, Retired Chief of Police, Division of Capitol Police
Camille Cooper, Director of Government Affairs, The National Association to PROTECT Children & PROTECT
Harold Clarke, Director, Virginia Department of Corrections
La Bravia J. Jenkins, City of Fredericksburg, Commonwealth's Attorney
Luke E. Torian, Member, Virginia House of Delegates
Mindy M. Stell, President, Virginia Victim Assistance Network
Kenneth W. Stolle, Sheriff, Virginia Beach Sheriff's Office
Alvin Edwards, Ph.D., Pastor, Mt. Zion First African Baptist Church
Karen Brown, Chair, Virginia Parole Board
Jack Gravely, JD, Executive Director, Virginia State NAACP
Sandra W. Brandt, Executive Director, STEP-UP Inc.
Timothy Heaphy, Partner, Hunton & Williams, former US Attorney, Western District of Virginia
Dave Marsden, Member, Senate of Virginia
Thomas M. Wolf, Partner, LeClairRyan

Members Not Present:

Cheryl Robinette, Director of Substance Abuse Services, Cumberland Mountain Community Services Board
Mira Signer, Executive Director, National Alliance on Mental Illness of Virginia
Margaret Schultze, Commissioner, Virginia Department of Social Services
Meredith Farrar-Owens, Director, Virginia Criminal Sentencing Commission

Other Participants:

Lloyd Sheets, Program Facility Manager, Cumberland Mountain Community Services Board for
Cheryl Robinette

Joanna E. Laws, Virginia Criminal Sentencing Commission for Meredith Farrar-Owens

Welcome/Opening Remarks

Secretary Moran convened the meeting at 1:01 PM and welcomed everyone in attendance. On behalf of Governor McAuliffe, he thanked the members for their willingness to serve. Secretary Moran advised the members that they each bring valuable experience to the table and this will ensure taxpayer dollars are utilized effectively and efficiently.

Secretary Moran provided a historical overview of the abolishment of parole in 1995 and stated that now, twenty years later, it is time to review the policy that abolished parole.

Secretary Moran advised that the purpose of this Commission is not to overturn the previous determination. The Commission's purpose is to improve public safety. The Commission must provide an interim report to the Governor no later than November 2, 2015, with the final report due by December 4, 2015.

Secretary Moran provided an overview of the agenda and turned the floor over to Chair Mark L. Earley, Sr.

General Earley stated it was a pleasure to serve with Secretary Moran, Secretary Stoney and the rest of the Commission.

Secretary Stoney reported that as Secretary of the Commonwealth, nearly 9,000 citizens have had their rights restored. He advised it is time to revisit our policy and perform a full review because our criminal justice system should keep people safe. Currently, 15 states have abolished parole and several have reestablished parole since; however, we must carefully examine what works for Virginia. The Commission is tasked with having a frank conversation to ensure taxpayer dollars are spent wisely and keeping our citizens safe.

Introductions

All members present introduced themselves and stated their affiliations.

Swearing-In

Kelly Thomasson, Deputy Secretary of the Commonwealth, performed the swearing in of the Commission members. Members of the Commission took the oath of office to commence their duties.

Overview of the 1994 Commission on Parole Abolition and Sentencing Reform

Eric Finkbeiner, Former Executive Director of Governor Allen's Commission on Parole Abolition and Sentencing Reform, provided a presentation on the history and impact of 1994 parole abolition and sentencing reform. Mr. Finkbeiner commended Governor McAuliffe for taking the time to review reform. Mr. Finkbeiner's report provided a historical overview of the 1994 objectives. Topics presented included but were not limited to the 1993 gubernatorial

campaign, the significant increase in crime, percentage of violent offenders with prior criminal convictions, the development of a comprehensive sentencing reform plan, review of federal guidelines and experiences in Florida, North Carolina, Pennsylvania, and Texas, sentencing and time served.

Secretary Moran requested clarification regarding felons serving time that exceeds the 85% under truth-in-sentencing. Mr. Finkbeiner advised that sentences of offenders incurring infractions for misbehavior results in an extended sentence. Secretary Moran asked Director Clarke to expound on his inquiry during his presentation. During Director Clarke's presentation he explained that this is a representation of offenders who violated the law/policy while incarcerated.

Secretary Moran requested clarification regarding the share of Virginia's prison beds occupied by violent felons. *Per Secretary Moran, is it correct that 80.8% of the offenses may not be a violent offense?* Mr. Finkbeiner indicated that is correct.

Sheriff Stolle shared concern regarding the lack of available alternative sentencing options.

Ms. Arnall asked if the definition of violent crime has changed. Mr. Finkbeiner advised that the definition has not changed. Ms. Laws confirmed that the definition has not changed.

Sheriff Stolle commented that the current population of 33,000 is significantly lower than the projected rates of 49,000 – 52,000. The prison population would have been significantly higher if nothing was done to address prison population growth (i.e., the incarceration of people we are afraid of versus those we are mad at). Delegate Torian questioned the statement. Mr. Gravely advised that the statement would resonate differently in some communities. Secretary Moran clarified that "mad at" refers to those technical violators that do not comply with orders. Director Clarke expounded that this phrase should be used in totality with further explanation that we are afraid of these individuals because of their behaviors or risk factors.

Mr. Richardson asked if the demographics that the previous Commission focused on were violent offenses. Mr. Richardson's question was deferred to the next meeting to be addressed by Meredith Farrar-Owens, Director of the Virginia Criminal Sentencing Commission.

Mr. Richardson asked if 95% of all cases were guilty pleas or those heard by a judge. He further stated that judges, prosecutors, and District Attorneys accommodated parole by increasing sentencing. In response, Mr. Finkbeiner advised victims, families and those in the criminal justice system have varying perspectives. Sheriff Stolle advised that judges did not sentence higher amounts and juries were not provided with information. Juries were under the impression time would be served at 100%. Secretary Moran indicated there are a number of variables that play out in a court of law.

Questions were asked about the goals and objectives of the Commission and the hope to get into more detailed objectives at future meetings.

Mr. Finkbeiner then provided an overview of the nonviolent offender risk assessment developed pursuant to a 1994 mandate. The risk assessment is completed in larceny, fraud, and drug cases for offenders who are recommended for incarceration by the sentencing guidelines.

Ms. Cooper asked if the data took into account the primary and secondary offenses. Mr. Finkbeiner advised that the guidelines take into account the whole career of the offender.

Mr. Heaphy asked Mr. Finkbeiner to share any previous discussions regarding violent offenses. Mr. Finkbeiner advised that there was a lengthy conversation on what should be categorized as a violent offense. He would like mandatory minimums and truth-in-sentencing to be on the table because currently, someone who sold crack could get the same sentence as someone who committed a violent crime.

A question was asked regarding any studies that confirm sentencing disparities have been eliminated. Mr. Finkbeiner advised that the Sentencing Commission has reports that provide the requested information.

Dr. Taxman asked for clarification regarding the definitions of state prison beds and prison growth. She questioned if this references the length of sentences or offenders. Mr. Finkbeiner advised that it references the number of offenders in the facilities.

Mr. Vassar reported that parole eligibility staggers and not everyone is granted parole on their first eligibility. There is no specific formula to guarantee release. Mr. Stolle commented that the grant rate was 41% before the abolition of parole.

Senator Vogel asked Mr. Finkbeiner if having had the historical perspective has his recommendation changed. Mr. Finkbeiner advised that he does not think parole should be reinstated or truth-in-sentencing adjusted. The policy is 20 years old and should be reviewed when it comes to non-violent offenders with no prior convictions.

Mr. Lett asked if the Commission would hear some of the good things about parole.

Overview of the Department of Corrections

Director Clarke provided brief introductions and background and then turned the floor over to Dr. Tama Celi.

Dr. Celi provided a comprehensive overview of definitions and historical information, the total State Responsible population (SR), agency operations, changes in operational capacity, and three-year re-incarceration rates.

Sheriff Stolle advised that local jails receive only \$12 per day to house offenders and that rate should be increased. Per Dr. Celi, the VADOC definition of violent is broken down and grouped for data. VADOC also utilizes Virginia statute 17.1-805.

CA asked how people under 30 incur lengthy sentences. Dr. Celi advised the individual could have been a youthful offender.

Mr. Heaphy asked if drug distribution was included in the violent category.

Sheriff Stolle asked what percentage of parole eligible offenders are over 50. Dr. Celi advised that she did not currently have that information but could obtain and provide at the next meeting.

Dr. Taxman asked for the percentage of offenders that score high on the COMPAS assessment. Dr. Celi advised that COMPAS is used for offenders' general recidivism and criminogenic needs to help prepare offenders to leave prison and transition back into the community. The COMPAS assessment is performed on every offender and has been in use since 2008.

Ms. Brown provided requirements for being considered as a youthful offender. Pursuant to Code of Virginia § 19.2-311, the individual must be under 21, serving a four-year commitment. The Commonwealth's Attorney, the victim, and the court must agree.

Secretary Moran asked how many youthful offenders there are currently. Ms. Brown advised there are currently 62.

Ms. Cooper requested additional information on the aging population. Dr. Celi advised geriatric information is available.

Mr. Vassar asked for data reflecting the decrease in parole numbers. Dr. Celi advised that Ms. Brown's presentation would include the information requested.

Dr. Edwards stated that the female offender population had not been discussed thus far. Dr. Celi advised that female offender data is available.

Dr. Celi advised members that ethnicity information has just recently begun being obtained. She does not believe the 1% reported regarding the Hispanic demographic is currently accurate.

Dr. Celi provided an overview of the annual cost to operate facilities and detention and diversion centers. Secretary Moran advised that it does not cost more to divert someone than it does to incarcerate someone.

Dr. Taxman requested additional information regarding alternative incarceration. Dr. Celi advised that an alternative by the guidelines is anything other than recommended sentences.

Dr. Celi provided an overview of authorized and filled positions, on and off-site medical expenditures.

Several requests were made for data that Dr. Celi did not currently have in her possession but would be obtained and presented at the next meeting.

Mr. Heaphy asked about recidivism and if there was any data about the percentage of the population that participates. Dr. Celi advised that the numbers are where they expected them to be. Director Clarke advised that an effective re-entry program is the best plan for public safety.

Five years ago, the VADOC set out to shift the environment. The VADOC continues moving in the direction to build engagement with offenders.

Ms. Brandt asked if there was any gang information available. Dr. Celi advised that she would provide the information at the next meeting.

Mr. Gravely asked where the newly opened facilities are located and if the members would visit a facility. Director Clarke advised that Marion and Grayson County (River North) are the new facilities. Secretary Moran advised that he would welcome the opportunity to visit one of the facilities.

Current State of Parole in the Commonwealth

Karen Brown, Chair, Virginia Parole Board provided an overview of the Parole Board. Presentation topics included but were not limited to the following: the goal of the Parole Board and overview of *Swarthout v. Cooke* and *Burnette v. Fahey*; offenders' eligibility for parole consideration; parole ineligibility; percentage of parole eligible and truth-in-sentencing population serving life sentences; number of parole eligible and truth-in-sentencing offenders serving higher sentences (excluding life); the current parole eligible population that has served more than 20 years; current parole eligible population have already served 20+ years; statistics on crimes committed by geriatric offenders; and statistics on crimes committed while a juvenile.

Sheriff Stolle asked how someone with a drug charge has a 20-year sentence when truth-in-sentencing does not have a 20-year sentence. Ms. Brown advised the charges are based on the most serious offense and they could also be serving time for new violations. Dr. Celi advised the sentence is an accumulation of offenses.

Ms. Cooper asked if we are looking at individual offenders. Ms. Brown advised yes.

Dr. Taxman asked if we could come up with a common way we look at data. She expressed that she would be happy to make recommendations. She further stated that availability of risk information would be helpful.

Several questions were asked regarding the Commission's duties to include: is the abolition of parole not working; should we reform parole; are we looking into the abolition of parole; how has parole worked; and how can we look into without comparing it to something else.

Ms. Cooper asked if the PowerPoint presentation would be made available following the meeting. Yes, the presentation will be available.

Mr. Vassar asked for the requirements to be considered for geriatric release. Ms. Brown advised an inmate convicted of a non-capital felony offense who has reached the age of 60 having served 10 years, or the age of 65 having served five years, is eligible for geriatric release. Secretary Moran stated that originally all inmates had to request consideration. Per Ms. Brown, effective July 1, 2014, the Parole Board began reviewing all truth-in sentencing offenders automatically and all parole eligible offenders who petition the Board.

Mr. Vassar asked why geriatric offenders are not being helped. Director Clarke advised that many of the elderly are sex offenders and finding placement is difficult.

Mr. Gravely asked if the issue was no family was available to assist. Ms. Brown advised that restrictions on where a sex offender can reside are often limited.

Mr. Vassar asked if there are any juveniles sentenced to life. Ms. Brown advised the information could be provided at the next meeting.

Ms. Brown provided an overview of technical violations. Sheriff Stolle asked if a violation could be appealed. Ms. Brown advised that a technical violation cannot be appealed.

Public Comment

Due to time constraints, public comment was limited to 2 minutes per person. Eleven members of the public provided comments to the Commission. The comments included the following:

- Ms. Kelly Brotzman, a professor at Washington and Lee University, expressed the importance of untangling the definition of violent; it can be a constructive category.
- Chaplain Manship spoke about an Alford Plea and a regular plea. He stated that when one makes a decision on a plea, it is a contract with the government. Disparities occur when there is a breakdown in an adversary system and representation of a client.
- Katherine Wilson, an accountant, expressed her concern with the potential of her husband getting lost in the numbers identified during the presentations. Ms. Wilson advised that there is more to the diagrams. Her husband is a first-time offender who was charged with possession with the intent to distribute; he was sentenced to 10 years.
- Jeannette Forciliias, with Justice RVA, advised that money wasted in prisons could be used in public education.
- Lillie Branch-Kennedy, spoke of the Sentence Disparity Project which was started because jurors were not told that parole was abolished. This injustice continues today.
- Mr. Hundai, an ex-offender who served time for committing white collar crime advised of his view that the Sentencing Commission's Report is fundamentally flawed. In many cases, judges do not give a reason for the time issued to offenders. Mr. Hundai requested that the Parole Review Commission be mindful of how they look at the data of the Sentencing Commission.
- William Whitlock, of Chaplain Services of Virginia, raised the question of why judges are not held accountable for exceeding prison guidelines. He advised the Commission members to reflect upon themselves.
- Ike Green, an ex-offender, advised that he had served a lot of time in prison, but has been free for 30 years. Mr. Green shared that his son is currently serving a life sentence; Mr. Green is eager to see what the state has done with his son since he's been incarcerated the majority of his life.
- Monique Santiago, a legal advocate for juveniles, voiced her concern with juveniles being sentenced to life in prison. She asked the Commission members to put themselves in the juveniles' shoes and to be mindful that the juveniles made mistakes.
- Kina Davis, shared her concern for her loved one who has been incarcerated since the age of 16. Ms. Davis questioned the focus of individuals incarcerated before Governor Allen's parole abolition. She further questioned what the Commission will do after these individuals serve their time.

- Colonel Angelo Riddick advised that stats are great and can provide a platform for criteria to evaluate parolees; unfortunately, he did not see this today.

Next Steps/Closing Remarks

The next meeting will be held on August 27, 2015, House Room 3, 1:00 P.M. - 4:00 P.M.

Secretary Moran thanked everyone for their attendance and participation. He will send a survey to determine the interest in taking the Commission meeting on the road.

Meredith Farrar-Owens of the Virginia Sentencing Commission and Dick Hickman of the Senate Finance Committee will present at the August meeting.

The meeting was adjourned at approximately 4:25 P.M.

APPENDIX B

August 27, 2015

Commission on Parole Review Agenda and Minutes

Meeting Two Agenda
Commission on Parole Review

Thursday, August 27, 2015
1:00 p.m. – 4:00 p.m.

Virginia General Assembly Building – House Room C
Richmond, Virginia

- 1:00 p.m. - 1:10 p.m.** **Welcome/Opening Remarks**
The Honorable Mark L. Earley, Sr.
Former Attorney General of Virginia
- The Honorable Brian J. Moran
Secretary of Public Safety and Homeland Security
- The Honorable Levar M. Stoney
Secretary of the Commonwealth
- 1:10 p.m. - 1:50 p.m.** **Virginia Sentencing Commission**
Meredith Farrar-Owens
Director, Virginia Sentencing Commission
- 1:50 p.m. - 2:30 p.m.** **Overview of Senate Finance Report**
Dick Hickman
Deputy Staff Director, Senate Finance Committee
- 2:30 p.m. - 3:00 p.m.** **National Perspective from Right on Crime**
Vikrant Reddy
Senior Fellow, Charles Koch Institute
- 3:00 p.m. - 3:20 p.m.** **Overview of the Safe, Accountable, Fair and Effective (SAFE)
Justice Act of 2015**
The Honorable Bobby Scott
U.S. Representative, 3rd District of Virginia
- 3:20 p.m. -3:35 p.m.** **Public Comment**
- 3:35 p.m. -3:45 p.m.** **Overview of Open Meeting Laws**
Cynthia Hudson, Chief Deputy Attorney General
Office of the Attorney General
- 3:45 p.m. -4:00 p.m.** **Discussion & Subcommittees**
Closing

Meeting Two Minutes
Commission on Parole Review
Virginia General Assembly Building – House Room C

August 27, 2015

Members Present:

The Honorable Brian J. Moran, Secretary of Public Safety and Homeland Security
The Honorable Levar M. Stoney, Secretary of the Commonwealth
The Honorable Mark L. Earley, Sr., Owner, Earley Legal Group, LLC; former Attorney General of Virginia
Bobby N. Vassar, Chief Counsel (Retired), U.S. House Judiciary Subcommittee on Crime
Faye S. Taxman, Ph.D., Professor, George Mason University
Gail Arnall, Ph.D., Consultant for Outreach and Development, Offender Aid Restoration
Dave Albo, Member, Virginia House of Delegates; Chairman, Courts of Justice Committee
William R. Richardson, Jr., Member, Virginia CURE; Retired partner, Wilmer, Cutler, Pickering, Hale and Dorr, LLP
David R. Lett, Public Defender, Petersburg Public Defender's Office
Tonya Chapman, Deputy Secretary of Public Safety and Homeland Security
Cynthia E. Hudson, Chief Deputy Attorney General, Office of the Attorney General
Francine Ecker, Director, Virginia Department of Criminal Justice Services
Marcus M. Hodges, President, National Association of Probation Executives
Kimberly Lettner, Retired Chief of Police, Division of Capitol Police
Camille Cooper, Director of Government Affairs, The National Association to PROTECT Children & PROTECT
Harold Clarke, Director, Virginia Department of Corrections
La Bravia J. Jenkins, City of Fredericksburg, Commonwealth's Attorney
Kenneth W. Stolle, Sheriff, Virginia Beach Sheriff's Office
Karen Brown, Chair, Virginia Parole Board
Jack Gravely, JD, Executive Director, Virginia State NAACP
Timothy J. Heaphy, Partner, Hunton & Williams, former United States Attorney for the Western District of Virginia
Cheryl Robinette, Director of Substance Abuse Services, Cumberland Mountain Community Services Board
Mira Signer, Executive Director, National Alliance on Mental Illness of Virginia
Thomas M. Wolf, Partner, LeClairRyan
Pat Nolan, Director, Center for Criminal Justice, American Conservative Reform Union Foundation

Members Not Present:

Luke E. Torian, Member, Virginia House of Delegates
Jill Vogel, Member, Senate of Virginia
Mindy M. Stell, President, Virginia Victim Assistance Network
Margaret Schultze, Commissioner, Virginia Department of Social Services

Alvin Edwards, Ph.D., Pastor, Mt. Zion First African Baptist Church
Sandra W. Brandt, Executive Director, STEP-UP Inc.

Other Participants:

Robin Bostick, Vice President, Victim Assistance Network for Mindy M. Stell
Archie Whitehill, for Sandra Brandt

Welcome/Opening Remarks

Secretary Moran convened the meeting at 1:05 p.m. and welcomed everyone in attendance. Secretary Moran expressed his appreciation to the members for their time, attendance, and participation. .

Secretary Moran reported that in response to the numerous complaints concerning time restrictions imposed on the public comment period was moved up on the agenda. Secretary Moran then turned the floor over to Chairman Earley.

Chairman Earley stated that it is a pleasure to serve with the members of the Commission. He stated that some of the measures passed in 1993 need revisiting, while others need to be withdrawn, or tempered, but all need to be reviewed. Many affected by the laws are non-violent.

Secretary Stoney stated that the last meeting was very informative. Going forward we want to outline where we have been and where we are going. Secretary Stoney asked the members that were not previously sworn in to stand. He then performed the swearing in of the Commission members for those members not in attendance at the July 20 meeting.

Approval of July 20, 2015 Meeting Minutes

Chairman Earley presented the July 20, 2015 minutes for review and approval. Upon a motion by Chairman Earley and duly seconded, the members voted unanimously to approve the July 20, 2015 Commission on Parole Review meeting minutes as presented.

Virginia Sentencing Commission

Meredith Farrar-Owens, Director Virginia Sentencing Commission, provided an overview of Virginia's sentencing guidelines. Topics presented included but were not limited to the impetus for sentencing guidelines, goals for sentencing reform, methodology used to create historically based sentencing guidelines, methodology used when parole was abolished, violent offender's terms of incarceration and guidelines enhancement overview.

Mr. Heaphy asked about qualifiers regarding non-drug related violent offenses. Ms. Jenkins asked if the maximum penalty on distribution of drugs is considered a violent offense. Ms. Farrar-Owens advised that it must be listed as a violent offense pursuant to the definition.

Mr. Richardson asked if violent offenses were dictated by the General Assembly and if there was any information available or a specific reason the General Assembly double/tripled time for certain offenses. Further, he inquired as to whether there have been any studies on why the extended sentences were necessary. Ms. Farrar-Owens advised that a complete list outlining violent offences could be found in the material.

Mr. Vassar asked if when assessing what level of aggravators would apply, there was any correlation of sentencing, and if the Commission looked at people to see if every case was treated the same regardless of backgrounds. Ms. Farrar-Owens advised there was no specific study to address differences; the guidelines implemented are used as a benchmark.

Mr. Vassar stated that he thought the focus was to support a notion that people with specific backgrounds would serve more time. Ms. Farrar-Owens advised that information in response to some of his inquiries would be discussed further into her presentation.

Senator Marsden asked if all of the offender risk assessments are scorable. Ms. Farrar-Owens responded that the assessments are scorable.

Ms. Signer asked how the 25% of offenders recommended for placement in alternative sanctions were selected. Ms. Farrar-Owens advised that decisions are guided by legislation.

Mr. Vassar asked if the risk assessment tracked differences. Per Ms. Farrar-Owens, new felony offenses committed within three years only applied to non-violent larceny, fraud and drug cases.

CA Jenkins asked if there was a risk assessment for non-violent offenders and whether drug distribution was considered as non-violent. Ms. Farrar-Owens responded, yes but only in specific instances.

Senator Marsden asked what was learned as a result of the study. Ms. Farrar-Owens advised that a risk assessment worksheet was developed based on the factors that were statistically significant in predicting recidivism. The study determined that the assessment tools could be more effective if tailored to each offender type. Individualized assessments would provide more accurate results. Mr. Wolf asked if the tools were specific to Virginia or nationwide and if the Parole Board uses a tool. Ms. Farrar-Owens advised that the tool is specific to Virginia. Ms. Brown advised the Parole Board relies on the same risk assessment utilized by DOC—Correctional Offender Management Profiling for Alternative Sanctions (COMPAS).

Deputy Chapman asked if utilizing risk assessments is mandatory or optional. Ms. Farrar-Owens advised that judges must comply depending on the charges and if eligible. Those with a current or prior violent felony are excluded pursuant to §17.1-805.

Dr. Taxman asked if the definition of violence could be found in the Code and what percentage of the cases fall into the category of non-violent. Ms. Farrar-Owens advised the data does not reflect the prevalent reason, specifics/nature or qualifying offense.

Mr. Vassar asked if larceny and drugs have the highest correlation for recidivism and whether information was based on scientific research. Ms. Farrar-Owens advised that the General Assembly defines the accepted types and the study was based on the group at that time. Using empirical risk assessment, roughly 3,000 of the eligible drug, larceny, and fraud offenders are recommended for alternatives.

General Earley requested confirmation that half of the offenders were not placed in programs. Ms. Farrar-Owens advised that is correct, the programs are not available for all offenders at every institution.

Secretary Moran asked if the numbers are lower in Arlington because they have more resources. Ms. Farrar-Owens advised that is correct.

Panel members asked questions regarding the availability of a cost comparison available to determine the cost of incarceration versus the cost of alternative sentencing. Ms. Farrar-Owens advised that the Sentencing Commission does not maintain cost comparison information; the DOC may have the requested information. Percentages fluctuate due to budget cuts.

Sheriff Stolle asked if the data provided included all offenders. Ms. Farrar-Owens advised yes. Secretary Moran asked how many people are serving a prison sentence for grand larceny as a first offense. Ms. Farrar-Owens advised that of 3,000 offenders, 43% received probation, 1500 are serving a jail sentence and 250 (7%) are serving a prison sentence. Secretary Moran advised the members that many state responsible offenders with shorter sentences are serving their time in local jails, where treatment and programs are often not available. Ms. Farrar-Owens confirmed that terms of 1 year or more is defined as a state responsible sentence; however, some sentences are served in local jails.

Mr. Wolf stated that every sentencing system is developed with goals in mind. Ms. Farrar-Owens advised that guidelines for sentencing are determined by the General Assembly. The goals of the Sentencing Commission were presented at the opening of the presentation. Mr. Vassar asked how many offenders had served terms beyond their sentence. Ms. Farrar-Owens advised 706 offenders served terms beyond their sentence.

Mr. Heaphy made a comparison between state and federal sentencing guidelines. Placing people in categories allows for adjustments based on major/minor crimes and the role/conduct of the offender. Determining a category results in a more tailored sentence. The federal program is treating categorically while the Virginia program is treating individually.

Overview of Sentence Finance Report

Dick Hickman, Deputy Staff Director of the Senate Finance Committee, thanked the Commission for inviting him. Mr. Hickman provided a comprehensive overview of the implementation of sentencing reform in Virginia as measured against the goals and objectives of the abolition of parole and the adoption of felony sentencing guidelines. Topics included but were not limited to the reform objectives, background of the 1994 Crime Bill, old law vs. new law parole, reform efforts prior to 1994, percentage of time served versus actual time served, sentencing and prison costs, recidivism and crime and incarceration rates.

Several comments were made regarding alternative sentencing, mandatory sentencing, and mandatory minimums.

Sheriff Stolle asked Director Clarke to provide information regarding the current caseload for probation officers. Director Clarke advised the current caseload is approximately one probation officer to 80 offenders. One to 80 is an average as caseloads may vary depending on the crime.

Caseloads are determined based on the type of crime (sex offender, larceny, assault etc.) therefore, a PO may only have a caseload of 40. The industry has gone away from standards and each state decides the complexity of caseload distribution.

Sheriff Stolle commented that there is no mystery to reducing crime. The Senate Finance Committee study is not misguided; to stop crime you must spend money. The Parole Reform Commission must review and address all issues.

National Perspective from Right on Crime

Vikrant Reddy, Senior Fellow of the Charles Koch Institute, stated that he was happy and honored to be here. He advised that he has spent the last five years working in Texas and is proud of Right on Crime. The Right on Crime statement of principles can be found by visiting RightonCrime.com. Mr. Reddy reported that parole is about public safety. 95% of offenders will be released from prison and cannot be expected to reenter society without some sort of programming. Reentry begins the day you enter prison and you must incentivize offenders to earn more parole time. Crime did decrease when parole was abolished.

Researchers have determined crime that the 25-30% decrease in the crime rate was directly related to the tough on crime stance. The cost to put someone on parole versus incarceration is significant. Oregon has the lowest recidivism rate and has a good system to identify risks and needs. Michigan has had a lot of success with their parole system. One-third of offenders are less likely to return if they participated in a specific program. Per Mr. Reddy, the Urban Institute determined a total of thirteen factors which identify the results of a number of studies. Mr. Reddy, advised he would provide seven of the thirteen that he finds important:

- 1) Define success in terms of recidivism
- 2) Tailor the conditions of supervision to the individual
- 3) Focus resources on moderate/most serious parolees
- 4) Front-load supervision
- 5) Make sure you have earned discharge
- 6) Assess criminogenic risks and needs
- 7) Engage informal social control

Dr. Taxman asked that based on his experience in Texas, what would he recommend for younger offenders? Mr. Reddy advised the population needs more programming. Because they are young, there is an opportunity to save them, measure in terms of recidivism successes, look at funding prisons on how successful they are versus how many people are in them.

Sheriff Stolle asked if parole is an incentive to do the right thing (i.e., by getting them to engage they would do better). Sheriff Stolle advised Mr. Reddy that he did not agree with his

commentary. Mr. Reddy advised their views are actually closer in agreement than thought. The prospect of parole is an incentive; intuitively data does not change behavior.

Sheriff Stolle reported that he has a strict policy in his facility regarding revocation of good time. He asked Mr. Reddy why he disagrees with the abolition of parole. Mr. Reddy advised that Sheriff Stolle has a management style that addresses issues with a swiftness and certainties, data indicates that is what people immediately respond to.

Senator Marsden stated the more efforts you put into kids the more bang you get for your buck.

Mr. Vassar stated that science and evidence were not a factor at all 20 years ago. Less than 3% of people were committing crimes, the focus was whether they served enough time. We are better off if we do all common sense things.

Mr. Wolf asked if the goal is to deter crime. Mr. Hickman advised the goal is public safety. Mr. Wolf stated that Mr. Hickman is only reporting on what he has, not goals but characteristics. We need to look into if it is possible to achieve the same outcome of five years versus life. Mr. Hickman agreed and advised the main goal of criminal justice system or policy is public safety.

Mr. Nolan discussed swift and certain studies performed by UCLA and Pepperdine on the HOPE Program and how other states such as Texas, Georgia, Kentucky and Louisiana had addressed right on crime reforms to fund treatment programs. Mr. Reddy advised that the Hawaii's Hope Program focus is low-level offenders. The swift and certain approach allows judges to subject participants to random drug tests in lieu of incarceration. If a participant fails a test they are immediately sent to jail for a short period of time. If they fail a second time, they are sent to jail for a slightly longer time. If they fail a third time, they are then returned to the system. The program has an 80% success rate. The 20% that do not succeed are identified as the true problem population and enables you to target your limited resources to the population that need it most. Mr. Reddy commented on justice reinvestment, which allows savings from closing prisons to be reinvested into developing stronger, probation and parole programs.

Delegate Albo reported that immediate sanctions probation legislation was adopted in 2012. He suggested that a presentation providing information how it is working should be presented at the next meeting. The Sentencing Commission is in charge of implementing those programs at the four pilot sites (Arlington, Lynchburg, Henrico, and Harrisonburg). The Sentencing Commission is working on an evaluation for submission to the General Assembly due on November 1, 2016.

Overview of the Safe, Accountable, Fair, and Effective (SAFE) Justice Act of 2015

Bobby Scott, U.S. Representative, 3rd District of Virginia thanked the Commission for inviting him. He commended Governor McAuliffe for appointing the Commission. Congressman Scott reported that you can reduce crime or you can politic, but you cannot do both. Research shows that the tough on crime initiatives failed to reduce crime and over-incarceration is counter-productive. The United States is number one in the world in incarcerating people. Truth-in-sentencing is a half-truth; the funds used for incarceration could be redirected into evidence-based practices. Supporters recently released a study on violent recidivism. By abolishing

parole, the recidivism rate was supposed to decrease by 2%. There was no consideration of violent crimes and all incentives were eliminated. Project Exile decreased the crime rate by 25%; however in areas without Project Exile crime decreased more. Congressman Scott shared that we need to change the business as usual mind-set, we must address the crisis we are dealing with. He further stated that we need prevention and rehabilitation in lieu of the pipeline to prison. Two-thirds of federal drug offenses are the result of mandatory minimums.

Per Ms. Cooper, we hear a lot about risk-assessments and they are not one-size fits all. The Static-99 is a deeply flawed tool and her organization does not support it. Regarding the SAFE Justice Act, at the first Commission meeting the geriatric population was identified as the single largest first time offender population a majority having committed sex crimes. Please consider reviewing that data before making any final decisions.

Mr. Vassar asked if any studies are available that could support the information presented by Congressman Scott. Congressman Scott advised yes, information is readily available to support his comments.

Director Clarke responded to Ms. Cooper's comments regarding geriatric offenders and advised he could not confirm that geriatrics is the largest population coming into prison. The number of geriatrics has increased over time due to the lengthy sentences they are serving. A large number of geriatrics are coming in as first-time offenders and most are sex crime related.

Public Comment

Due to time constraints, public comment was limited to 2 minutes per person. Fifteen members of the public provided comments to the Commission. The comments included the following:

- Lindsay Michie questioned why the Commonwealth built two new prisons since 1995. She also asked why 60% of the prison population is black. She also advised that while we spent \$25,000/year on offenders, we spent less on education.
- Vandy Singleton shared her concern for her husband (first time felon) who received two life sentences plus 100 years. She also shared with the Commission copies of the book that she and her husband wrote, "Love Conquers All."
- Clemis Macklin shared her concern for her brother, Chris Richards, who was incarcerated when he was 17. Mr. Richards received 80 years.
- Kari Anderson, spoke of the current injustices yet to be corrected. She informed the Commission of a bill that RIHD has proposed and requested support.
- Leoni May shared her concern for her son who was incarcerated at the age of 20 for aggravated malicious wounding and was sentenced to two life sentences plus 33 years.
- Elaine Randall shared her concern for her fiancé who was sentenced to 54 years for robbery. She also expressed concern for her brother-in-law who is incarcerated. Ms. Randall asked the Commission to please reinstate parole.
- Lillie Branch-Kennedy, Executive Director of RIHD, thanked the Governor and the Commission for reviewing parole. Ms. Branch-Kennedy expressed her wish for justice for all and her desire to see injustices of the past corrected.

- Kelly Brotzman, a professor at Washington and Lee, urged the committee to recommend the reinstatement of parole and to make it retroactive. Ms. Brotzman stated “you are being watched and we will find ways to hold every one of you accountable.”
- Carroll Malik shared that he was incarcerated in 1971-1978, but now works in the prison system. He shared that Virginia holds individuals’ pasts against them. He expressed frustration with the 2-minute restriction on public comments. He advised that the problems with parole did not begin with Karen Brown and Mr. Howell nor did the problems with the Department of Corrections begin with Mr. Clarke.
- Richard Walker, CEO of Bridging the Gap in Virginia, shared that he is a former offender who now promotes the restoration of rights of individuals. He expressed that Virginia needs to change the face of its entire justice system. He commented on barriers that offenders face with ultimately lead to issues of parole. He further expressed the need to increase funding for mental abuse.
- Monique Santiago, legal advocate, shared that Virginia’s sentencing is flawed. She also expressed concern for a juvenile who is currently serving a 118 year sentence plus 6 life sentences. Ms. Santiago expressed the need to fund programs. She also asked the Commission to provide a presentation about white collar crime by minorities.
- Yvonne Mills/Catherine Wilson spoke about their son-in-law/husband who is serving a 10 year sentence for a firearm and distribution charge. They spoke of the accomplishments that he made during the time that he was charged until he was incarcerated. They posed the question of what will prison do for me that he has not done for himself. They expressed that many offenders deserve second chances.
- Lanetta Thompson shared that many offenders enter the prison system at a young age and some have been incarcerated for many years. There is a need to make changes and correct the system now.
- Kathleen Brandon – Ms. Brandon spoke about her husband who received a 142 year sentence at the age of 16. She expressed that offenders can be rehabilitated. Her husband obtained his GED and completed programs while incarcerated. She expressed her desire to see parole reinstated.
- Taquan Grant, a 15 year old student at Thomas Jefferson High School, encouraged the Commission to reach out to the lawmakers to make an impact. He expressed his desire to see Virginia be a “Commonwealth.”

Overview of Open Meeting Laws

Chief Deputy Attorney General Cynthia Hudson provided a brief overview of open meetings as they are subject to the Freedom of Information Act.

Secretary Moran expressed that the Governor wanted a large group to bring a variety of perspectives. Looking at the Executive Order, he created sub-committee assignments to make recommendations. The three sub-committees are: Efficiencies and Fiscal Impact; Best Practices for Reducing Recidivism; and Appropriate Classification of Offenses. The sub-committees are to meet before the next Commission meeting.

Sheriff Stolle asked if Secretary Moran will provide goals for the sub-committee to come up with. General Early answered that goals will be provided.

Mr. Richardson spoke about an interest presentation on reform, to which Secretary Moran responded that the Commission's purpose is to look at parole review. The sub-committees are designed to look at/review parole overall.

General Earley asked if staff would be provided to the sub-committees, to which Secretary Moran responded yes, staff will be provided to the sub-committees.

The meeting adjourned at 5:22 PM.

APPENDIX C

September 28, 2015

Commission on Parole Review Agenda and Minutes

Meeting Three Agenda
Commission on Parole Review

Monday, September 28, 2015
1:30 p.m. – 5:00 p.m.

Virginia State Capitol – House Room 3
Richmond, Virginia

- I. Welcome/Opening Remarks**
 - The Honorable Levar M. Stoney
Secretary of the Commonwealth

 - The Honorable Brian J. Moran
Secretary of Public Safety and Homeland Security

 - The Honorable Mark L. Earley, Sr.
Former Attorney General of Virginia
- II. Overview of DOC Programs and Re-Entry**
 - Harold Clarke, Director, Virginia Department of Corrections
- III. Overview of Local Re-Entry**
 - DeVon Simmons, Program Coordinator, Office of the Attorney General
- IV. Overview of Pre-Trial Services, VCCJA**
- V. Community-Based Treatments**
 - Daniel Herr, J.D., Assistant Commissioner, DBHDS
- VI. Virginia Department of Social Services Perspective**
 - Tom Steinhauser, Director, Division of Benefits for VDSS
- VII. Updates from Subcommittees**
 - Efficiencies and Fiscal Impact
 - Best Practices for Reducing Recidivism
 - Appropriate Classification of Offenses
- VIII. Geriatric Population**
 - Karen Brown, Chair, Virginia Parole Board
- IX. Public Comment**
- X. Closing**

Meeting Three Minutes
Commission on Parole Review
Virginia General Assembly Building – House Room C

September 28, 2015

Members Present:

The Honorable Brian J. Moran Secretary of Public Safety and Homeland Security
The Honorable Levar M. Stoney Secretary of the Commonwealth
The Honorable Mark L. Earley, Sr., Owner, Earley Legal Group, LLC; former Attorney General of Virginia
Bobby N. Vassar, Chief Counsel (Retired), U.S. House Judiciary Subcommittee on Crime
Gail Arnall, Ph.D., Consultant for Outreach and Development, Offender Aid Restoration
Dave Albo, Member, Virginia House of Delegates; Chairman, Courts of Justice Committee
David R. Lett, Public Defender, Petersburg Public Defender's Office
Tonya Chapman, Deputy Secretary of Public Safety and Homeland Security
Cynthia E. Hudson, Chief Deputy Attorney General, Office of the Attorney General
Francine Ecker, Director, Virginia Department of Criminal Justice Services
Marcus M. Hodges, President, National Association of Probation Executives
Kimberly Lettner, Retired Chief of Police, Division of Capitol Police
Camille Cooper, Director of Government Affairs, The National Association to PROTECT Children & PROTECT
Harold Clarke, Director, Virginia Department of Corrections
La Bravia J. Jenkins, City of Fredericksburg, Commonwealth's Attorney
Kenneth W. Stolle, Sheriff, Virginia Beach Sheriff's Office
Karen Brown, Chair, Virginia Parole Board
Jack Gravely, JD, Executive Director, Virginia State NAACP
Timothy J. Heaphy, Partner, Hunton & Williams, former United States Attorney for the Western District of Virginia
Cheryl Robinette, Director of Substance Abuse Services, Cumberland Mountain Community Services Board
Thomas M. Wolf, Partner, LeClairRyan
Margaret Schultze, Commissioner, Virginia Department of Social Services
Sandra W. Brandt, Executive Director, STEP-UP Inc.
Jill Vogel, Member, Senate of Virginia
Alvin Edwards, Ph.D., Pastor, Mt. Zion First African Baptist Church
Mindy M. Stell, President, Virginia Victim Assistance Network

Members Not Present:

Luke E. Torian, Member, Virginia House of Delegates
Pat Nolan, Director, Center for Criminal Justice, American Conservative Reform Union Foundation
William R. Richardson, Jr., Member, Virginia CURE; Retired partner, Wilmer, Cutler, Pickering, Hale and Dorr, LLP
Faye S. Taxman, Ph.D., Professor, George Mason University
Mira Signer, Executive Director, National Alliance on Mental Illness of Virginia

Other Participants:

Tama S. Celi, Ph.D., Statistical Analysis & Forecast Unit Manager, Virginia Department of Corrections

Grady McLean, MPA, CSAC, Statewide Program Manager, Virginia Department of Corrections

Welcome/Opening Remarks

Secretary Stoney convened the meeting at 1:36 PM. Secretary Stoney reported that the Parole Review Commission web portal was accessible by visiting <http://vpb.virginia.gov/parole-commission/index.html> and provided an overview of the agenda. Secretary Stoney then turned the floor over to Secretary Moran. Secretary Moran stated that he was pleased with the public's participation. He advised that the Department of Corrections (DOC) has invested a lot into re-entry and requested that the members pay close attention to the information provided and think of ways to improve and expand. Secretary Moran then turned the floor over to Chairman Earley. Chairman Earley stated that he has received numerous phone calls from family and friends expressing their support for incarcerated loved ones.

Approval of August 27, 2015 Meeting Minutes

Secretary Stoney presented the August 27, 2015 minutes for review and approval. Upon a motion by Secretary Stoney and duly seconded, the members voted unanimously to approve the August 27, 2015 Commission on Parole Review meeting minutes as presented.

Overview of DOC Programs and Re-Entry

A. David Robinson, Chief of Corrections Operations, DOC, provided an overview of DOC's re-entry system. Topics presented included but were not limited to the offender population, the recidivism rate, the re-entry initiative, empirical risk and needs assessments, re-entry preparation through work, Step Down program outcomes, interagency collaborations, and ongoing challenges.

Mr. Heaphy asked about higher education and distance learning opportunities and the resistance regarding the use of state funds for obtaining an education while incarcerated. Mr. Robinson advised that the Darden program is currently being utilized at Dillwyn and the Virginia Correctional Center for Women. Liberty University is currently trying to obtain funding. DOC met with University of Virginia (UVA) to discuss expansion of program accessibility to include online courses.

Mr. Heaphy asked about the creation of secure pipelines to obtain training. Mr. Robinson advised that although DOC has the ability to offer online programs, he believes it would be through a secure portal. Mr. Robinson advised that DOC has no funding in the budget for higher education, but they are exploring options to expand such opportunities.

Secretary Stoney asked Mr. Robinson to provide an overview of President Obama's Pell Grant proposal. Mr. Robinson advised that Pell grants were used years ago. For many years, instructors would come into prisons and teach courses until it was abolished. Community colleges must apply, but have been assured that DOC will partner with them if the grant is received. DOC currently partners with seven or eight community colleges.

Sheriff Stolle asked about Wallens Ridge and Red Onion as it pertains to restrictive housing. Mr. Robinson advised they are maximum security facilities which include restrictive housing units.

Sheriff Stolle if there has been any comparison regarding re-entry programs at any of the facilities. Tama Celia advised that only one level was reviewed and that DOC also looked at a step-down program. Ms. Celi also advised that information regarding re-entry is still in the early stages and will require more time to obtain results. Mr. Robinson advised there will be a three and a five year look back period; however, the programs did not begin until 2011-2012.

Mr. Wolf asked about the lack of resources and the effect on program availability. In addition, he asked if there is a way to quantify the lack of resources for cognitive programming and how can one determine the most cost effective way to do so. Mr. Robinson advised more funding is the key to being able to offer more cognitive programs to offer. Approximately four years ago, for every 128 offenders that went through a program that did not return, it was determined that a budget request of \$3.5 million was required and the savings was justified. Mr. Robinson explained diversion and detention centers are more costly because of the number of offenders that go through them. DOC currently has five diversion and detention centers that judges utilize to send non-violent offenders to. Currently, DOC is in the process of looking at diversion and detention centers to ensure that the dollars that we have we are getting the most effective results.

Secretary Stoney asked if DOC has private partners willing to hire returning citizens. Mr. Robinson advised that local Re-entry Councils identify organizations that hire returning citizens. Most Probation and Parole Districts work with employers in localities on hiring. Secretary Stoney asked if skills obtained while incarcerated enable returning citizens to obtain employment. Mr. Robinson advised that each Chief has contacts within their localities, work with Re-entry Councils, and is aware of employment needs in their communities.

Chairman Earley asked if all offenders go through 12-month re-entry programming. Mr. Robinson advised that it is DOC's goal that every offender go through re-entry; approximately 33-40% go through re-entry.

Chairman Earley asked which minimum security facility is within a 50 mile radius of Northern Virginia. Mr. Robinson advised Coffeewood. Chairman Earley asked where offenders are sent when Coffeewood is at capacity. Mr. Robinson advised Haynesville. Buckingham and Nottoway also accommodate when necessary.

Ms. Cooper asked the following questions: is COMPAS used based on historical data, are there specialized programs for women (is any of the programming trauma based and are the providers trauma certified), is sex offender housing due to living restriction laws? Mr. McLean of DOC advised that the COMPAS information is based on historical data and is validated by Northpointe. Ms. Cooper requested copies of the scoring sheets to be able to review the questions that offenders have to answer. Mr. McLean advised that an assessment will be available in early spring to identify the needs of women beyond the current assessment. Mr. Robinson advised that all facilities are staffed with well qualified mental health professionals and groups are available to offenders to address trauma. Mr. Robinson advised that individuals

identified as sexual offenders create concerns in the community; therefore, making it difficult to determine where an individual can reside.

Sheriff Stolle commented that localities are experiencing difficulty obtaining bonds. Mr. Robinson advised the bonds are issued through a federal program and the bond program is an employer incentive to hire at-risk. The bond protects the employer in case of any loss of money or property due to employee dishonesty up to \$5,000. It is like a “guarantee” to the employer that the person hired will be an honest worker. Mr. Robinson reported that DOC has issued 14,000 letters and 117 bonds have been accepted.

Ms. Arnall reported that there are instances of returning citizens who have completed highly-qualified vocational training and were still unable to obtain employment. Ms. Arnall stated that job placement opportunities are not working well in the localities. She encourages forming relationships with local business. She stated that the Governor banned the box and maybe we could go one step further and require states that desire to do business with Virginia, to ban the box also. This would not mean an employer must hire; the requirement would be to interview only.

Overview of Local Re-Entry

DeVon Simmons, Esq., Re-Entry Program Coordinator, Office of the Attorney General (OAG), provided a brief overview of the future direction in re-entry. Mr. Simmons’ presentation included but was not limited to the following topics: the definition of re-entry, the current landscape, transition from jail to community model, and initiatives and resources. Mr. Simmons reported that it currently costs \$75 per day to incarcerate the approximately 5,000 state responsible offenders. State responsible offenders have been charged with a felony offense, received a sentence of longer than a year and serve their entire incarceration in a local/regional jail; these offenders never enter a DOC facility during their term of incarceration. Currently, there are no state led re-entry programs. Each locality is solely responsible for their programs and how they operate. Norfolk is the only jurisdiction that has re-entry court. If an offender is successful, they graduate with a reduced sentence. Western Virginia Regional Jail (WVRJ) was built specifically to offer programming. WVRJ offers faith-based programming and partners with the local probation office to assist with transition plans. Virginia Peninsula Regional Jail has an in-house re-entry staff. Facilities that have in-house Re-entry Specialists are often more successful. Re-entry Specialists are able to go before Re-entry Council’s to identify offenders and address specific criminogenic needs and connect people with the resources necessary to be successful. Albemarle/Charlottesville Regional Jail utilizes the Transition from Jail to the Community model (TJC). This model is the standard that would like to be implemented across the state. This model is adaptable and can be adjusted to meet the needs of jails. The TJC model has four main benefits: long term public safety, cost effectiveness, improved individual outcomes, and resource expansion. The framework of the system focuses on leadership, vision, organizational culture, collaborative structure and joint ownership, data driven understanding of local re-entry, targeted intervention strategies, self-evaluation and sustainability. The OAG is in the process of developing a web portal to have a centralized place where all information is available.

Senator Marsden asked how many people in local jails are being released prior to the completion of their sentence to work release or some other type of program. Mr. Simmons advised that he

does not have specific numbers. However, on the local level, work release is determined by the sheriff and is a separate issue from re-entry.

Deputy Chapman asked how many local or regional jails have re-entry programs in comparison to those that do not. Mr. Simmons advised that the numbers have not been verified.

Sheriff Stolle asked what studies have been done on the recidivism rate. Mr. Simmons advised that a study was done in 2009 and he would be happy to follow-up with specific information about the study. He further shared that it is cheaper to keep offenders in jail than to put them on work release.

Mr. Wolf asked if it is correct that low risk inmates have better outcomes if you they are not offered treatment. Mr. Simmons advised that risk is based on what will happen when they are released. Having a good support system is a factor.

Dr. Edwards asked if Re-entry Councils collaborate or assess community needs to ensure skills learned meet employment need. Mr. Simmons advised that each program is run independently and only a few have relationships with employers. Mr. Simmons stated he is only aware of one (Shenandoah Valley) that invites employers and informs them of why hiring ex-offenders is beneficial to their businesses.

Mr. Hodges spoke on the lack of funding. He applauded the local re-entry's efforts in this regard.

Secretary Stoney applauded Mr. Simmons and thanked him for his presentation.

Overview of Pre-Trial Services, Virginia Community Criminal Justice Association (VCCJA)

Hal Diggs, Colonial Community Corrections, provided a comprehensive overview of pre-trial services. The presentation included but was not limited to the Comprehensive Community Corrections Act/Pretrial Services Act, probation and pre-trial services. Mr. Diggs reported that there are 37 local probation agencies serving 127 localities. The average daily local probation cost in FY14 was \$1.90 per client. The return on investment for the Commonwealth has been calculated at \$6.2 million in payments to communities. He also reported that there are 31 pretrial agencies serving over 99 localities. In FY14, agencies completed more than 42,000 investigations. Research indicates that detaining low and moderate risk offenders increases the possibility for future criminal activity. Pretrial is efficient, cost effective and significantly less expensive than incarceration. The benefits of pretrial agencies include additional screenings to assist in early identification of mental health, substance abuse, and veteran status. In addition, pretrial reduces local and state cost for jail expansion. Mr. Diggs reported there is a large gap in pretrial agencies and the goal is to expand to underserved areas to evenly distribute caseloads and lessen the burden on local and regional jail populations.

Chairman Earley asked what tips the scales for someone to go on pre-trial versus general conditions of bond. Ms. Smith, OAR/Jefferson Area Community Corrections, advised that the determination is subjective and begins with the judge and the number of points calculated based on pre-trial risk assessment.

Delegate Albo reported pretrial services do a fantastic job saving the Commonwealth money through its investigations and assessments. Some people believe taxpayers should not be paying for services if someone is financially capable of paying through a bond company.

Ms. Jenkins asked for clarification regarding the statistical information provided on page 4 of the presentation. “When held 2-3 days, low-risk defendants are almost 40% more likely to commit new crimes before trial than equivalent defendants held no more than 24 hours.” Ms. Jenkins also asked if the information was provided by the Arnold Foundation Study. Mr. Diggs advised that the information was provided by the Arnold Foundation and the report should be available on the Department of Criminal Justice Services (DCJS) website.

Ms. Jenkins asked if the study was Virginia-specific or national and how controlled was the study. Mr. Diggs advised it was a national report however; their 30-month study was specific to Virginia. The study encompassed thousands of individuals. When low-risk offenders are the ones that we are trying to release and are sitting for lengthy periods, this often results in an increase in the possibility for commission of a crime.

Ms. Cooper requested copies of the risk assessment sheets for review and for additional information regarding the information from the study found on pages 4-5 of the presentation. Clarification of the requested information was not available at the time; however, VCCJA staff will provide the link to the study for additional review.

As a follow-up, Deputy Chapman asked if pretrial offers additional services that bond services would not address, specifically catering to mental health and substance abuse needs. Mr. Diggs advised that pretrial services supervise all aspects of an offender to ensure they meet all requirements.

Secretary Stoney asked if they had reviewed any of the New York studies. Mr. Diggs advised that they had not.

Ms. Ecker reported that from an agency perspective, VCCJA is one of the most professional and hardworking groups that she has the pleasure of working with in state government. If you are able to pay a bond, you walk away with no supervision. Virginia has one of the most highly respected pretrial programs which offer a level of supervision that is nationally recognized. In addition, she will be happy to provide copies of the reports referenced by Mr. Diggs.

Chairman Earley stated that his observation is that government loves a client. For some, it makes sense. For others, it does not. He posed the question of what is it that we’re using as criteria to place people in the program.

Ms. Ecker shared that pre-trial only deals with people in jails. Risk assessments are administered to determine who may be released.

Chairman Earley stated that it seems to vary across the board as to who gets it. For some it ends up that some stay in jail longer.

Mr. Heaphy stated that he agreed with Ms. Ecker's comments. He stated that the problem is that not enough resources are allocated to the agencies performing the work and that the Commission must also take into consideration that resource reallocation is important.

Sheriff Stolle asked how much of the DOC budget was cut last year. The Commonwealth's budget is growing and the DOC budget is decreasing. Deficits in budgets creates problems. Mr. Clarke advised that \$20 million were cut from DOC's budget last year.

Community-Based Treatments

Daniel Herr, J.D., Assistant Commissioner Department of Behavioral Health and Developmental Services (DBHDS), provided an overview of the Virginia Department of Behavioral Health and Developmental Services' perspective. The presentation included but was not limited to an overview of the Community Services Board (CSB) services, individuals referred for services, costs for behavioral health services, access to behavioral health services, and access to housing.

Sheriff Stolle thanked Mr. Herr for the department's work. He further stated that we need to deal with the recidivism rate of mental health offenders and those with CSA needs.

Ms. Cooper asked what triggers referrals as there is a disproportionate number of African Americans referred. She asked if any post service recidivism rate information was available. Mr. Herr answered that this was worth paying attention to and deferred to DOC and the Parole Board on what triggers referral.

Mr. Heaphy questioned the 70% incarcerated rate with substance abuse issues. Director Clarke answered that DOC's figure reflects 80% of those incarcerated having a history of substance abuse or substance abuse being included in the crime committed. Ms. Robinette agreed with Director Clarke.

Deputy Secretary Chapman questioned if 1,124 were referred to DBHDS? She further questioned who is served? Mr. Herr answered that we can assume that this is an under-reported number. Ms. Robinette stated that the majority of referrals are services. Deputy Secretary Chapman asked if some of those referred did not receive services for up to four months. Mr. Herr answered yes.

Sherriff Stolle asked about veterans. Director Clarke answered that the services and responses that DOC gets from CSB varies. Some refuse service to sex offenders. Some decide based on services sought. Ms. Robinette agreed that she too is aware of CSB's doing so.

Tom Steinhauser, Director of the Division of Benefits, Department of Social Services, provided a presentation on Public Assistance for Former Drug Felons. Topics included but were not limited to federal requirements for temporary assistance for needy families (TANF), work requirements, and the Personal Responsibility and Work Opportunity Reconciliation Act.

Secretary Stoney raised that fact that folks in the possession of substances cannot get TANF, but can get SNAP. Mr. Steinhauser responded that general funds are in the program.

Chairman Earley asked if the federal ban is where states can opt out. Mr. Steinhauser answered yes.

Secretary Stoney asked if murderers can receive TANF, to which Mr. Steinhauser answered yes.

Sheriff Stolle asked if \$128,000 is the state's contribution, to which Mr. Steinhauser confirmed. Sheriff Stolle asked if \$165,000 is needed, to which Mr. Steinhauser confirmed.

Ms. Cooper questioned the details of the legislation and asked what does it do? Mr. Steinhauser answered that victims of Code Section 18.2-250 may receive TANF.

Secretary Stoney thanked Mr. Steinhauser for his report.

Updates from Subcommittees

Secretary Stoney advised that the Commission will meet one more time before the final report is due to the Governor. He asked for an update from each of the subcommittees.

Mr. Vassar reported that the Subcommittee on Efficiencies and Fiscal Impact met on September 28 to discuss its work plan. The subcommittee's next meeting is October 9.

Mr. Hodges reported that the Subcommittee on Best Practices for Reducing Recidivism will meet on October 5.

Ms. Brandt reported that the Subcommittee on Appropriate Classification of Offenses met on September 28.

Geriatric Population

Karen Brown, Chairman of the Virginia Parole Board, delivered a presentation. Topics included but were not limited to geriatric consideration, parole evaluation factors, and statistics on crimes committed by geriatric offenders, to name a few. Ms. Brown addressed truth-in-sentencing versus the parole system as they relate to the state responsible confined population.

Secretary Moran thanked Ms. Brown for her presentation. He stated that a recent posting about the geriatric population had prompted his request for Ms. Brown's presentation. Ms. Brown shared that the offenders in question are the absolute worst cases imaginable, involving multiple rape and/or murder victims.

Mr. Heaphy spoke of compassion release which is available in federal prisons. He asked if a similar provision is available. Ms. Brown answered that it is not available in that sense. If offenders are terminally ill, the Governor can issue a pardon.

Ms. Cooper asked what triggers availability? Ms. Brown answered those 60 years old and serving 10 years or those 65 years old serving five years. Ms. Cooper suggested everyone to review the static 99 scoring sheet.

Public Comment

Due to time constraints, public comment was limited to 2 minutes per person. Thirteen members of the public provided comments to the Commission. The comments included the following:

- Maria Dee, a Juvenile Justice Advocate with the Virginia Coalition for the Fair Sentencing of Youth, shared her concern for Virginia's sentencing of juveniles.
- Peggy Williams expressed her concern for her son who is serving a juvenile sentence of life without parole.
- Kimberly Hoffman shared her concerns regarding her son who received a 30 year sentence at the age of 16.
- Dr. Lindsay Michie addressed Virginia's violent and non-violent offenses.
- Marcus Sandridge shared his concern for an offender who received 89 years with our parole.
- Mercedes Buck, shared her concern for her husband who received a 23 year sentence at the age of 18. She voiced her concerns for multiple issues faced by offenders.
- Kina Davis and Benny Lavelle shared concern for a loved one who has been incarcerated since the age of 16 years. Ms. Davis expressed her interest in hearing from the Commission about old law inmates. She also questioned the next steps for offenders who have done everything that was required of them.
- Kay Brandon spoke of her husband who received a 142 year sentence at the age of 16. He has been denied parole 12 times.
- Monique Santiago shared that no child should be left in prison to die. She further spoke on the need to rehabilitate youth.
- Leonie May shared her concern for her son, who is a first time offender under truth-in-sentencing. She shared that the jury was not aware that parole was abolished and thus, her son received a 15 year sentence.
- Mrs. Barnes spoke of her husband receiving a 150 year sentence when he was 19 years old.
- Katherine Wilson shared her concern for her husband who is incarcerated.
- Christina Sanchez shared her concern for her husband who received a life without parole sentence at the age of 17.

Secretary Stoney thanked everyone for their participation and reminded everyone of the purpose of the Commission. He thanked the public for their attendance and also shared the importance of attendance at the General Assembly.

A motion was made and properly moved and unanimously approved to adjourn at 5:12 PM. The next meeting is scheduled for October 26, 2015 at 1:00 PM.

APPENDIX D

October 26, 2015

Commission on Parole Review Agenda and Minutes

Meeting Four Agenda
Commission on Parole Review

Monday, October 26, 2015
1:00 p.m. – 4:00 p.m.

Virginia General Assembly Building – House Room C
Richmond, Virginia

XI. Welcome/Opening Remarks

The Honorable Brian J. Moran
Secretary of Public Safety and Homeland Security

The Honorable Levar M. Stoney
Secretary of the Commonwealth

The Honorable Mark L. Earley, Sr.
Former Attorney General of Virginia

I. Legislative Presentations

II. Overview of PAPIS

Ann Fisher
Executive Director, Virginia CARES

III. National Perspective

Peggy Burke
Center for Effective Public Policy

IV. Overview of Victims Services

Wendy Lohr-Hopp
Director, Victim Services Unit, Virginia Department of Corrections

Emily Sattie
Victim Services Coordinator, Virginia Parole Board

V. Presentations from Subcommittees

- Efficiencies and Fiscal Impact
- Best Practices for Reducing Recidivism
- Appropriate Classification of Offenses

VI. Public Comment

VII. Closing

Meeting Four Minutes
Commission on Parole Review
Virginia General Assembly Building – House Room C
October 26, 2015

Members Present:

The Honorable Levar M. Stoney, Secretary of the Commonwealth
Bobby N. Vassar, Chief Counsel (Retired), U.S. House Judiciary Subcommittee on Crime
Gail Arnall, Ph.D., Consultant for Outreach and Development, Offender Aid Restoration
Dave Albo, Member, Virginia House of Delegates; Chairman, Courts of Justice Committee
David R. Lett, Public Defender, Petersburg Public Defender's Office
Tonya Chapman, Deputy Secretary of Public Safety and Homeland Security
Cynthia E. Hudson, Chief Deputy Attorney General, Office of the Attorney General
Francine Ecker, Director, Virginia Department of Criminal Justice Services
Camille Cooper, Director of Government Affairs, The National Association to PROTECT
Children & PROTECT
La Bravia J. Jenkins, City of Fredericksburg, Commonwealth's Attorney
Karen Brown, Chair, Virginia Parole Board
Jack Gravely, JD, Executive Director, Virginia State NAACP
Timothy J. Heaphy, Partner, Hunton & Williams, former United States Attorney for the Western
District of Virginia
Cheryl Robinette, Director of Substance Abuse Services, Cumberland Mountain Community\
Services Board
Thomas M. Wolf, Partner, LeClairRyan
Margaret Schultze, Commissioner, Virginia Department of Social Services
Alvin Edwards, Ph.D., Pastor, Mt. Zion First African Baptist Church
Mindy M. Stell, President, Virginia Victim Assistance Network
Luke E. Torian, Member, Virginia House of Delegates
Pat Nolan, Director, Center for Criminal Justice, American Conservative Reform Union
Foundation
William R. Richardson, Jr., Member, Virginia CURE; Retired partner, Wilmer, Cutler,
Pickering, Hale and Dorr, LLP
Faye S. Taxman, Ph.D., Professor, George Mason University
Mira Signer, Executive Director, National Alliance on Mental Illness of Virginia
Dave Marsden, Member, Senate of Virginia
Cynthia Hudson, Chief Deputy Attorney General, Office of the Attorney General

Members Not Present:

The Honorable Brian J. Moran, Secretary of Public Safety and Homeland Security
The Honorable Mark L. Earley, Sr., Owner, Earley Legal Group, LLC; former Attorney General
of Virginia
Harold Clarke, Director, Virginia Department of Corrections
Sandra W. Brandt, Executive Director, STEP-UP Inc.
Kimberly Lettner, Retired Chief of Police, Division of Capitol Police
Marcus M. Hodges, President, National Association of Probation Executives
Jill Vogel, Member, Senate of Virginia

Kenneth W. Stolle, Sheriff, Virginia Beach Sheriff's Office

Other Participants:

A. David Robinson, Chief of Corrections Operations, Virginia Department of Corrections for
Harold Clarke, Director, Virginia Department of Corrections
Mark D. Sickles, Member, Virginia House of Delegates
Ann Fisher, Executive Director, Virginia CARES
Wendy Lohr-Hopp, Director, Victim Services Unit, Virginia Department of Corrections
Emily Sattie, Victim Services Coordinator, Virginia Parole Board

Welcome/Opening Remarks

Secretary Stoney convened the meeting at 1:07 PM. Secretary Stoney provided an overview of the agenda. He advised the audience that after visiting Lynchburg and Ferrum College's last week, he is pleased to report citizens of the Commonwealth are paying close attention to the Commission. The citizens believe the Commission is tasked with a worthwhile charge. He expressed thanks to the members for working diligently and the public for their participation as the Commission reviews the critical issue of parole review and other criminal justice reform issues.

Approval of September 28, 2015 Meeting Minutes

Secretary Stoney presented the September 28, 2015 minutes for review and approval. Upon a motion by Delegate Albo and duly seconded, the members voted unanimously to approve the September 28, 2015 Parole Review Commission meeting minutes as presented.

Legislative Presentations

Senator Marsden presented an overview of Supreme Court cases *Miller v. Alabama* and *Graham v. Florida*, which he introduced legislation to address over the last couple of years, and are relevant to the work of the Commission. *Miller v. Alabama* is considered extremely controversial. The case addresses anyone under the age of 18 years old charged with a homicide and transferred to an adult court. A minor is required to have a sentencing hearing, which considers mitigating factors. For example, in Virginia, if a 15 year old is charged with a capital offense there are two options, death, or life without parole. The U. S. Supreme Court has determined it is unconstitutional to impose a death sentence on a juvenile therefore that only leaves the option of life without parole. With only one option, this eliminates the necessity for a sentencing hearing. Currently prosecutors are charging juveniles with a capital offense then reducing the charges to 2nd degree felonies to ensure mitigating factors are considered during sentencing determination. Senator Marsden reported he is considering introducing a bill that will ensure that anyone under the age of 18 that is charged with a homicide is charged with a Class 2 felony (20 years to life) upfront. This requirement would eliminate the step of determining a charge and then having to reduce the charges. Senator Marsden then opened the floor for questions.

Mr. Vassar asked if the bill would affect current cases. Response, several states have retroactively corrected cases. They have searched all cases in which mitigating circumstances were not presented because the juveniles were not afforded a sentencing hearing and scheduled

hearings to retry and resentence. It may be difficult for Virginia to consider looking back retroactively to retry or resentence and as a result, this option was not included in the bill.

Senator Marsden presented an overview of *Graham v. Florida*. Senator Marsden has presented this bill on two separate occasions. *Graham v. Florida* addresses individuals under the age of 18 years old charged with life sentences in which there was no loss of life and transferred to adult court.

The U.S. Supreme Court has determined it is unconstitutional to sentence someone to life in prison without the possibility of parole for a non-homicide offense committed under the age of 18. It also states that the juvenile must be given a meaningful and realistic opportunity for release. The Virginia Supreme Court has determined that geriatric parole is meaningful and realistic. However, the U.S. Eastern District Court has determined that geriatric parole is not a remedy for *Graham v. Florida*. For example, in Virginia, a 15 year old sentenced to life would not be eligible for geriatric parole would have to serve 45 years before becoming eligible. Senator Marsden's bill would provide an opportunity for individuals to serve 20 years or age 35 whichever comes last to petition a four-judge panel, which would include one judge from the sentencing jurisdiction. The judges would then review reports from Probation and parole districts, an institutional report, victim input, and offender rehabilitation providers to make a determination. The individual would then come back every five years with a similar petition.

Secretary Stoney asked CA Jenkins for her input regarding Commonwealth's Attorneys. Per CA Jenkins, Senator Marsden presented his bill to Commonwealth's Attorneys last year. As an organization, when bill is presented they are reviewed and considered.

Mr. Wolf asked why a four-judge panel was chosen. Response- it was felt that a super majority of three or four would create a bar high enough satisfy Virginia criminal justice practices.

Secretary Stoney asked Ms. Brown to address how the bill differs from current Parole Board practices. Ms. Brown advised that out of the entire DOC population there are currently four inmates eligible for geriatric release that came in as juveniles. These cases are reviewed no differently from other geriatric eligible offenders with the exception of updated psych evaluations are requested prior to each review.

Ms. Cooper asked of the 22 juvenile offenders what types of crimes were committed. Senator Marsden advised in addition to homicides some of the crimes reviewed were horrible (i.e., rape, torture, abduction etc.). On the other side, there is Travion Blount, a 15 year old that received 15 separate charges for robbery. He received six life terms and has served eight or nine years. His adult co-defendants took plea bargains and received shorter sentences. Prior to leaving office Governor McDonnell adjusted Travion's sentence to 40 years. The Blount case is complicated and currently being litigated in Virginia Supreme Court.

Ms. Cooper asked Senator Marsden if he was familiar with 17.1-805 the part of the Code that deals with sentencing enhancements. Response, consideration of prior records should be taken into account. Mandatory sentences are Travion's issue. Senator Marsden advised that he is not thoroughly familiar with sentencing enhancement. He reported that he participated in the

drafting the first blended sentencing laws as the former head of DCJS. If a 15 year old committed an armed robbery, they were sent to juvenile detention. The blended law required juveniles to begin their adult sentences in juvenile detention. Once they reached 20 ½ years old, they were returned to the sentencing jurisdiction for a review. This is not dissimilar in what we are asking for with Graham.

Delegate Mark D. Sickles, Member, Virginia House of Delegates thanked the members for allowing him to present. Delegate Sickles provided an overview of Bill 2288. Delegate Sickles advised that the bill fit with the mission of the Governor's Commission on Parole Review. Delegate Sickles reports receiving numerous letters from concerned constituents regarding parole. Delegate Sickles plans to introduce a bill that would address the approximately 4,000 old law inmates currently serving lengthy sentences. The bill would require the Parole Board to give fair and meaningful review of each case. Delegate Sickles advised that the Parole Board primarily responds with "the serious nature and circumstances of your crime" however, they should be considering truth-in-sentencing guidelines and who the inmate is now not who they were at the time of the crime. The Parole Board purports that they do not have the resources to perform extensive reviews. If this is the case, Delegate Sickles recommends the Governor seriously consider providing the funds necessary to acquire the additional staff necessary to perform the reviews. Per Delegate Sickles, it is a matter of basic fairness to review this multi-faceted issue of approaching crime. Delegate Sickles commends the Governor for establishing this Commission to tackle this issue. Delegate Sickles advised that Virginia has an injustice that needs to be fixed.

CA Jenkins asked how many of the 4,000 parole eligible offenders that have been denied would benefit from Bill 2288. Delegate Sickles advised that the number is unknown and he cannot answer with any precision. He indicated that he has been told the cases affected are the worse of the worse however, these are crimes were committed by teenagers.

Ms. Farrar-Owens reported a study was completed six years ago which included a little over 3,000 parole eligible inmates. Research found that 700 inmates were considered to have served past the high end of their sentencing guidelines range. Delegate Sickles advised that he does not believe that the intention of the General Assembly was to remove the discretion of the Parole Board in 1995 however; current events are an unintended consequence that must be addressed.

Overview of PAPIS

Ann Fisher, Executive Director, Virginia CARES provided a comprehensive overview of PAPIS: Virginia Re-entry Coalition. Ms. Fisher's report included but was not limited to the historical background of PAPIS, funding sources, number of clients served, assistance provided, and number of referrals made FY14-15. PAPIS is a community based, non-profit organization that provides re-entry services to local and regional jails.

Ms. Ecker advised the members that although they may not be familiar with PAPIS, there are many programs such as OAR, Virginia CARES, and STEP-UP that fall under the PAPIS umbrella, which they may be more familiar with.

Mr. Wolf asked if there are any studies that tie program completion with recidivism rates following completion. Response, PAPIS is currently in the process of compiling that information. The PAPIS Coalition in Hanover is currently performing its strategic planning initiative. They are reviewing the mission, vision and develop consistent measurements to ensure consistency as they move throughout DOC and the Probation and Parole offices.

Ms. Fisher reported that Virginia CARES a study was performed 4 years ago that identified an 11% recidivism rate. Ms. Arnall reported that the medium/high-risk population in Arlington has performed a recidivism study that reflected an 8% recidivism rate of those who are in the program from eight to six months. Ms. Fisher and Ms. Arnall advised that the individuals served are not assigned but are volunteer. PAPIS has become more prominent as the face of reentry and because of that, we have seen larger numbers of individuals. The population tends to fluctuate dependent upon the geographic location in which they are released. Virginia CARES has reorganized and anticipates some fluctuation in the population of individuals served in the upcoming year.

Ms. Cooper asked if a process could be implemented to assist returning citizens in obtaining birth certificates and social security cards prior to release. Response, DOC currently collaborates with DMV staff visits institutions to provide photo IDs for returning citizens upon release. Per Ms. Fisher, they work with returning citizens once released to obtain social security cards and birth certificates. Ms. Fisher advised no agreements have been made with federal agencies to get them into the institutions to provide social security cards prior to release.

Ms. Cooper asked if Re-entry programs work with employers and landlords that are open to accepting returning citizens as employees and tenants. How many are able to maintain housing and employment after a background check. Response, Virginia CARES has built a collaborative with employers and landlords in our areas who will accept individuals. Returning citizens are steered towards those employers and landlords that are open to providing employment and housing. This creates a more successful transition into jobs as opposed into putting them in the general market.

Ms. Cooper advised approximately 13,000 offenders are released annually. Ms. Cooper asked for clarification regarding 1808 jobs reflected in the presentation, are they medium and/or high-risk. Response, in most cases the medium to high-risk individuals are the ones requiring the majority of reentry services. Returning citizen that obtain employment without assistance are not included in the total number reported.

Ms. Arnall advised that obtaining housing is a huge problem in urban areas. Most returning citizens are medium to high-risk offenders go immediately to shelters and halfway houses for approximately nine months. They have difficulty obtaining employment. Banning the box is helpful but does not guarantee employment but does give the opportunity for an interview. There are federal programs that offer tax credits for hiring an ex-offender, at \$2,400 per year for two years.

Mr. Robinson advised the members that one of the first things DOC does upon entry is assist offenders in obtaining social security cards and birth certificates. Mr. Robinson reported DOC

does have an agreement with Social Security Administration for returning citizens to obtain Social Security cards. DMV representatives come in to the facilities and provide ID cards. Re-entry Programs Director, Scott Richeson can provide the specific numbers.

Overview of National Perspective

Peggy Burke provided an overview of the national perspective. Ms. Burke advised the members additional information could be found by visiting www.nationalparoleresourcecenter.org. Ms. Burke reported the elimination of parole, 3-strikes laws, and mandatory minimums resulted in an increase in incarceration between 1978 and 2014. Many states have moved away from parole while others have continued the use of parole. Paroling authorities are still key decision makers in the states that have sentencing structures are governed by indeterminate sentences. Research has identified that recidivism can be reduced with evidence based intervention, empirically based risk and needs assessment tools and intrinsic motivation as a key to behavior change. Low risk populations can be identified where interventions will not have significant risk reduction potential and may even increase risk.

In 2011, as states refocused with a desire for fair and evenhanded punishment, a national study identified the consensus around best practices. The goal was to have dialog in determining good practices for paroling authorities while keeping public safety in mind. To achieve fair and evenhanded punishments it was determined that it was necessary to identify areas of reform, enhance basic capacities of boards, expand responsibilities to include policy making, key input to Commission and look to the future. Lessons learned from the past and present identified the following needs to strengthen the future, balanced and strategic sentencing including fair and proportionate punishment, accountability, community safety, and wise use of resources.

The National Parole Resource Center has outlined best practices for how an effective parole board operates. Enhancing risk reduction impacts and strategic use of resources by parole, and basic capabilities of paroling authorities' responsibilities to include policymaking and effective collaboration with other state agencies will assist in broadening paroling authorities responsibilities in assessing the criminogenic needs of offenders.

Ms. Burke reported paroling authorities are making efforts to take of advantage of their position in the sentencing system, after the severity of the crime has been established and the limits of punishment set.

Secretary Stoney recognized the members of the Virginia Parole Board in attendance, Karen Brown, Chairman, Adrienne Bennett and Sherman Lea, board members.

Mr. Heaphy asked if there was a model for what the commission is considering. Response, Pennsylvania is a good example. A sentencing court imposes a sentence and the Parole Board reviews and deliberates any serious infractions that may have occurred within the past year. If the investigation uncovers any serious infractions, this will result in a no release decision.

Questions were asked regarding parole reform efforts and how to make them available in Virginia. Response, Indeterminate sentencing is being reassessed to determine basic underlying goals that are less costly and are not a serious threat to community being embraced as emerging

best practices. The challenge is to develop a strategic approach to paroling authorities across the board.

Mr. Vassar asked if there have been any cost savings. Response, a balanced approach to sentencing and not using resources where they really are not needed is the general practice. There have been no specific studies, we are still learning from experiences. It is important to develop strategy and distribute resources to the appropriate people. The Robina study encompasses a lot and will provide valuable information.

Mr. Richardson asked if there are parole reforms that should be considered. He suggested parole board members being appointed by panel in addition to the gubernatorial appointment. Further, the parole board should not deny based on time served. He went on to advise risk assessments should be validated by sound research and should be transparent. Decision making tools should develop guidelines of presumptive release dates. Response, decisions should not depreciate the nature of the crime. Community safety must always be the primary concern. Parole is a privilege not a right.

Overview of Victims Services

Wendy Lohr-Hopp, Director of the Victim Services Unit, Virginia Department of Corrections, provided an overview of DOC's Victim Services Unit duties and responsibilities. She shared concerns and statements of crime victims. Victims have expressed frustration with the recent changes requiring new law offenders to be considered for paroled. Victims state that any additional changes to parole consideration for existing new law offenders would betray the agreements and decisions of the court. Victims request that the Commission honor the decision of the court on existing cases and not allow new rules and laws to abandon the agreements made during prosecution and sentencing.

Emily Sattie, Victim Services Coordinator, Virginia Parole Board (VPB), provided an overview of VPB's Victim Services' Unit. She provided excerpts of letters from victims of crime as submitted to the VPB. At the request of victims and their families, Ms. Sattie requested the Commission consider the impact any new action will have on the population of those who have been victimized.

Mr. Richardson asked how many decisions do not involve victims. Ms. Lohr-Hopp advised she was not in possession of individual case information.

Ms. Jenkins asked if Ms. Lohr-Hopp or Ms. Sattie were aware how many staff were in place prior to 1995. Response, the Victim Services unit was not in place prior to 1995. Pennsylvania has a c staff of 12-15 however; the majority of DOC's have a large number of staff to address victim needs.

Senator Marsden asked are we at a point where nobody should be released unless a victim is ok with it. If yes, that cannot be a determining factor. Ms. Sattie advised her commentary was not meant indicate only releasing someone unless the victim approved. The message she was attempting to convey was that the commission consider the impact its decisions will have on victims.

Secretary Stoney reported the preliminary report to the Governor was due November 2. The next meeting will be held November 18. Please consider for discussion at the next meeting that some items discussed by the commission do not pertain specifically to parole. Therefore, please be prepared to discuss changing the name of the Commission to Criminal Justice Reform.

Presentations from Subcommittees

Efficiencies and Fiscal Impact: Mr. Vassar reported that the Subcommittee on Efficiencies and Fiscal Impact has met three times. He advised the members that the subcommittee has made steady progress utilizing various avenues to address the subcommittee's charge. The subcommittee has determined with a fair consensus that there is much to consider but it will be difficult to reach consensus on all topics. Controversial elements of the report will be presented even though a consensus has not been reached. Following the commission's directives for points to consider discussing various aspect we are seeking precise language, more details, and better clarification. We are making progress and will be in a position to present our considerations at the next meeting.

Delegate Albo shared that he has served in the House of Delegates for 22 years. He reported the Efficiencies and Fiscal Impact meeting was interesting and there were many differences of opinion. He stated that the Commission on Parole Review is not a legislative body and therefore cannot overturn the abolition of parole. The 64 Republican members of the General Assembly will never reinstate parole. He further stated whether it is referred to as second look or eliminating parole, reinstatement will never happen. He reported he would be absent for the meeting on November 18 due to a scheduling conflict however, he expressed although there were differences of opinion, they were able to reach a consensus on the things that actually helped people (i.e., helping people stay out of prison and helping them when they get out of prison so they do not come back in). He advised the members of the Efficiencies and Fiscal Impact subcommittee that if they were able to compile a report consisting of the things that they were able to reach consensus on they would actually have report that would actually be read and would be helpful. A report that the General Assembly would consider taking into consideration.

Best Practices for Reducing Recidivism: Senator Marsden provided an update on behalf of the Subcommittee on Best Practices for Reducing Recidivism. He identified several recommendations for the Committee as they relate to recidivism and reentry.

Appropriate Classification of Offenses: Timothy Heaphy provided a summary of the work of the Subcommittee on the Appropriate Classification of Offenses. The subcommittee has met four times and reviewed the classification of violent crimes and various Code sections. The subcommittee is in the process of recommending considerations to the full Committee on November 18.

Mr. Wolf asked if any crimes been identified that could referred to as non-violent. Response, yes some have been identified

Public Comment

Due to time constraints, public comment was limited to two minutes per person. Seven members of the public provided comments to the Commission. The comments included the following:

- John Saunders shared his concern for truth-in-sentencing and spoke of the matter in which his wife brutally murdered their son. He asked that parole not be reestablished.
- Judy Choeny shared that her father, an Alexandria police officer, was killed while responding to a bank robbery. She continues to fight parole for those charged with his killing.
- Laurie Crawford spoke of her experience as a juvenile victim and asked that Committee to be mindful of how broken the system was before the abolishment of parole.
- Clarence Dunnaveit thanked the Governor and the Committee members for their work and shared that the criminal justice system needs to be reformed.
- Corey Burden, a victim witness, shared his wish that offenders serve the time given.
- Kina Davis shared supper for her loved one who is serving a life sentence. She posed the question of what the next steps should be for offenders who have done everything that was asked of them. She further shared that it is unconstitutional to sentence a juvenile with no opportunity for release.
- Raheem Mohammed stated that he benefited from discretionary parole. At the age of 17, he was sentenced to 29 years. After being denied parole for several years, he was granted discretionary parole after serving 12 years. He shared his appreciation for the work that the Committee is doing, but shared that criminal justice must also be added to the equation.

Secretary Stoney thanked everyone for their participation and informed everyone that the subcommittee presentations will be due at the next meeting on November 18, 2015.

A motion was made and properly moved and unanimously approved to adjourn at 4:20 PM.

APPENDIX E
November 18, 2015
Commission on Parole Review Agenda and Minutes

Meeting Five Agenda
Commission on Parole Review

Wednesday, November 18, 2015
1:00 p.m. – 4:00 p.m.

Virginia State Capitol – House Room 3
Richmond, Virginia

- I. Welcome/Opening Remarks**
The Honorable Brian J. Moran
Secretary of Public Safety and Homeland Security

The Honorable Levar M. Stoney Secretary
of the Commonwealth

The Honorable Mark L. Earley, Sr. Former
Attorney General of Virginia
- II. Approval of October 26, 2015 Meeting Minutes**
- III. Subcommittee Presentations & Recommendations**
 - Best Practices for Reducing Recidivism
 - Efficiencies and Fiscal Impact
 - Appropriate Classification of Offenses
- IV. Public Comment**
- V. Closing**

Meeting Five Minutes
Commission on Parole Review
Virginia State Capitol – House Room 3, Richmond, Virginia
November 18, 2015

Members Present:

The Honorable Brian J. Moran, Secretary of Public Safety and Homeland Security
The Honorable Mark L. Earley, Sr., Owner, Earley Legal Group, LLC; former Attorney General of Virginia
The Honorable Levar M. Stoney, Secretary of the Commonwealth
Bobby N. Vassar, Chief Counsel (Retired), U.S. House Judiciary Subcommittee on Crime
Gail Arnall, Ph.D., Consultant for Outreach and Development, Offender Aid Restoration
David R. Lett, Public Defender, Petersburg Public Defender's Office
Tonya Chapman, Deputy Secretary of Public Safety and Homeland Security
Cynthia E. Hudson, Chief Deputy Attorney General, Office of the Attorney General
Francine Ecker, Director, Virginia Department of Criminal Justice Services
Camille Cooper, Director of Government Affairs, The National Association to PROTECT Children & PROTECT
La Bravia J. Jenkins, City of Fredericksburg, Commonwealth's Attorney
Karen Brown, Chair, Virginia Parole Board
Jack Gravely, JD, Executive Director, Virginia State NAACP
Timothy J. Heaphy, Partner, Hunton & Williams, former United States Attorney for the Western District of Virginia
Cheryl Robinette, Director of Substance Abuse Services, Cumberland Mountain Community Services Board
Margaret Schultze, Commissioner, Virginia Department of Social Services
Alvin Edwards, Ph.D., Pastor, Mt. Zion First African Baptist Church
Mindy M. Stell, President, Virginia Victim Assistance Network
Luke E. Torian, Member, Virginia House of Delegates
Pat Nolan, Director, Center for Criminal Justice, American Conservative Reform Union Foundation
William R. Richardson, Jr., Member, Virginia CURE; Retired partner, Wilmer, Cutler, Pickering, Hale and Dorr, LLP
Faye S. Taxman, Ph.D., Professor, George Mason University
Mira Signer, Executive Director, National Alliance on Mental Illness of Virginia
Dave Marsden, Member, Senate of Virginia
Sandra W. Brandt, Executive Director, STEP-UP Inc.
Marcus M. Hodges, President, National Association of Probation Executives

Members Not Present:

Harold Clarke, Director, Virginia Department of Corrections
Kimberly Lettner, Retired Chief of Police, Division of Capitol Police
Jill Vogel, Member, Senate of Virginia
Kenneth W. Stolle, Sheriff, Virginia Beach Sheriff's Office
Dave Albo, Member, Virginia House of Delegates; Chairman, Courts of Justice Committee
Thomas M. Wolf, Partner, LeClairRyan

Welcome/Opening Remarks

Secretary Moran convened the meeting at approximately 1:08PM. Secretary Moran provided an overview of the agenda and thanked the Commission for their hard work leading up to the final meeting.

Approval of October 26, 2015 Meeting Minutes

Secretary Moran presented the October 26, 2015 minutes for review and approval. Mr. Edwards made a motion to accept the minutes which was properly seconded. Members voted unanimously to approve the minutes.

Subcommittee Presentations and Recommendations

Secretary Moran introduced Dr. Faye Taxman, Chair of the Best Practices for Reducing Recidivism subcommittee.

Best Practices for Reducing Recidivism:

Dr. Taxman began by thanking the members of the subcommittee. Dr. Taxman reviewed the charge of her subcommittee and began presenting the recommendations.

Secretary Moran noted that the Commission would be operating on consensus with regard to the recommendations, and recommendations would be adopted if there were no expressed objections.

Recommendation 1: Carefully review recent research findings

- Over the past 20 years there has been an accumulation of research literature on effective practices, policies, and programs that have been shown to reduce recidivism, and practices that increase recidivism.
- This research has informed our perspective that the Commonwealth of Virginia should be exploring other practices and programs besides incarceration to increase the public safety of our communities.
- The incarceration of nonviolent offenders and individuals that do not pose a threat to the safety of the community has been found to increase criminal behavior (Nagin, Cullen, & Jonston, 2013).

Secretary Moran asked about Dr. Taxman's slide regarding treatments that have demonstrated success, some success, or no success in reducing recidivism; specifically about the "Intensive supervision with no treatment" bullet from her slide. He noted the relation to the "Swift and Immediate Sanctions" program in Virginia and that without sufficient treatment it may not ultimately reduce recidivism. Dr. Taxman agreed.

✓ The Commission adopted Recommendation 1.

Recommendation 2: Review data from Other States, including Georgia, Texas, Kentucky, Florida, Missouri

- Other states have pursued policies and programs to *reduce the use of incarceration* for nonviolent offenders and felony offenders that do not pose a threat to the community.

- Expanded programs in the community such as drug treatment, problem solving courts, reentry services, supportive housing programs, mental health services, day reporting programs with cognitive behavioral programming and employment services; short-term diversion and halfback residential programming.
- The states have pursued *reduction in sentence lengths*, altering the criminal code to redefine the felony status of certain criminal behavior
- Do not use incarceration for probation and parole violations that relate to merely violations of conditions (programmatic)

Dr. Taxman focused on the “Justice Reinvestment” component of this recommendation and highlighted the significant outcome other states have achieved with these initiatives.

Mr. Heaphy strongly supported this recommendation and further noted the importance of the data and savings numbers Dr. Taxman shared. Mr. Heaphy expressed that other states have reduced recidivism and experienced cost savings, so starting with the data is essential.

Secretary Moran asked if this recommendation is specifically to review the data. Response-Yes.

CA Jenkins asked about the final bullet point and whether this should be considered an absolute and whether the states listed have also taken this approach.

Dr. Taxman responded that she has not studied other states enough to say for sure. She stated that Ohio believes their correctional facilities are not intended to be used for technical violators.

Senator Mardsen felt that this was at the heart of the subcommittee and that Virginia should not incarcerate people for technical violations.

Chairman Brown asked if language could be included to account for a person representing a threat to the community.

- ✓ **The Commission adopted Recommendation 2 with Chairman Brown’s amendment.**

Recommendation 3: Survey the existence of Community Based programs for “alternatives to incarceration ”and reentry services in each Virginia jurisdiction

- *The Commission was informed that about half of the offenders incarcerated each year are eligible for “alternatives to incarceration” but the judges do not believe that there are sufficient and adequate programs for community sanctions*
- To address this, we recommend:
 - Assess the characteristics of individuals in each jurisdiction
 - Identify gaps in needed services and programs in each jurisdiction to better manage the offender in the community
 - Develop a strategic plan for each jurisdiction
 - Increase availability of behavioral health services to address the unmet needs of mental health and substance abuse services
 - Expand therapeutic assessment “drop off” centers to benefit public safety

- Assess how services are delivered in each jurisdiction and whether CSBs can adequately handle the needs of Justice-Involved populations
- Expand the use of PAPIS since it provides an infrastructure for reentry services

Dr. Taxman stated that DOC has a list with all programs and services available, but localities do not have a similar list. Having comprehensive lists of services and programs would help to assess the needs of each community and their ability to treat offenders.

✓ **Recommendation 3 was adopted.**

Recommendation 4:

- Expand Medicaid to fund needed behavioral health services.* The Commonwealth should pursue Medicaid Expansion as a means to fund behavioral health and chronic health services for offenders in the community. This would provide a funding stream for needed programs and services
- Support Permanent Supportive Housing expansions.*
- Use savings/funds from closed prisons to fund needed programs, services, and reforms.* Justice Reinvestment Initiatives are being used to convert funds saved through reduced incarceration to build the community capacity to safely manage offenders in the community that they reside. The Subcommittee recommends that half of the savings from the closing of prisons and/or detention facilities should be used to build evidence-based programming, services, and practices in the community. These funds should be directly allocated to build community capacity to manage the offenders in the community.
- Increase the amount of good time credits provided to encourage recidivism reduction programming participation.*
- Allow felony drug offenders to have access to TANF. TANF should be allowed for certain drug felony offenses.*
- Support ban-the-box efforts*
- Allow offenders to obtain driver's licenses prior to paying all court fines and costs.*
- For candidates whose time served has already exceeded either 20 years, or the time set by the TIS guidelines for the same offense, the Parole Board should be required to issue a reasoned decision for any parole denial, specifically explaining why there is a substantial risk of serious re-offense.*
- Review candidates with no recent record of major institutional infractions. The Governor should encourage at least three Board members to personally interview such candidates and meet to discuss them.*
- The Board should standardize its use of validated risk assessment tools and ensure that such tools include appropriate consideration of dynamic factors (such as age) at the time of parole review. Parole candidates should have transparent access to the information relevant to validation of these tools, as well as to the application.*

General Earley expressed concern about recommending Medicaid Expansion, as that has been a continual point of conflict between the Governor and the General Assembly. He asked whether the Commission could amend the language to make it more favorable.

Dr. Taxman noted the importance of a dedicated funding stream to treat this population and that other states have found great success by expanding Medicaid access.

Ms. Signer added the Governor's Access Plan and explained that people who have been housed in correctional institutions are explicitly prohibited from accessing benefits.

Dr. Taxman asked if someone who is on Probation & Parole qualifies. Ms. Signer said there are a number of criteria that must be met and it is worth looking into.

Commissioner Schultze further elaborated on the narrow constraints of Medicaid eligibility and that currently, indigent persons would only be eligible for Medicaid under Expansion.

General Earley asked if the intent was to increase funding for drug rehabilitation. Dr. Taxman responded that it would address all behavioral health needs.

General Earley asked if the intent was to address pre-incarceration, incarceration, or post-incarceration services. Dr. Taxman stated it would assist with all efforts. General Earley expressed further concerns about this particular sub-recommendation.

Secretary Moran suggested modifying the language to "identify revenue sources to fund behavioral health treatment".

✓ **Recommendation 4a was adopted as amended.**

✓ **Recommendation 4b was adopted.**

✓ **Recommendation 4c was adopted.**

Recommendation 4d: Increase the amount of good time credits provided to encourage recidivism reduction programming participation.

Mr. Heaphy noted that the Appropriate Classification of Offenses Subcommittee put forth a similar recommendation. The Subcommittee recommended increasing good-time credits up to 50% for drug offenders who actively participate in treatment.

Mr. Richardson commented that the current 15% standard is not evidence-based and was created in order to comply with federal guidelines to ensure Virginia received certain funding. This funding is no longer available and should be reviewed.

✓ **Recommendation 4d was adopted as amended to reflect discussion from the Appropriate Classification of Offenses Subcommittee regarding the availability of programming.**

Recommendation 4e: Allow felony drug offenders to have access to TANF.

Commissioner Schultze explained that currently, all drug offenders are prohibited from receiving funds through the Temporary Assistance for Needy Families (TANF) program. Currently, those convicted of drug possession qualify to receive benefits through SNAP.

Secretary Moran noted this recommendation would mirror current SNAP requirements and all possession offenses to be eligible for TANF.

General Earley would like to include Possession with Intent to Distribute to this recommendation, as it is currently treated as distribution and would be disqualifying.

Commissioner Schultze would like to further amend the SNAP requirements so long as it complies with federal regulations.

✓ **Recommendation 4e was adopted as amended.**

✓ **Recommendation 4f was adopted.**

Recommendation 4g: Allow offenders to obtain driver's licenses prior to paying all court fines and costs.

Ms. Arnall supports this and said it would be beneficial to remove the suspension so that a person is able to get to work and pay off the fines.

Mr. Graveley stated greater efforts should be made to ensure offenders know of programs assisting with obtaining identification and driver's licenses.

Cookie says she believes they have flyers throughout the facilities and re-entry programming that shares this information.

Jack Graveley says let's think about a Public Service Announcement on this. Doing so would allow family members to hear about this and pass it on.

✓ **Recommendation 4g was adopted.**

Recommendation 4h: For candidates whose time served has already exceeded either 20 years, or the time set by the TIS guidelines for the same offense, the Parole Board should be required to issue a reasoned decision for any parole denial, specifically explaining why there is a substantial risk of serious re-offense.

Recommendation 4i: Review candidates with no recent record of major institutional infractions. The Governor should encourage at least three Board members to personally interview such candidates and meet to discuss them.

Recommendation 4j: The Board should standardize its use of validated risk assessment tools and ensure that such tools include appropriate consideration of dynamic factors (such as age) at the time of parole review. Parole candidates should have transparent

access to the information relevant to validation of these tools, as well as to the application.

Mr. Richardson stated that the Parole Board should have to explain what risk a person poses to public safety and highlighted the importance of face-to-face meetings with eligible offenders, as the other processes occur electronically. This would enhance transparency and consistency.

Chairman Brown expressed concern about not seeing these recommendations previously and felt unprepared to adequately address them. She stated that current Parole Board practices and procedures comply with the Code of Virginia and case law. The Fourth Circuit Court of Appeals has recently upheld the policies, practices and procedures of the Parole Board. The US Supreme Court has also stated there is no constitutional right to parole release only consideration. Parole is not a right and is not guaranteed. The Parole Board reviews all institutional infractions. Chairman Brown noted that as written, the recommendation removes the Parole Board's discretion and creates a right to release if the Board cannot justify its denial in a manner satisfactory to the offender. Each denial could then be subject to litigation. The Board does provide a reasoned decision for denial. The Parole Board already uses the COMPAS a validated assessment tool also used by the DOC. Finally, she noted the Parole Board does meet regularly to discuss cases and the entire process is not electronic.

Mr. Richardson said he is not concerned with whether the current system is constitutional, rather he is concerned about whether it is right and fair. He would like the Governor to consider addressing these concerns administratively. He feels strongly that Parole Board members should meet offenders in person.

Secretary Moran recommended ending recommendation 4h after denial, as substantial risk to re-offend should not be the only factor considered.

Dr. Taxman and Mr. Richardson both indicated concerns about equity with regard to persons serving longer than current TIS cases, as well as the low grant rate for parole.

- ✓ **After significant discussion and debate, the Commission recommended presenting recommendations 4h-4j as amended to the Governor for consideration. The content of the recommendations was not adopted unanimously.**

Recommendation 5: Address procedures and policies that correct prior errors

- During the past thirty years there have been a number of instances that require some administrative procedures to correct or address errors.
- We recommend that the Governor establish a procedure to address these errors and to reform procedures and policies for geriatric release, compassionate release, and (for those 4,000 inmates still eligible for offenses committed prior to 1995) discretionary parole release, and for correcting unfair and uninformed jury sentencing (i.e. *Fishback v. Commonwealth*, 532 S.E.2d 629 (Va. 2000)).

Ms. Farrar-Owens noted she could find out how many cases were impacted by *Fishback v. Commonwealth*.

Secretary Moran questioned the use of the word “error”, as the recommendation includes a lot of different issues and compassionate release does not exist in Virginia. The similar existing process would be medical clemency.

Several Commission members expressed concerns about the broad language of the recommendation and felt it did not accurately portray the title of the recommendation. After much discussion, the Commission agreed to separate the overarching recommendation into two recommendations for the final report. The first recommendation should address policies and procedures for geriatric release and medical clemency, and the second recommendation should focus specifically on policies and procedures for *Fishback v. Commonwealth*. Both recommendations should focus on exploring whether relief should be granted, and if so, how relief should be granted.

✓ **Recommendation 5 was adopted as amended.**

Recommendation 6: Create an infrastructure for expanding evaluations of existing efforts.

- *Establish an infrastructure to conduct studies on effective practices and programs.* Request that each commonwealth-funded University work with the Department of Corrections provides evaluation services. Provide a coordinator at the Department of Corrections and one graduate student at each participating university.
- *Establish a committee to review recidivism reduction efforts in the Commonwealth* including: 1) the definition of recidivism (many states are making revisions to the definition); 2) the methods to measure recidivism; and 3) the establishment of recidivism rates for existing programs, services, incarceration, etc. by risk level.

After several questions regarding this recommendation, Dr. Taxman clarified that the point of this recommendation is to establish an infrastructure to regularly review and analyze recidivism in the Commonwealth.

The Commission agreed to tweak the language of the recommendation to reflect that the Commonwealth should solicit support from or enter into cooperative agreements with public or private institutions of higher education. Additionally, the Commission agreed to adjust the language so that the entity should coordinate with DOC rather than having a coordinator at DOC.

✓ **Recommendation 6 was adopted as amended.**

Recommendation 7: Recommendations for studies to be conducted

- The subcommittee recommends that further studies are needed. The preference would be to have the studies conducted by a Virginia organization such as the sentencing commission or an independent research organization
- Study evidence-based sentence lengths for various crimes to examine what the impact of reducing sentencing lengths would have on recidivism. The VCSC report should explore the length of sentences for violent offenses, nonviolent offenses, and limits on probation terms which other states have pursued to reduce the cost of corrections.

- Review the need for mandatory minimums given the overall 90% compliance by courts with the VCSC sentencing guidelines.
- Examine the potential to improve the quality of justice and fairness in Virginia and to ensure cost effective expenditures on incarceration. These include:
- The “second look recommendation” by the American Law Institute which allows offenders with lengthy sentences to return to the sentencing court or a judicial panel after 15 years to seek sentence modification, applicable to old law as well as new law inmates,
- Virginia Freedom of Information Advisory Council’s pending review of Freedom of Information Act exemptions should include modification of the Parole Board’s exemption to provide for greater transparency with respect to its policies and procedures;
- Review Parole Board rules for geriatric or compassionate release, and reform policies and procedures for discretionary parole release for old law inmates, and,
- The Virginia Code should be revised to increase the Parole Board’s expertise, independence, and diversity.
- Examine the use of tax incentives for businesses to promote employment of those who are on probation/parole or recently released from prison/jail.

✓ **Recommendation 7 was adopted.**

Recommendation 8: We are Not done!!!!

- *Continue the work of the Subcommittee on Evidence-based Programming and Practices to ensure that Virginia has an ongoing effort to thoroughly review its efforts at reducing recidivism*

Dr. Taxman explained this was not necessarily a recommendation, rather that more work is needed to address these issues.

Public Comment

Dr. Kelly Brotzman, Professor at Washington & Lee University addressed the Commission and shared a petition with over 9,960 signatures supporting reinstating parole in Virginia. Dr. Brotzman demanded that the Governor introduce a bill to that effect because it is the smart and right thing to do. Dr. Brotzman advised the Commission that over 10,000 active citizens are watching them and their actions on this issue, particularly elected or appointed members.

Ms. Jae George addressed the Commission and noted she is the mother of an old-law incarcerated person sentenced to life. She stated that the judge told him to “keep his nose clean and in 10-12 years you’ll be home”. He has been continuously turned down for parole since 2005 and feels that she represents the people who have fallen through the cracks.

Ms. Rashay White testified to the Commission on behalf of her husband. She posed to the Commission, what is 85% of a life sentence? She noted that prior to her husband’s current offense, he had no violent criminal record and he has been in prison for 21 years. She understands Chairman Brown’s decision for denial, but also knows that young people make mistakes and their decisions get better as they get older.

Ms. Julia Ganzie testified about Marcus Ganzie who pled guilty as a co-defendant to murder at age 17. He is now 39. She feels that he grew up in prison and his behavior has changed throughout his incarceration. She also noted family would be able to support him upon release.

Ms. Leonie May thanked the Commission for considering Fishback and appreciated their recommendations.

Appropriate Classification of Offenses Subcommittee

Ms. Brandt, Chair of the Subcommittee, presented the recommendations to the full Commission.

Recommendation 1: Evaluate these offenses to determine if “Violent Crime” classification under § 17.1-805 is appropriate:

- Burglary §18.2-91 and 18.2-92
- Escape §53.1 -203 (1)
- Prisoners §53.1-203 (2), (9) and (10)
- Riot & Unlawful Assembly §18.2-403 and 4.13
- Treason §18.2-481 (3), (4), & (5)
- Vandalism §182-162
- Weapons
 - Felon - §18.2-308.2 (A)
 - Ineligible Person - §18.2-308.2:1, 18.2-308.2:2(M, i), (M, ii) and 308.2:2
 - Purchase - §18.2-308.2:2 (M)

Ms. Brandt clarified the intent is to re-classify these offenses as non-violent.

The Commission discussed this recommendation and noted the need for further clarity in offenses, as certain offenses, such as burglary, do not clarify whether it is burglary of an occupied or unoccupied dwelling.

General Earley suggested limiting this list to burglary and weapons, as those two offenses are the most prevalent and most common. After further discussion, the Commission agreed to present the list as originally presented.

✓ **Recommendation 1 was adopted.**

Recommendation 2: Virginia Three Strikes Law

- Study the current population of inmates declared ineligible for parole under the Three Strikes Law to assess the circumstances surrounding the declaration of ineligibility
- Assess the implementation of the 1993 amendments to the Three Strikes Law to determine whether the amendments were implemented as intended by the legislature
- Consider legislative proposals if it is determined that further amendments are warranted

✓ **Recommendation 2 was adopted.**

Recommendation 3: Raise the larceny and simple larceny threshold

Ms. Brandt noted the subcommittee recommended increasing the threshold to at least \$500.

✓ **Recommendation 3 was adopted.**

Recommendation 4: Drug-Related Offenses

- Sentence reduction for drug-related offenses if offender actively participates in drug treatment, mental health or other recidivism reduction programs
- Increase availability of DOC rehabilitative and reentry programs
- Increase the number of Parole Officers' available to supervise offenders released under the rehabilitative initiative

Mr. Heaphy noted the importance of ensuring adequate programming in order to implement this recommendation. He said in order to provide incentives like sentence reduction, programs must be in place and available to all eligible offenders.

Secretary Moran agreed that further study is needed in order to implement this recommendation to ensure that adequate programs are in place.

✓ **Recommendation 4 was adopted as amended.**

Recommendation 5: Participation in Drug Treatment Courts

- Reexamine eligibility criteria for participation in Drug Treatment Courts and consideration given to offenders eligible to participate in these specialized court dockets
- Using "violent offenses" definition in §17.1-805 in determining eligibility for participation excludes individuals from participating

The Commission discussed this recommendation and agreed that the current statute is limiting and increasing access to Drug Treatment Courts is important.

✓ **Recommendation 5 was adopted.**

Efficiencies & Fiscal Impact Subcommittee

Mr. Bobby Vassar, Chair of the Subcommittee, presented the recommendations of his subcommittee. Mr. Vassar noted the significant overlap between the recommendations of his subcommittee and Dr. Taxman's Subcommittee on Best Practices for Reducing Recidivism. Because many of the recommendations were already adopted by the Commission, no further action was taken. Those recommendations include increasing access to alternatives to incarceration, expand community-based services, review geriatric release procedures, expand access to evidence-based programs, expand earned-time opportunities, re-classify certain offenses from violent to nonviolent, review mandatory minimum sentences, and increase the grand larceny threshold. Other recommendations presented by the Efficiencies & Fiscal Impact Subcommittee are as follows:

Recommendation 9: Establish parole consideration for juveniles sentenced as adults.

Mr. Vassar noted this issue is currently being litigated and we should continue to look at this issue, as he does not believe it is right to continue incarcerating juveniles for life sentences.

➤ **The Commission did not take action on Recommendation 9.**

Recommendation 10: Establish a meaningful parole or other “second look” opportunity for offenders.

Mr. Vassar noted that eligibility does not mean guaranteed parole, and he thinks it is necessary to consider opportunities for release as time elapses.

Mr. Heaphy proposed further studying this recommendation.

Secretary Moran noted that this Commission has put forth a lot of recommendations, however many require more study as they require collaboration with the General Assembly.

Senator Marsden responded that we eventually must arrive at a consistent policy and we must try to move the issues forward regardless of whether the General Assembly is cooperative.

➤ **The Commission did not take action on Recommendation 10.**

Ms. Farrar-Owens said 471 people were influenced by *Fishback v. Commonwealth*.

Next Steps/Closing Remarks

Secretary Moran thanked everyone for their work and noted that the report will be available for all members to review prior to submission to the Governor.

General Earley stated that as someone who supported the parole abolition bill in 1995, he thinks the policy went too far. He noted that addressing many of these issues are not as insurmountable as we think with regard to the General Assembly. He thanked the Commission and expressed gratitude for the leadership opportunity. General Earley shared that with abolishing parole, we failed to incorporate rehabilitation into our system. Other states have parole in various forms and seem to be doing well. He appreciates the Governor’s support and looks forward to advancing these issues when the time comes.

Secretary Stoney thanked everyone who has served on the Commission. He thanked the Governor and noted the Governor’s leadership on this issue. He stated that now we need leadership from the General Assembly.

The meeting concluded at 4:36PM.

APPENDIX F

Subcommittee Assignments & Charges

Efficiencies & Fiscal Impact

The Subcommittee on Efficiencies and Fiscal Impact was charged with the responsibility to:

1. Identify the goals of abolishing parole and evaluate whether they have been met (i.e. preventing new felony offenses, crime reduction, reducing recidivism);
2. Examine national trends and identify other potential mitigating factors influencing trends;
3. Analyze pre and post-1995 trends (i.e. crime rates, incarceration rates, sentence lengths and recidivism rates);
4. Examine the fiscal impact of abolishing parole, including societal impacts from the perspectives of victims, offenders and their families;
5. Identify opportunities for cost-savings; and
6. Additional recommendations for legislative or executive action.

Members included:

Bobby Vassar, Chair

Cheryl Robinette

La Bravia Jenkins

Francine Ecker

Karen Brown

Assisted by: Dreana Gilliam

Kimberly Lettner

Delegate Luke Torian

Pat Nolan

Delegate David Albo

Thomas Wolf

Best Practices for Reducing Recidivism

The Subcommittee on Best Practices for Reducing Recidivism was charged with the responsibility to:

1. Identify initiatives that have reduced recidivism within Virginia's current system and evaluate opportunities to improve current processes;
2. Research and evaluate best practices in reducing recidivism in other states;
3. Identify evidence-based alternatives to incarceration while improving public safety;
4. Evaluate the impact of incarceration on recidivism and re-entry; and
5. Additional recommendations for legislative or executive action.

Members included:

Faye Taxman, Chair

Gail Arnall

Jack Gravely

Senator David Marsden

Margaret Schultze

Assisted by: Nicky Zamostny

Mira Signer

Marcus Hodges

William Richardson

Sheriff Ken Stolle

Tonya Chapman

Appropriate Classification of Offenses

The Subcommittee on the Appropriate Classification of Offenses was charged with:

1. Identifying and evaluating violent crime types and definitions;
2. Comparing Virginia Code definitions and the Department of Corrections' classification system;
3. Identifying and evaluating violent crime definitions from other states and on the federal level; and
4. Making additional recommendations for legislative changes based on findings.

Members included:

Sandra Brandt, Chair

Meredith Farrar-Owens

Alvin Edwards

Harold Clarke

David Lett

Assisted by: Vernita Boone

Senator Jill Vogel

Camille Cooper

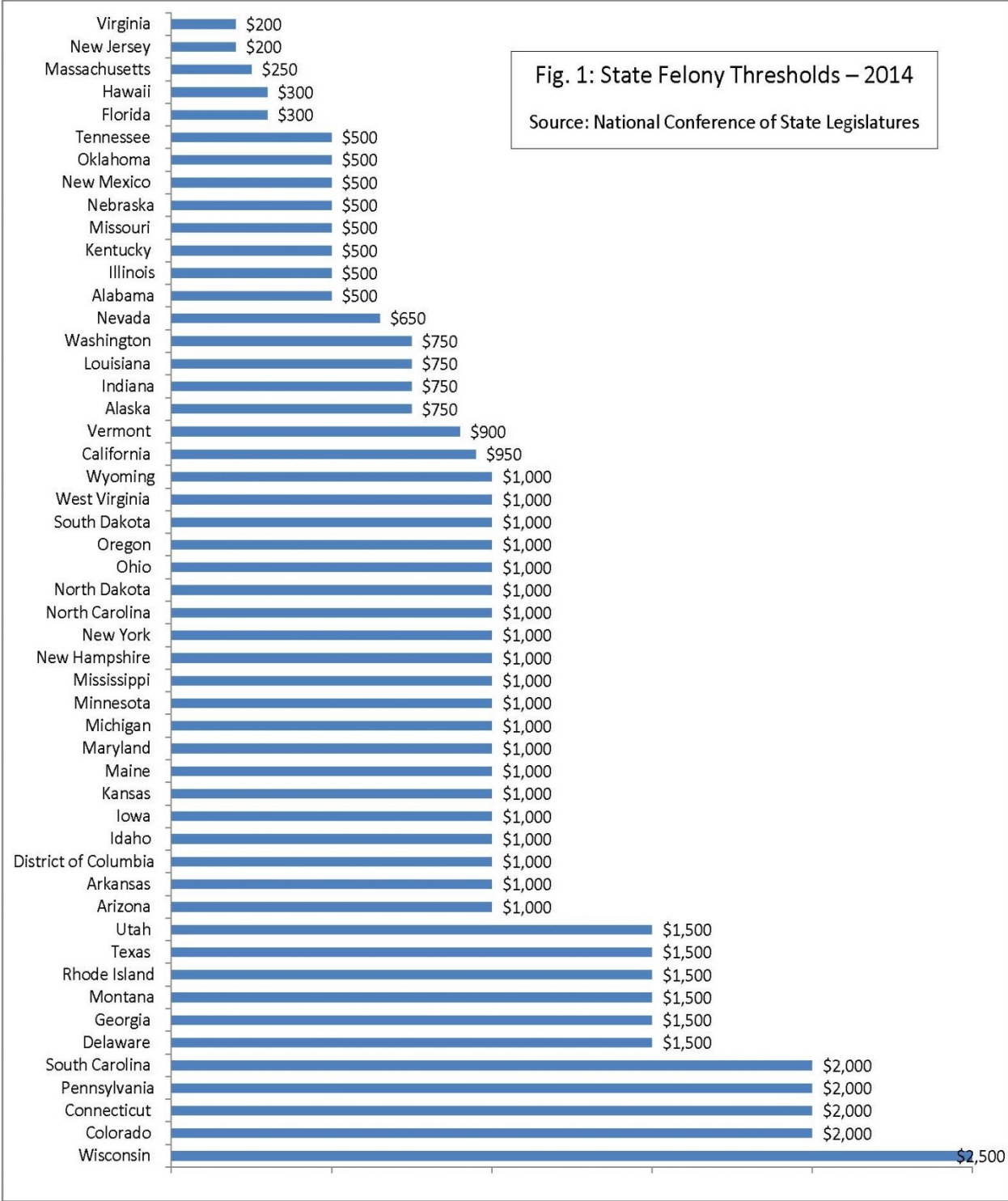
Timothy Heaphy

Cynthia Hudson

Mindy Stell

APPENDIX G

Felony Larceny Thresholds by State



APPENDIX H

Cover Letter from Dr. Taxman, Chair Subcommittee on Best Practices for Reducing Recidivism



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December 4, 2015

Secretary Brian Moran
Attorney General Mark Earley
Secretary Levar Stoney

SUBJECT: Subcommittee on Best Practices for Reducing Recidivism for the Parole Review Commission

Dear Secretaries Moran and Stoney and Attorney General Earley,

Attached is a copy of the report produced by the *Subcommittee on Best Practices for Reducing Recidivism*. The Subcommittee is pleased to submit these recommendations that provide a wide range of actions to improve justice and parole in the Commonwealth of Virginia. During the short time of our work, the Subcommittee has identified a number of areas, as reflected in our 19 recommendations, that could advance the quality of justice and better outcomes for our citizens. The Subcommittee also wants to echo that the short period of time for this work has been productive but we believe that there is more that we could do as a subcommittee to work to achieve the goals of the subcommittee, and Commission overall. We hope there is consideration to continue our work.

Given the short time of our work, there are a few issues that we did not have time to thoroughly discuss or even review. Given my international and national work, from my own perspective, I would like also to request that you might consider two other actions that are fitting to the goals of improving justice. First, it might be useful to have a full evaluation of the Parole Board's procedures and policies to see if there are efficiencies and improvements that can be identified. With a grant rate of about 3 percent, it seems apparent that there is a need to review the policies and procedures. Texas, which had low grant rate, did such a review and has now reached a grant rate of 31 percent and decreased their recidivism rate. Second, many states have benefited from legislation that embraces the use of evidence-based practices and treatments. Such legislation has resulted in the speedier adoption and implementation of evidence-based practices and treatments.

Thank you for this opportunity to contribute to public safety and health of the Commonwealth. Please let us know if you have any questions about our recommendation.

Sincerely,

A handwritten signature in black ink, appearing to read "Faye S. Taxman".

Faye S Taxman, Ph.D., University Professor

APPENDIX I

EXECUTIVE ORDER

NUMBER FORTY FOUR (2015)

ESTABLISHING THE COMMISSION ON PAROLE REVIEW

Importance of the Commission

Twenty years ago, the Commonwealth passed legislation eliminating discretionary parole for persons convicted of felonies. Supporters argued that abolishing parole and requiring felony offenders to serve at least 85 percent of their sentences would reduce re-offenses and recidivism while strengthening public safety.

It is time to revisit this policy. Virginia has two decades of evidence by which to assess progress and public safety outcomes and determine whether abolishing parole has achieved its intended goals. Virginia must evaluate past and present crime rates, prison populations, number of facilities, costs of incarceration and recidivism rates. Virginia must carefully examine how resources are being allocated and ensure that public dollars are spent efficiently and effectively.

Virginia should also consider modifications using evidence-based and data-driven approaches that reduce costs while improving outcomes for offenders, their families and the Commonwealth. This analysis should study whether Virginia is properly rehabilitating offenders and preparing them to re-enter communities as productive citizens. Virginia must also look at sentence lengths and determine whether long sentences are appropriate for nonviolent offenders.

Establishment of the Parole Review and Update Commission

Accordingly, by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to §§ 2.2-134 and 2.2-135 of the *Code of Virginia*, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby establish the Commission on Parole Review.

Composition of the Commission

The Commission will include representatives of the Virginia General Assembly, the Office of the Attorney General, relevant state agencies, advocates, community members and other organizations or individuals as assigned by the Governor. The Governor will designate the chair or co-chairs of the Commission.

Commission Priorities

The Commission will address five significant priorities related to Parole Reform:

1. Conduct A Review of Previous Goals and Subsequent Outcomes The Commission shall review whether abolishing parole achieved the intended goals of preventing new felony offenses, reducing crime, and reducing recidivism. The Commission's analysis shall include, at a minimum, a quantitative analysis of pre and post-1995 trends in crime rates, incarceration rates, sentence lengths, and recidivism rates.
2. Examine the Cost of Parole Reform/Abolition The Commission shall conduct an analysis of the fiscal impact abolishing parole has had on the Commonwealth, as well as an analysis of the societal costs on communities and families from longer incarceration.
3. Evaluate the Best Practices of Other States The Commission shall research and evaluate what policies and practices have proven successful or unsuccessful in other states, and explore the application of the most successful approaches in the Commonwealth.
4. Recommend Other Mediation Strategies The Commission shall examine what other approaches could be used to achieve similar results in terms of preventing new felony offenses, reducing crime, and reducing recidivism? Virginia must pursue cost-saving, evidence-based, and multi-faceted approaches to reducing crime while also improving outcomes for offenders, families and communities.
5. Provide Recommendations to Address Public Safety Challenges The Commission shall provide its recommendations on how Virginia may best position itself to address the public safety challenges resulting from changes to parole. These final recommendations shall include any proposed legislative or executive branch actions necessary, as well as any potential private sector engagement.

Staffing

Staff support for the Commission will be provided by the Office of the Governor, Office of the Secretary of Public Safety and Homeland Security, the various secretariats and their agencies represented on the Commission and other agencies as may be designated by the Governor. It is estimated that the staff time required to complete the Commission's work will be 500 hours. All executive branch agencies will cooperate fully with the Commission and will render such assistance as may be requested by the chair or co-chairs. Direct costs for the Commission are estimated to be \$3000. Commission members shall serve without compensation and shall receive reimbursement for expenses incurred in the discharge of their official duties.

The Commission will provide an interim report to the Governor no later than November 2, 2015, with a final report due by December 4, 2015.

Effective Date of the Executive Order

This Executive Order shall be effective upon its signing and shall remain in full force and effect until June 24, 2016, unless otherwise amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 24 day of June 2015.

Terence R. McAuliffe, Governor

Attest: _____
Levar M. Stoney, Secretary of the Commonwealth