

RECOMMENDATIONS BY EFFICIENCIES AND FISCAL IMPACT COMMITTEE

Submitted by the Efficiencies and Fiscal Impact Committee
To the Governor's Commission on Parole Review
November 18, 2015

**RECOMMENDATIONS ON WHICH
THERE IS A COMMITTEE CONSENSUS:**

Recommendation I.

Summary:

Increase alternatives to incarceration options available to the courts.

Recommendation:

- 1) Increase access to and utilization of community residential and detention centers;
- 2) Fund CSBs for increased community corrections support;
- 3) Increase access to Medication Assisted Treatment (MAT); and
- 4) Expand re-entry support services.

Increase Access to and Utilization of Community Residential and Detention Centers

Utilize community residential, detention, and diversion programs for low risk offenders as an alternative to incarceration in prison or local and regional jails.

- Allows probationers to stay connected to families and communities, and they provide access to treatment, education, and employment or job skills training.
- Should also be used as transitional placements for inmates being released from prison, who may benefit from a gradual release or step down programming approach due to anticipated adjustment issues, no secure home plans, or other complex needs.

Fund Community Service Boards (CSBs) for Increased Community Corrections Support

Provide adequate funding for CSBs, including staff support, to provide the necessary behavioral health interventions and related care coordination for probationers and for inmates being released from incarceration, who have serious substance abuse and/or mental health disorders.

Increase Access to Medication Assisted Treatment (MAT)

- ▣ Virginia should authorize Medication Assisted Treatment (MAT) therapy as a re-entry treatment for incarcerated individuals with significant opiate addictions and provide for uninterrupted continued treatment after release.
- ▣ More Access to MAT should also be provided for probationers in the community who do not have a third party payor source.
- ▣ The use of MAT with case management and other appropriate recovery supports reduces potential costs for relapse, recidivism, prosecution, and incarceration.

Expand Re-Entry Support Services

- ▣ Research has shown that inmates approaching release from incarceration, or who have already been released, are more likely to avoid recidivism and re-incarceration if needed institutional and community supports are available to assist their transition, particularly those with behavioral health needs.
- ▣ Successful transitions increase public safety as well as reduce costs through lower rates of relapse and recidivism.

Recommendation II:

Summary:

Establish more community based interventions and programming, such as specialized court dockets, including Drug Courts, Mental Health Courts, Veterans Courts, Re-entry Courts, Day Reporting Centers and HOPE Court.

Recommendation:

- 1) Increase access to Drug Court programs;
- 2) Establish Mental Health Court Dockets;
- 3) Establish Veterans Court Dockets;
- 4) Establish Re-Entry Court Dockets;
- 5) Re-establish Day Reporting Centers; and
- 6) Establish replicas of the Hawaii Opportunity Probation with Enforcement (HOPE) program.

Increase Access to Drug Court programs

- Establish access to an Adult Drug Court program for each locality.
- Reports indicate that many crimes in Virginia are drug related or drug driven. Virginia currently has 37 operational drug courts serving specific jurisdiction. The majority do not receive state funding, relying instead on competitive federal grants and/or “in-kind” donations from community partners.
- Drug Courts are an alternative for offenders with new felony charges or probationers facing revocation.
- Drug Court successes are well researched and documented with graduates recidivating at half or less than the rate for similar non-drug court graduates.

Establish Mental Health Court Dockets

- ▣ The goal of a mental health court program is to address the needs of mentally ill individuals in a manner that decreases the frequency of their contacts with the criminal justice system by providing courts with resources to improve their social functioning and link them to employment, housing, treatment, and other support services.
- ▣ Mental health courts typically involve a collaboration between judges, prosecutors, defense attorneys, and other court personnel who have an interest in helping mentally ill individuals avoid contacts with the criminal justice system, or who possess particular mental health expertise.

Establish Veterans Court Dockets

- ❑ Veterans Court dockets are designed as alternatives to incarceration sentences for the justice-involved veteran population struggling with issues such as substance abuse/addiction, Post-Traumatic Stress Disorder, Traumatic Brain Injury, and/or military sexual trauma.
- ❑ A Veterans Court judge is trained to understand the issues that a veteran may be struggling with that may be contributing to criminal activity.
- ❑ A Veterans Treatment Court judge also becomes familiar with the Veterans Health Administration, Veterans Benefit Administration, State Department of Veterans Affairs, Veterans Service Organizations, and volunteer Veteran Mentors, and how they all can assist veteran defendants.

Establish Re-Entry Court Dockets

- ❑ Re-entry Courts are designed to help improve public safety and the general success of a released offender by reducing the prospects of habitual relapse into crime after release, through the use of direct judicial oversight.
- ❑ Re-entry courts typically: (1) review offenders' reentry progress and problems; (2) order program participation; (3) use drug and alcohol testing and other checks to monitor compliance; (4) apply graduated sanctions to offenders who do not comply with treatment requirements; and (5) provide modest incentive rewards for sustained clean drug tests and other positive behaviors.
- ❑ The Norfolk Circuit Court now operates a Re-entry court docket through a grant from the Department of Justice which could inform the establishment of other Re-entry Court dockets in other parts of the state.

Re-establish Day Reporting Centers

- ▣ Day Reporting Centers allow probationers to remain in the community while reporting daily to the probation office and/or treatment provider. Probationers receive substance abuse treatment, frequent drug screenings, skills building programming, assistance with case management needs, and sanctions/incentives.
- ▣ The goal is to provide an alternative punishment program that allows probationers to change their behaviors through an ongoing recovery process.
- ▣ Day Reporting Centers/Programs operated successfully in Virginia in the past, but closed in response to the budget crisis a few years ago.

Establish Court Dockets Replicating the Hawaii Opportunity Probation with Enforcement (HOPE) Program

- HOPE is a high intensity court supervision program for probationers at high risk of a probation violation.
- It is designed to reduce recidivism through a proportionate/graduated sanctions program that does not result in complete revocation of probation for minor violations of conditions.
- However, any probation violation, including a failed drug test or failure to show for a probation appointment, results in immediate jail time for a short period of time, depending on the nature and circumstances of the violation.

Recommendation III

Summary:

Make available for appropriate cases proven evidenced based practices and programming alternatives to incarceration that have been shown to reduce crime and recidivism and other failures of individuals now being incarcerated, that would protect the public and save taxpayer costs.

Recommendation:

Increase availability of the following evidence based programs:

- 1) RANT (Risk and Needs Triage) Tool;
- 2) Addiction Severity Index (ASI);
- 3) Eye Movement Desensitization and Reprocessing (EMDR);
- 4) Peer Recovery Support (PRS); and
- 5) Moral Reconciliation Therapy (MRT).

Increase availability of the 1) RANT (Risk and Needs Triage) Tool

- ▣ The RANT is used to categorize treatment and supervision levels suggested for drug court candidates. It is a decision support tool that has 19 questions and immediately sorts candidates into one of four risk/needs quadrants for legal supervision and for treatment interventions.
- ▣ Virginia's Adult Drug Courts administer the RANT prior to accepting a referral. According to the Treatment Research Institute's (TRI) website, RANT is "rigorously grounded in scientific research" and ensures that only high risk/high need drug court participants are targeted and admitted, thus providing access for referrals who have the most significant addictions and with the most intensive treatment needs.

Addiction Severity Index (ASI)

- ▣ The ASI provides a structured interview format that examines seven areas of functioning commonly affected by substance abuse (medical, employment, drug/alcohol, legal, family, social relationships, and psychiatric) and is validated for use with criminal justice populations.
- ▣ The ASI provides a severity rating for each area of functioning. The severity ratings and recommendations support level and intensity of recommended treatment. It is one of the most widely used assessment instruments for adults in the addiction field.

Eye Movement Desensitization and Reprocessing (EMDR)

- Many individuals involved in the criminal justice system have histories of trauma that often started in childhood/ early adolescence which contribute to early use of substances to self-medicate, and other behaviors that contribute to poor judgement and performance in school and in other areas of life.
- EMDR is a psychotherapy treatment that facilitates the accessing and processing of traumatic memories and other adverse life experiences to bring them to an adaptive resolution. It enables individuals to heal from the symptoms and emotional distress that are the result of disturbing life experiences. Failure to accurately identify these issues, increases potential for continued substance use and other problem behaviors.

Peer Recovery Support (PRS)

- Research has demonstrated the social support framework of peer to peer recovery support services. Peer based community supports are critical to the challenges of initiating and sustaining recovery over a lifetime.
- Peer Recovery Coaches are the bridge between treatment and the recovering community. They ensure consistent links to the recovering community and to community supports. Peer to peer services provide a safety net of support and education about the disease of addiction and the process of recovery.

Moral Reconciliation Therapy (MRT)

- ▣ MRT is a systematic treatment strategy that seeks to decrease recidivism among adult criminal offenders by increasing moral reasoning. MRT is the premiere cognitive-behavioral program for substance abuse treatment and offender populations.
- ▣ Developed in 1985, over 120 published outcome studies have documented that MRT-treated offenders show significantly lower recidivism for periods as long as 20 years after treatment with re-arrest and re-incarceration rates from 25% to 75% lower than similar non-MRT treated offenders.

RECOMMENDATIONS ON WHICH
THERE IS *NOT* A COMMITTEE
CONSENSUS:

Recommendation IV.

Summary:

The Parole Board and the Department of Corrections should develop programs to allow more parole eligible and Geriatric Release eligible offenders be successfully released to supervision.

Recommendation:

The Governor or the General Assembly should direct the Parole Board and the Department of Corrections to develop programs to allow more people eligible for parole under the pre-1995 law to be successfully paroled and more eligible offenders to be released under the Geriatric Release Program.

Parole -

- ▣ In Virginia, there are about 4,000 people in prison eligible for discretionary parole under the pre-1995 Truth-in-Sentencing law. While there are offenders who may never be found suitable for parole release, others may be found suitable with sufficient institutional and community programming and supports.
- ▣ One possible consideration for gradually releasing long-term or hard to place prisoners otherwise suitable for release is to work with local jail officials to develop more releases back to local jails in home communities, or other communities, to which such prisoners are being prepared to be successfully released.
- ▣ Ultimately, a program of releases to half-way houses similar to the federal half-way house Justice Policy Institute, 2014.

Geriatric Release -

- ▣ Studies have shown, that after a certain age, the likelihood of committing a crime is reduced. While there are offenders who may never be found suitable for geriatric release, others may be found suitable with sufficient institutional and community programing and supports.
- ▣ The Department of Corrections reported that the number of people in prison age 60 and older in Virginia has tripled since 2000. Since the average cost of medical care for a person in prison who is over 60 is more than triple that of a person under 50 (\$3569 compared to \$1,071), reducing the number of older people in prison without the likelihood of risk to the public would save significant money.

Geriatric Release – (Continued)

- ▣ As with pre-1995 sentence parole eligible offenders, a possible consideration for gradually releasing long-term or hard to place prisoners otherwise suitable for release is to work with local jail officials to develop more releases back to local jails in home communities, or other communities, to which such prisoners are being prepared to be successfully released.
- ▣ Ultimately, a program of releases to half-way houses similar to the federal half-way house release system should be considered as part of a graduated release system in Virginia.
- ▣ All or some of the costs for programing to accomplish such successful releases could be recouped from the savings generated by the releases.

Recommendation V.

Summary

Expand earned-time opportunities

Recommendation

The General Assembly should raise the total number allowable credits beyond the current 15% maximum and/or authorize credits for participation in self-improvement classes, work programs or other approved activities.

- Such credits could serve as incentives for good conduct as well as program participation to improve an offender's prospects for successful re-entry.

Recommendation V. (Continued)

- After the 1995 reforms, only 4.5 days can be reduced from the sentence length for every 30 days of compliance.
- This is even less than allowed for local jail earned-time credits.
- Of the 47 states that offer good-time credit, only Mississippi offers as little.
- Information submitted to the Commission indicated that the current level of earned-time credits is not sufficient to induce either good behavior or program participation.

Recommendation VI.

Summary

Reclassify Certain Offenses from violent to non-violent.

Recommendation

The General Assembly should reclassify current offenses that do not involve violence or threats of violence from violent to non-violent.

- Virginia classifies many offenses, including burglary, as violent offenses for sentencing guidelines purposes, even when they do not involve violence. Changing the classification of some offenses would change

Recommendation VI. (Continued)

- ▣ sentencing recommendations, prison custody levels, and collateral consequences. In 2010, Colorado passed reforms to “distinguish between drug trafficking, lower-level drug sales, and drug possession.” The reform was projected to save \$1.5 million in FY 2010 and \$6 million in FY 2011.

Recommendation VII

Summary

Amend mandatory sentencing laws

Recommendation:

The General Assembly should eliminate or, at a minimum, reduce mandatory minimum sentencing laws

- Mandatory sentencing laws contributed to the increase in the sentences of people in prison in Virginia.
- Sheriff Ken Stolle, Commission member and former Senator who was the chief sponsor of the legislation that abolished parole and established the TIS system, noted during one of our meetings that mandatory minimum sentences are not needed in a system that mandates that 85% of the sentence is served.

Recommendation VIII.

Summary

Raise the threshold for what constitutes Grand Larceny

Recommendation:

The General Assembly should raise the threshold for what constitute Grand Larceny to at least the current day value of what the 1980 threshold was.

- If the threshold was raised to the same level as the buying power in today's dollars of \$200 in 1980 (about \$600), it could have a significant impact on prison space, felony disqualifications and restrictions, and other impacts of felony records.

Recommendation VIII (Continued)

- According to a 2008 report by the Virginia State Crime Commission, Virginia's \$200 threshold for Grand Larceny has remained unchanged since 1980.
- It is the lowest in the nation, tied with only New Jersey. Virginia incarcerates far more people for larceny offenses than comparable states. There are now more Virginians in prison for these low-level property crimes than there are for assault, burglary, or sexual assault.
- While Virginia's larceny rate is much lower than in comparable states (1,690 per 100,000 in Virginia, compared to 2,185 in North Carolina) its prosecutions are higher.
- Analyses of other states show that raising the threshold does not result in increased incidences of theft.

Recommendation IX.

Summary

Establish parole consideration for juveniles sentenced as adults.

Recommendation:

The General Assembly should establish parole consideration for juveniles sentenced as adults consistent with U.S Supreme Court rationales and jurisprudence that recognizes the differing mental responsibility capacities of juveniles and adults.

- The United States is the only country in the world that sentences child offenders to die in prison.
- Throughout the U.S., including Virginia, there are some 2500 offenders serving life without the possibility of parole sentences, and many others serving sentences with a term of years equivalent to life in prison.

Recommendation IX. (Continued)

- ▣ Starting with the death penalty in *Roper v. Simmons* (2005), and life without parole sentences in non-homicide cases in *Graham v Florida* (2010), the U.S. Supreme Court determined that such sentences violated the Constitution's prohibition against "cruel and unusual" punishments when applied to juveniles, given current knowledge that juveniles have insufficient brain development to be held to adult accountability standards.
- ▣ And then in *Miller v. Alabama* (2012), the Court further extended the application of this jurisprudence to cases involving mandatory life without parole for juveniles. Current cases pending before the court will further clarify the constitutional requirements.
- ▣ Senator Dave Marsden reported to the Commission on SB 730, his bill to address this issue.

Recommendation X.

Summary

Establish a meaningful parole or other “second look” opportunity for offenders

Recommendation:

The General Assembly should establish a meaningful parole of second look opportunity for offenders to petition their sentencing court or other designated body to consider whether they have shown worthiness for consideration of whether they can be safely released at some point short of the end of their sentence.

Recommendation X. (Continued)

- ▣ Parole - The possibility of parole release does not mean or require release on parole for any offender. With an annual parole release rate of 3%, Virginia's current parole release practices for offenders eligible for discretionary parole release certainly reflect that.
- ▣ A group of the foremost scholars on sentencing and parole recently recommended that there should be discretionary parole on criminal sentences, but that such sentences should reflect a joint and mutually respectful decision between the sentencing court and the parole release authority with the parole release authority having release discretion of between 25% and 33% of the sentence, with the presumption of parole unless there is an articulable basis not to other than the offender has not served enough time.

Recommendation X. (Continued)

- ▣ Second Look - In the absence of an opportunity for parole consideration, some jurisdictions provide for a systemic “second look” opportunity for offenders to allow authorities to reconsider extreme harshness, inequity, mistakes that are not subject to correction within the appellant systems or other mechanisms, outstanding contributions by offenders, and other considerations.
- ▣ As a part of its development of a model penal code, the American Law Institute has drafted a set of considerations a jurisdiction should consider in developing a second look opportunity on sentences exceeding 15 years. Cases would be brought before the sentencing court or other body with authority to make or recommend sentence adjustments.