

“Sunlight is said to be the best of disinfectants.”

--Justice Louis D. Brandeis

I. INTRODUCTION

Pursuant to Executive Order Number Three (2022), Governor Glenn Youngkin took certain actions with the goal of restoring integrity and confidence in the Virginia Parole Board and the Commonwealth’s System of Criminal Justice. See **Enclosure A**, attached.

In addition to terminating the prior Parole Board and appointing five new Members, Governor Youngkin issued a directive to the Secretary of Public Safety and Homeland Security to perform a programmatic review of the Parole Board’s duties, procedures, and administration. The directive further stated that the review should include, but not be limited to, increasing the transparency of Parole Board votes, recording reasons for granting parole, and reviewing the management, personnel, and operations of the Parole Board.

After completion of the programmatic review, the Chairman of the Virginia Parole Board (VPB) hereby submits the following report. It addresses each issue identified in the Executive Order, along with other substantial issues identified by the Chairman over the last six months. Included, as well, are recommendations for legislative, administrative, and policy changes that will improve the administration of the agency in fulfilling its solemn public safety mission.

VPB is also in the process of approving a fully-updated Virginia Parole Board Policies and Procedures Manual, reflecting changes detailed below which have already been made by the Chairman to improve operations in the agency.

II. VPB DUTIES, PROCEDURES, AND ADMINISTRATION

In recent years, the Virginia Parole Board has operated largely in the shadows, with Board members making decisions in secret, shielded from public scrutiny. Most recent Boards did not meet on a regular basis to discuss cases.¹ Decisions were made by individual members in their offices around the state, with no oversight. The reasons given for each decision to grant or deny parole were boilerplate, providing little to no insight into the Board’s reasoning.

¹ The prior Board met twice per month, when possible and not on a regular basis.

As discovered by the OSIG investigation², Board members were often voting to grant parole before reaching out to victims. Previous Boards never reached out to Commonwealth's Attorneys (CAs) until after parole was actually granted.³ Obtaining input from victims and CAs should be a cornerstone of this process.

Exacerbating transparency issues, VPB functionally relies on a Department of Corrections (DOC) database called CORIS – the Virginia Corrections Information System. VPB's functionality was created as an add-on with limited input from VPB staff. Unfortunately, at this time, the agency is completely dependent upon CORIS, which consumes innumerable staff hours navigating the current system's deficiencies.

In addition, VPB has suffered greatly in recent years from physical absence of leadership. In order for the VPB to function, there must be a Chair who actually shows up to the office and manages the agency on a daily basis, Monday through Friday.

Chairs must also diligently address concerns about various decisions made by leadership. Any concerns by staff that specific statutes, policies, and procedures were being violated should have been expeditiously resolved in a transparent manner and this must change.

VPB has been an afterthought for prior administrations, tucked into a corner of DOC headquarters in office space. Though a separate agency, VPB is entirely dependent upon DOC for everything from Human Resources to computer equipment to printer paper.⁴ This causes problems on a daily basis, and is no way to run a "Best in Class" agency.

This agency's continued operations throughout varying levels of management previously – whose ultimate goal, after all, is the safety of the public – is due to a talented group of dedicated employees, many of them long-time public servants, who have been working diligently to do their jobs to the best of their ability.

Of course, despite being tasked with a solemn duty relating to public safety, the Parole Board currently only has ten (10) staff members, including two of the five Board members, who are full-time employees of the Commonwealth of Virginia. The remainder of the 39-person staff

² Specific details about the failures of recent Boards will not be discussed in detail in this report beyond what is necessary to demonstrate why change is needed. Please refer to the investigations of OSIG and the Office of the Attorney General. Under Chairman Dotson, VPB is cooperating fully with the OAG investigation.

³ And sometimes, not even then. Pursuant to §53.1-136 (3)(c), the Board is required to notify the CA at least 21 days before an inmate's release. During the year 2020, a total of nine inmates were released prior to expiration of that 21-day timeframe.

⁴ To be clear, DOC Director Harold Clarke and his staff have been extraordinarily accommodating to the current Board, for which we are grateful.

are part-time wage employees. The lack of dedicated staff available to process requests resulted in huge backlogs on both the parole and pardon dockets discovered in January 2022.

In order to restore public confidence in VPB – and keeping in mind the goal of ensuring Virginia’s parole process is “Best in Class” -- it is imperative that we make drastic changes to the way this agency operates, many of which will require legislative action. We must also completely reform internal policies and procedures to ensure the proper administration of VPB under future Boards. At the same time, we must embrace an over-the-top level of transparency, so the public can see what VPB is doing and trust that decisions are being made fairly, with full justification, and with proper consideration for public safety and the rights of victims.

This represents an opportunity for Governor Youngkin to make a lasting impact, both for public safety and efficient government.

A. The History of the Virginia Parole Board

The Virginia Parole Board was established by law in 1942, and its duties are outlined in Chapter 4 of Title 53.1, beginning with Virginia Code § 53.1-134. Currently, the Parole Board is composed of up to five members appointed by the Governor and subject to confirmation by the General Assembly. At least one member of the Board is required to be a representative of a crime victims’ organization or a victim of crime.⁵

In September of 1942, Governor Colgate Darden appointed William Shands Meacham (Associate Editor of the Richmond Times-Dispatch) as the Commonwealth’s first “State Director of Parole and Chairman of the Parole Board.” At the time, there were two part-time members of the Board, along with the Chairman.⁶ From its inception, parole hearings were conducted in-person, by members of the Parole Board, at institutions across the state. At the time, inmates who had served at least one-third of their sentences were eligible for parole. Inmates serving life sentences were ineligible for consideration.

In 1945, the Parole Board was merged into the newly-created Department of Corrections. At the same time, the part-time Board positions were converted into full-time positions, and the

⁵ As defined in §19.2-11.01(B).

⁶ One of the original part-time members was Culpeper attorney Robert Button, who would later serve two terms as Attorney General.

members also became members of the Virginia Board of Pardons and Reprieves. This is the earliest instance of the parole and pardons processes being combined in the Commonwealth.

By the time parole was abolished in 1995, the Board had five full-time members who still traveled to prisons to conduct hearings with parole-eligible inmates. Because of the high number of eligible inmates, there were no actual “hearings;” a Board member and their “confidential secretary” met with the inmates and prepared files that would be circulated among the members with a voting sheet. Formal Board meetings were held no more than once per month. Input from the public was received via “Board appointments” in which victims and/or family of inmates were allowed to speak to a member, and that member’s written notes of the meeting would be placed in the file for the consideration of the rest of the Board.

Thanks to the visionary leadership of Governor George Allen, Virginia passed a “Truth in Sentencing” (TIS) law that became effective on January 1, 1995. Prior to 1995, a system providing for lenient “good conduct credits” and expansive granting of parole meant that many inmates were released after serving as little as one-fifth of their sentence.⁷ The stated goals of TIS were to abolish parole, reduce good time allowances to ensure that inmates serve a minimum of 85% of their imposed sentence, and increased prison sentences for violent and repeat offenders.

Parole remained in effect for individuals incarcerated prior to TIS, but the parole grant rate for those offenders dropped from 46% in 1991 to 5% by 1998. Parole Board funding was slashed, cuts were made to staffing, and much of the Board’s support staff was reorganized under the Community Corrections division of the DOC.⁸

However, though parole was technically abolished in 1995, the number of inmates eligible for parole has risen substantially in the more than quarter-century since. First, the TIS legislation created a category of “geriatric” release,⁹ and the number of inmates eligible for geriatric release continues to grow year after year.

- Geriatric Parole Eligibility¹⁰

⁷ “A Decade of Truth-In-Sentencing in Virginia,” Virginia Criminal Sentencing Commission, 2005.

⁸ “Truth-in-Sentencing in Virginia,” Ostrom, Cheesman, Jones, Peterson, Kauder. US Department of Justice report, 2001.

⁹ Geriatric offenders are those who have reached sixty (60 years of age after serving at least ten (10) years of their sentence, or sixty-five (65) years of age after serving at least five (5) years.

¹⁰ DOC has not yet reported statistics to us for the period from 1995 to 2013. Because of a change in how their records are kept, it requires more research. These numbers will be updated once DOC completes their research.

- 2014: 295 eligible inmates
- 2015: 507
- 2016: 580
- 2017: 490
- 2018: 726
- 2019: 707
- 2020: 858
- 2021: 902

Further, in 2020, the General Assembly opened the doors for even more inmates to become eligible for parole. As of July 1, 2020, anyone who had been convicted of an offense committed before the age of 18 is eligible for parole after serving at least 20 years of their sentence. In addition, the Assembly made so-called “Fishback” defendants statutorily eligible for parole consideration.¹¹

We are left with a system in which we have a growing number of inmates who are eligible for parole. At the same time, parole decisions are being made by an agency who has never received additional funding to adequately deal with the added workload and thus, is forced to operate with a staff comprised almost entirely of part-time employees.

Nothing in this comprehensive review of the Virginia Parole Board should be read as an endorsement of expansion of parole eligibility in Virginia. That question is in the hands of the legislature; they have spoken in recent years and more debate is expected in the future.¹² That question is beyond the scope of this report.

But we cannot pretend that parole has been completely abolished in Virginia. We have parole-eligible inmates in Virginia, their numbers are rising, and that reality is not going away without further action by the General Assembly. We owe it to Virginians to embrace a fully-

¹¹ Pursuant to the decision of the Supreme Court of Virginia in *Fishback v. Commonwealth* 532 S.E.2d 629 (Va. 2000) and subsequent legislation by the General Assembly, any offender who was sentenced by a jury between 1995 and June 9, 2000 in which the jury wasn’t informed that parole had been abolished is eligible for parole consideration. This excludes the most violent offenders and those cases in which the victim was a minor.

¹² To be sure, the current VPB Chairman fully supported Truth in Sentencing in the mid-1990s, and during his two-plus decades working in the Virginia criminal justice system as a prosecutor and judge, he saw first-hand the benefits of judges, juries, victims, and defendants having more clarity over the sentences that were being handed down.

transparent and completely fair system for adjudicating these parole decisions so as to ensure they are made in a manner that is consistent with public safety.

B. Statutory Duties of the Virginia Parole Board

While parole was abolished in 1995, the case load at VPB is increasing every year. Currently, VPB is mandated to provide decisions for:

1. Persons who committed their crime prior to January 1, 1995;
2. Geriatric offenders;
3. Offenders who are terminally ill;
4. Offenders who were convicted as a juvenile, given a life sentence, and served more than twenty (20) years; and
5. Fishback-eligible offenders.

The Board is required to investigate an inmate's history, physical and mental condition, character and conduct, education/programming, employment, home plan, and attitude while in prison.¹³ Such investigation must include notification that a victim may submit evidence concerning the impact that release of the prisoner would have on the victim.

The investigation, a crucial step in the process, is spearheaded by a group of 11 Parole Examiners who are all part-time wage employees of the Board. These Examiners meet with the inmate and prepare a detailed report for the Board. Notably, the Board only has contact with the inmates through its Examiners.

In addition, the Board issues warrants, sanctions and/or revokes parole and post-release supervision for offenders who have been released and have been found to be in violation of terms of their release.¹⁴ Finally, the Parole Board investigates pardon requests and makes recommendations to the Governor regarding Executive Clemency.¹⁵

III. INCREASING THE TRANSPARENCY OF BOARD VOTES

From day one of the Youngkin administration, we have made clear that our *modus operandi* will be “maximum disclosure, minimum delay.” This agency cannot operate under a

¹³ §53.1-155

¹⁴ §53.1-161

¹⁵ §53.1-136

veil of secrecy. Under current leadership, VPB has publicly embraced an over-the-top level of transparency that far exceeds the typical standards for government agencies. The goal is that inquiries for publicly-available information filed through FOIA should be kept to the absolute minimum, with Board staff providing the requested materials (where discretionary authority to release is permissible) outside the FOIA process as often as possible, and as quickly as possible. This speed and openness can and should be palpable to any individuals or organizations requesting information or resources.

A. Changes already implemented by the Youngkin administration

The Youngkin Parole Board has already implemented the following changes in procedure that are designed to maximize transparency:

Publishing individual member votes. Pursuant to SB5, the individual votes of Board members are required to be made publicly available via FOIA beginning July 1, 2022. Despite no requirement to provide that information prior to July 1, the Chairman directed staff to respond favorably to any such requests.

Regular Board meetings. The Board now meets weekly (on Wednesdays at 10:00 AM) to discuss cases. The meetings are governed by parliamentary procedure and detailed minutes are taken in the regular course of business.¹⁶

Requesting input from Commonwealth's Attorneys. Prior Boards did not systematically requested input from local CAs prior to making decisions about parole. Since our task is to make decisions that are consistent with public safety, the Youngkin Parole Board has made it a priority to seek input from those individuals charged with public safety in their localities. In every case to be discussed at a weekly meeting, this Board now automatically requests input from the CA of that jurisdiction prior to that meeting.

¹⁶ Unfortunately, the Board is unable to discuss each case during weekly meetings. Based on the current caseload, that would require the Board to discuss approximately 50 cases each week which is not feasible. Thus, we prioritize cases in which the VPB parole examiner, who interviews the inmate and puts together a report for the Board, recommends that we grant parole. We also prioritize cases in which the examiner has made a "not grant" recommendation, at the request of any individual Board member.

Outreach to stakeholders. The Chair has been systematically meeting with various stakeholders to explain the parole process, to give insight into how the Youngkin Board operates – with maximum transparency – and to elicit feedback on how we can provide a fairer, more transparent parole system. Among those stakeholders:

- **Victim-Witness Coalitions.** Chairman Dotson has spoken at numerous meetings of regional coalitions of local Victim-Witness coordinators across the state. Future meetings are scheduled, with the intention of meeting annually with all coalitions. The Chairman is also on the agenda for two future statewide conferences for victim groups, one virtually (August 29) and one in Roanoke (September 13).
- **Commonwealth’s Attorneys.** Chairman Dotson spoke to an executive session of the Commonwealth’s Attorney’s Services Council and the Virginia Association of Commonwealth’s Attorneys (VACA). In December, the Chairman spoke at VACA’s training session for all CAs and their chief deputies to update prosecutors on the Board’s activities and, again, elicited feedback on how we can better serve them.
- **Parole-eligible inmates.** Chairman Dotson (joined occasionally by fellow Board members) has traveled to four DOC prisons thus far (with plans to visit the rest) and has spoken to more than a thousand parole-eligible inmates. These visits consist of a short speech, in which the Chairman explains how the system works and relays the message that this Board is open to second chances when they are earned, then concludes with a Q&A session.¹⁷
- **Parole officers.** The Chairman has spoken virtually to all 43 local District Probation and Parole chiefs, and attended an in-person meeting of the Western Region leadership in Roanoke. (He has been invited to speak at upcoming meetings of DOC leadership in other regions, as well.) Much like the outreach to Commonwealth’s Attorneys and Victim-Witness Coordinators, these meetings are intended to open up greater lines of communication.

¹⁷ This is the first time parole-eligible inmates have had an opportunity to ask questions of the Chair and other Board members.

As noted, the dialogue with all these stakeholders is ongoing. All have been incredibly grateful, and many changes and recommendations noted herein are due to input from these groups. In particular, CAs and Victim-Witness coordinators have indicated their appreciation of the board's increased attention to communication.¹⁸

B. Recommendations for further legislative, administrative, and policy changes to increase transparency

If we are serious about transparency, public safety, ensuring victims have a voice, and creating a “Best in Class” parole system, we need to be open to drastic change that will inevitably require legislative buy-in. We cannot achieve those goals under the current parole system, but we can (and should) provide critical leadership in the effort to create an agency that will better serve Virginians.

Over the last few months, the Chairman has conducted outreach to parole chairs in other states, with one primary goal: to find out what transparency looks like in those states. Two Board members sat in on a virtual parole hearing for another state, and there are plans to attend others. VPB staff is also currently researching parole systems in other states to determine composition of their Board, who is eligible for parole, how hearings are conducted, how decisions are made, and what information they publish publicly. This study is ongoing, but the Chairman is prepared to make recommendations based on preliminary results.

Details of the recommendation will follow, after discussion of the other items specifically requested by the Governor in Executive Order Number Three, but the Chairman is recommending that we propose a legislative package that would open up the parole process to public scrutiny, provide real, lasting transparency, and ensure that no victim ever goes unheard again. We can truly make the Virginia Parole Board best in class.

IV. VICTIM SERVICES

¹⁸ In order to promote transparency and inspire confidence that we will be responsive to their needs, the Chair provided his work cell number to all CAs and V-W coordinators, with instructions to call/text if they are having an issue. In one instance, VPB was able to deal proactively with a victim issue simply because the local V-W coordinator was able to reach out and get information from us quickly.

The Board's obligation to notify and seek input from victims is mandated by Code.¹⁹ VPB is required to notify victims that they may submit evidence concerning the impact that the release of the prisoner will have on such victim. The requirement is only that this notification shall be sent to the last address provided to the Board by any victim of a crime for which the prisoner was incarcerated. Essentially, this places the burden on victims to keep their contact information up to date within DOC's "NAAVI" program.²⁰ The current Board believes that burden should be on VPB rather than the victim(s).

As the OSIG investigation revealed, prior Boards routinely bypassed this step in the process. The current administration considers victim input essential in making good decisions regarding parole.

Victims also have the opportunity to communicate with the Board via "Board Appointments."²¹ These thirty-minute meetings are now conducted virtually with the victim(s) and one Board member.²² Prior written policy stated that these appointments can be delegated to other staff within the office, rather than a Board member. The proposed revised policy states that such appointments must be conducted with a Board member. A VPB staff member takes notes from the meeting and records them in an inmate's electronic file where they can be seen by the other four Board members when they are reviewing the case prior to voting.

Too often, victims of violent crime have been ignored, silenced, and overlooked. Victims deserve to know their voices matter. The current process is undoubtedly an inefficient way to give victims and inmate's families a voice in the decision-making process. This is why the Chairman is recommending overhauling the system to ensure that stakeholders have the ability to speak to every Board member who will be voting on a case.

¹⁹ § 53.1-134 - § 53.1-139; § 53.1-40.01 - 53.1-40.02; § 53.1-151 – § 53.1-159; § 53.1-160 - § 53.1-169; § 53.1-170 - § 53.1-176.3; § 19.2-11.01, and § 53.1-231.

²⁰ Notification And Assistance for Victim Inclusion. This is the system that DOC uses to assist victims and survivors with post-sentencing services and information. Victims may use this portal to create a request for notifications (via phone, text, letter, or email) on inmate(s) who perpetrated a crime against them. If a victim is registered, they will automatically be notified when the inmate is up for parole, with instructions for providing input.

²¹ Families of offenders and their advocates are also offered an opportunity to schedule a Board appointment.

²² All Board members schedule days in which they can conduct these appointments. During the period of time after the Senate refused to confirm the other four Board appointments, the decision was made not to cancel any of the appointments scheduled for the former Board members. The Chairman conducted all scheduled meetings.

NOTE: Currently, VPB is operating with just two full-time and one part-time employee in our Victim Input Unit, led capably by Ms. Jamillah Harris.

A. Changes already implemented by the Youngkin administration

The Youngkin Parole Board has already implemented the following changes in procedure that are designed to improve operations in our Victim Input unit:

Prioritizing victim input. OSIG recommended that VPB develop policies and procedures for proactively contacting victims of crimes that occurred prior to the implementation of the NAAVI system (including accessing law enforcement databases and social media, contacting the appropriate Commonwealth’s Attorney’s office, etc.), particularly if the victims are not registered. The current Board agrees strongly with this recommendation. The opportunity to submit victim input should be obtained for consideration *before* the offender’s parole review, in order to reduce issues relating to impartiality, fairness, and injustice.

Board members will no longer vote to grant parole before an attempt is made to seek input from victim(s). The Chairman has implemented a system for discussion of cases that ensures victims will be heard.

As noted above, the Board now discusses every case in which a parole examiner makes a “Grant” recommendation, as well as cases which are recommended “Not Grant,” but which a Board member thinks merits a discussion. The VPB Administrator, Ms. Tracy Schlager,²³ maintains a spreadsheet of every case to be discussed at upcoming meetings. As soon as a case is added to the list, our Victim Input Unit immediately begins reaching out to victims if they haven’t already been in contact with the Board.²⁴ This is also the moment when we reach out to Commonwealth’s Attorneys, seeking their input.

If the victim is registered in NAAVI, that process can be relatively easy. In most cases, however, it requires research to locate the victim and notify them. VPB works with local Victim-

²³ Ms. Schlager has been employed at VPB since 1994.

²⁴ The Board does not proactively reach out to victims in cases that we are not discussing (though we do accept and consider any input received in these cases if and when victims reach out to us). As noted above, with three part-time Board members and more than 800 cases to discuss every quarter, we simply cannot discuss every single case on our docket. Thus, we prioritize cases in which there is a reasonable chance that the Board will grant parole. For cases in which there is little likelihood of a “Grant” decision, we see no reason to reach out to victims and re-traumatize them.

Witness offices to obtain contact information. We also have an investigator that uses various sources to try to identify victims (often using law enforcement databases, police records, and court documents) and their contact information.

That process often takes some time to complete, and occasionally it delays the Board's decision on a case. It needs to be a priority, so in the updated policies/procedures manual, this is how VPB will operate in the future.

Sexually Violent Predator assessments. In the past, when the Board voted to grant parole to a person who had been convicted of a sexual offense, the inmate was referred to DOC's Sex Offender Screening and Assessment Unit to determine if the offender qualified as a "Sexually Violent Predator." This is an instance where the Board was voting without having all the information at their disposal.²⁵

Soon after appointment in mid-January, the Chairman was advised of four inmates who had been screened and determined to be Sexually Violent Predators, but had been granted parole by the prior Board. (These cases were awaiting certification.)²⁶ The Chair immediately returned these cases to the Board for a new vote, and all four were subsequently denied parole as not being compatible with public safety.

Under our new procedures, when an offender who has been convicted of a sexual offense comes before the Board for discussion, an SVP screening is requested before the Board begins voting.

Website overhaul. The current VPB website is insufficient.²⁷ The current Chairman initiated the process of completely overhauling the site, which is packed with dense language and a confusing layout that makes it difficult for the public to navigate. Important information related to the manner in which the public can provide input to VPB was difficult to find. Given our new focus on transparency, this is clearly unacceptable.

²⁵ To be fair, prior Board members occasionally changed their votes from "Grant" to "Not Grant" after receiving victim input, or after receiving the SVP screening. But as a matter of public policy, it seems unwise to vote to release someone before having all the information before you.

²⁶ When a case is certified by the Parole Board Administrator, the inmate and DOC are advised immediately of the Board's decision.

²⁷ One example: the link that referred victims to sign up for NAAVI was broken, and no one had noticed! We fixed that immediately.

Over recent months, VPB has worked diligently to determine what the VPB site needs to be. The focus of the new site will be on ease of use (all text will be at a fifth-grade reading level, for example) and conveying clearly the activities of the Board. We intend to provide a robust series of resources for victims and families of offenders. In addition, we hope to have a portal for victims (and other interested parties) to schedule Board appointments quickly and easily, as well as a searchable database of all prior decisions and the votes taken on those cases. Finally, the site needs to be bilingual.

VPB is currently pursuing short-term solutions and identifying longer-term funding for more comprehensive website upgrades.

Board appointments. The former policy was that Board appointments could be delegated to staff. We have changed the policy to reflect that each appointment should be conducted by a Board member. Victims (and families of offenders) deserve an opportunity to speak to one of the ultimate decision-makers.²⁸

Victim Input Program brochure revised. Much like the website, the brochure VPB sends to all local Victim-Witness offices and to victims was in desperate need of an update. The new brochure will be printed soon, and it is designed to quickly inform victims about how they can have input in the parole process, and informing them about how the Board operates. Dense “legalese” was abandoned in favor of language that is easy to read and understand.

Communication with Victim-Witness Coordinators. As noted above, the Chairman has been in constant communication with the regional Victim-Witness coalitions and individual local Victim-Witness Coordinators. In increase communication and coordination, VPB now copies the local Coordinator every time there is written contact with a local Commonwealth’s Attorney. Based on feedback we are receiving, CAs and Victim-Witness Coordinators feel like they’re “in the loop” on VPB decisions now.

Increasing amount and quality of information to victims. Ms. Harris has been engaged in the process of creating a form that will permit victims to ask questions of inmates

²⁸ Ideally, victims should be able to speak to the entire Board. This is addressed later in this report.

(through our parole examiners). VPB will begin rolling these out to examiners soon. In addition to giving inmates the opportunity to answer victims' questions, the form will allow inmates to sign a release, permitting VPB to provide information about their activities while incarcerated (programs they've completed within DOC, for example) to victims upon request.

V. REASONS FOR GRANTING PAROLE

Executive Order Number Three asks for a review of the reasons that are given for granting parole. Currently, when a Board member votes to grant parole, they are required to list at least one reason for that vote. Within the CORIS computer system, there is a drop-down box in which the member can select as many reasons as they think applicable. The reasons that are currently listed as options:

- Age at the time of offense
- Demonstrated rehabilitation
- Excellent institutional adjustment
- Excessive sentence
- Infraction-free for at least the last 24 months
- Infraction-free since incarceration
- Medical condition
- No history of substance abuse
- No history of violence
- No previous felony convictions
- No victim opposition
- Release is compatible with public safety
- Released to detainer: Must serve a prison sentence in another jurisdiction
- Risk assessment score low
- Significant community support
- Stable release plan
- Successful participation in correctional and vocational programs
- Successful participation with victim's family in victim-offender dialogue program

- The Board concludes the individual has served enough time
- The prosecuting attorney supports release

There is a similar process when a Board member votes to deny parole. Reasons for denial that are currently listed within CORIS:

- Considering your offense and your institutional records, the Board concludes that you should serve more of your sentence before being paroled
- Conviction of a new crime while incarcerated
- Crimes committed
- Extensive criminal record
- History of substance abuse
- History of violence
- Other (specify)
- Poor institutional adjustment (for example, motivation/attitude, unfavorable reports, lack of program involvement)
- Release at this time would diminish the seriousness of the crime
- Serious Nature & Circumstances of the offense
- The Board concludes that you should serve more of your sentence prior to release on parole
- The Board concludes that you be at risk to the community
- You need further participation in institutional work and/or educational programs to indicate your positive progression towards re-entry into society
- You need to show a longer period of stable adjustment
- Your prior failure(s) and/or convictions while under community supervision indicate that you are unlikely to comply with the conditions of release
- Your record indicates a serious disregard for the property rights of others
- Your record of institutional infractions indicates a disregard for rules and that you are not ready to conform to society

Every reason selected by an individual Board member is listed in the final decision. In practice, this is boilerplate language that is often not helpful in providing feedback as to the actual reasoning behind the decisions made by the Board. Unfortunately, under our current system in which we are completely reliant on DOC and the CORIS system, making changes to the listed reasons is a difficult, time-consuming process. If we stay within this system, we will seek to expand and revise the list of reasons given. In the meantime, the Youngkin Parole Board has already implemented the following changes in procedure to provide better feedback about the decision-making process:²⁹

Utilizing “Other.” One of the options listed among the “Not Grant” reasons is “Other,” in which the individual Board members can use their own language to describe their reasons for casting that particular vote. The Chair has instructed the Board to utilize that option in order to provide more personalized reasons for individual decisions.

Regrettably, there is no “Other” option when a Board member votes to grant parole. As a result, under the current system, we are limited in how precise we can be when giving reasons for that decision. The Chairman has asked DOC to add the “Other” option for “Grant” votes and we are awaiting an update to the system for that to be made available.

Consulting with the entire Board. One benefit of having weekly meetings in which the entire Board discusses every single inmate who is ultimately granted parole is that we are able to discuss the reasons among ourselves and clarify those reasons precisely. The reasons are then recorded in the minutes of the meeting. These discussions did not happen routinely under prior Boards; individual members typically made their own decisions independent of the other Board members. This resulted in a secretive parole system in which reasoning and voting rationale was generally unclear.

Another benefit of these weekly discussions is that the Board is able to decide together what conditions should be placed on the release of an inmate. When parole is granted, the Board

²⁹ Note that providing better feedback to victims, inmates, their families, and the general public will also increase transparency, as well.

requires that the inmate complete DOC's Re-Entry Program prior to release.³⁰ Once that is completed satisfactorily, the inmate will be released to the supervision of a parole officer in their locality. The Board sets the conditions under which that supervision takes place. For example, the Board can require an ankle GPS monitor, strict curfews, substance abuse treatment, or any number of other conditions.

VI. REVIEW OF THE MANAGEMENT, PERSONNEL, AND OPERATIONS OF VPB

Executive Order Number Three asks for a review of the management, personnel, and operations of the Parole Board. There are two areas of VPB responsibility that have not been addressed in detail yet: pardons and post-release supervision.

A. Pardons

VPB investigates pardon requests and makes recommendations to the Governor regarding Executive Clemency. There are three types of pardons.

- A **Simple Pardon** is a statement of official forgiveness. While it does not expunge (remove the conviction from) the record, it often serves as a means for the petitioner to advance in employment, education, and self-esteem. Evidence of good citizenship is required, as are favorable recommendations from the officials involved in the case and from the Virginia Parole Board.
- A **Conditional Pardon** is available only to people who are currently incarcerated. It is usually granted for early release and involves certain conditions; if you violate these conditions, you could be put back in prison. There must be extraordinary circumstances for an inmate to be considered for such a pardon.
- An **Absolute Pardon** is rarely granted because it is based on the belief that the petitioner was unjustly convicted and is innocent. An absolute pardon is the only form of executive clemency that will result in a conviction being changed to "not

³⁰ This is typically a six-month intensive program designed to ensure the inmate will have every opportunity to succeed once released. From all indications (at least from the VPB perspective), this DOC program works very effectively.

guilty,” and would allow you to petition the court to have that conviction expunged from your criminal record.

The number of pardon petitions has skyrocketed since 2016, and the Parole Board has a Special Investigations Unit (SIU) to investigate those petitions. After the investigation, the Board makes a recommendation to the Secretary of the Commonwealth and the Governor as to whether a petition should be granted. Trudy Harris, a former Virginia State Police trooper and member of Governor Allen’s Executive Protection Unit, was appointed by Governor McDonnell in February 2011 to head up the SIU. Ms. Harris now leads a group of ten investigators – all of whom are retired law enforcement officers, and all of whom are part-time wage employees of the Board³¹ -- and she works closely with the office of the Secretary of the Commonwealth. The SIU works incredibly well under Ms. Harris’ supervision, despite difficult circumstances.

In January 2022, VPB had a significant backlog of pardon cases, as detailed below. (Note that tracking began in 2011 when the first investigator was hired.)

- Governor McDonnell’s administration:
 - December 28, 2011 - 30 petitions pending Parole Board vote
 - December 19, 2012 - 252 pending Parole Board vote
 - December 18, 2013 - 101 pending Parole Board vote
- Governor McAuliffe’s administration:
 - December 29, 2014 - 161 pending Parole Board vote
 - December 28, 2015 - 261 pending Parole Board vote
 - December 26, 2016 - 905 pending Parole Board vote
 - December 25, 2017 – 1,670 pending Parole Board vote
- Governor Northam’s administration:
 - December 31, 2018 – 1,868 pending Parole Board vote
 - December 30, 2019 – 1,957 pending Parole Board vote
 - December 31, 2020 – 2,086 pending Parole Board vote

³¹ Ms. Harris is also a part-time wage employee.

- December 31, 2021 – *numbers unavailable due to policies enacted by the Northam administration intended to reduce transparency*
- Governor Youngkin’s administration:
 - January 15, 2022 – 1,454 pending Parole Board vote
 - Numbers as of June 13, 2022 – 1,720 pending Parole Board vote
 - (Note: 429 pardon petitions have been reviewed by Governor Youngkin’s Parole Board as of January 2023.)

There are a number of reasons for the backlog. Petitions began flooding in after three absolute pardon petitions were granted by Governor McAuliffe and garnered considerable media attention. Due to the increase in the pardon numbers, the McAuliffe Parole Board could not keep up, despite having three full-time members (the current Board only has two full-time members).

In addition, due to the Fishback and juvenile offender legislation, the number of parole cases to be considered by the Board has increased, taking Board members’ time and attention away from pending parole petitions.

B. Post-Release Supervision

When inmates are released on parole, they are supervised by local parole officers in one of 43 districts around the Commonwealth. Those parole officers are employed by DOC and also conduct probation supervision as ordered by the local Circuit Courts. VPB has two full-time employees who coordinate the parole supervision, led by Post-Release Supervisor Helen Morton. Ms. Morton has been engaged in post-release supervision since 1984; approximately ten years ago, her position was moved from DOC to VPB.³²

This unit generally appears to be operating efficiently and with sufficient staffing.

VII. RESTORING INTEGRITY AND CONFIDENCE IN THE VIRGINIA PAROLE BOARD AND THE COMMONWEALTH’S SYSTEM OF CRIMINAL JUSTICE

³² Ms. Morton is yet another example of the tremendous amount of institutional knowledge available to the current Board.

The stated purpose of Executive Order Number Three was to restore integrity and confidence in the Virginia Parole Board and the Commonwealth's system of criminal justice. It is vital that the public have faith in our institutions. The current administration and VPB leadership have stated clearly – both in words and actions – that restoring the public trust in this agency is of paramount importance. Virginians must have confidence that, when we make a decision as a Board, it has been made only after solemnly examining all the evidence, including the wishes of the victims, and that our decision is consistent with public safety.

This is not a partisan issue; it's a solemn duty. We must consider granting second chances to those who have earned it. But we can only do so when it is compatible with public safety, and after listening carefully to those who have been most affected.

In addition to changes noted above, there are other actions that have been taken by the current Board with the goal of ensuring the greatest public confidence in our independence, impartiality, integrity, and competence.

A. Changes already implemented by the Youngkin administration

The Youngkin Parole Board has already implemented the following changes in procedure that are designed to restore integrity and confidence in the Virginia Parole Board:

Full cooperation with Attorney General's investigation. In Executive Order Number Three, Governor Youngkin also asked the Attorney General to coordinate the prosecutorial and investigative efforts into the past actions of the Virginia Parole Board, and to bring such cases as he may deem appropriate in order to protect the citizens of the Commonwealth and hold accountable any individuals who have violated existing law or violated the rights of victims of crime

Upon appointment, the Chairman pledged full cooperation and access to all records in VPB's possession. In the first full staff meeting during the first week, the Chairman directed staff to cooperate fully. Soon thereafter, he traveled to the OAG office to determine what the investigators needed from VPB. We subsequently gave them access to our offices, and facilitated access to CORIS so they could obtain every single printed record in VPB's possession. In

addition, VPB employees have made themselves available to be interviewed whenever requested.³³

Revised Policies/Procedures manual. The current VPB policy manual has an effective date of 2006; the procedures manual was last updated in 1996 (and the OSIG/OAG investigations will enlighten us as to whether it was even being consulted under previous Boards). We have completely revised these documents into one comprehensive manual which is in the process of finalization

Improvements to the Board's parole discharge procedure. A number of parolees were released early from their supervision obligations on the orders of a prior Chair, without any input from the parolee's supervising parole officer. We have changed the written policies and procedures surrounding the early discharge process to require that the process begin with a request from a local parole officer. These officers have been supervising the parolees and will have more detailed knowledge as to the parolee's ongoing risk to the community. Without that early discharge request from a PO, the Board will not take up the question of early release, and the Chair will have no authority to order early discharge in the absence of such a request.

Improvements to the way Parole Examiners make recommendations. In the weeks after his appointment, the Chairman met with every employee of the agency individually in an effort to assess weaknesses in the organization. When meeting with the Parole Examiners, they indicated that they would like to have feedback from the Board about things that were important to the members when making parole decisions. That discussion resulted in the creation of a "parole examiner's scale" which is designed to permit examiners to provide better recommendations to the Board. This scale is attached as **Enclosure B**.

This highlights how dependent the Board is upon part-time parole examiners to conduct good investigations and prepare thorough reports. We are fortunate to have a talented and dedicated group of examiners on staff now, but this is an inefficient way to conduct this process.

³³ These interviews are ongoing. The most recent interview of an employee with the VSP/OAG investigators was on July 6, 2022.

Standard questions for victim Board appointments. This was a recommendation from OSIG pursuant to last year's investigations. The Chair has directed all Board members to ask these questions of victims during any appointment:

- What long-term effects have you incurred since the crime that you are comfortable with sharing today?
- If the offender is released, what are some post-release considerations that VPB should consider? (What considerations would you like VPB to make about safety or precautions if the offender is released?)
- In the event you were able to have an opportunity to receive an apology from the offender, would you like to receive one? If yes, how would you like to receive this apology (by phone, in writing, etc.)

Improved the appeals process. In the past a staff member reviewed all appeals from inmates of unfavorable decisions and determined whether there was grounds for an appeal. Parole-eligible inmates expressed great frustration with that process. Now, that decision is reviewed by the Vice Chair of the Board as well.

Creation of training manual for new VPB members. When the prior Board was removed and a new Board installed, it was quickly determined that there was no succession plan in place for this eventuality. As a result, the first Youngkin Board had to learn everything from scratch. We have now created a training manual so that VPB can quickly onboard new Board members in the future. This manual contains a Parole Board fact sheet, relevant Virginia statutes, frequently asked questions, a step-by-step guide to navigating the byzantine complexities of CORIS, and other relevant items that are important for new appointees, many of whom are appointed without having real-world knowledge of all the responsibilities of the job.

VIII. FURTHER RECOMMENDATIONS FOR LEGISLATIVE, ADMINISTRATIVE, AND POLICY CHANGES

What follows are Chairman Dotson's recommendations for restoring public confidence in VPB, keeping in mind the goal of ensuring Virginia's parole process is "Best in Class." As noted above, this represents an opportunity for Governor Youngkin to make a lasting impact, both for public safety and efficient government.

A. Costs

It is imperative at the outset that we address the costs that will be associated with these recommendations. The Chairman is sensitive to the fact that making this agency "Best in Class" will likely require significant investment of public funds. Much of this report has been focused on restoring public trust in the Virginia Parole Board, but public trust also requires us to be good stewards of the taxpayer dollar. This isn't the government's money; it's the money of all 8.6 million Virginians that we serve, and we must never forget that.

At the same time, we must recognize that this agency has been left to wither on the vine, and that has contributed mightily to the chaos surrounding VPB in recent years. While the public largely thinks that parole has been abolished, the fact is that the Parole Board's case load continues to rise, stressing a staff of largely part-time employees.

Earlier in this report, we detailed the rise in pardon petitions and the associated strain on our team of part-time investigators. Thanks to recent legislation expanding the right to parole, more inmates are eligible for discretionary parole than at any time since parole was abolished in 1995. In addition, the number of inmates eligible for geriatric parole continues to rise as the prison population ages, as noted above on page 5. As a result, VPB faces significant backlogs in both pardon petitions and parole cases. This has put an enormous strain on VPB's part-time parole examiners and the mostly part-time Parole Board.

It is the Chairman's considered opinion that we can't truly fix this agency without significant changes. To be sure, we can try to make the current system work as well as it possibly can. We're already doing that, in fact, and the changes have been noticed by all stakeholders around the Commonwealth. If the costs to the taxpayer are too much to bear, the current Board will continue to do everything we can to maximize transparency and ensure that the mistakes of previous Boards are never repeated. But VPB will not be "Best in Class" if we continue to work under the constraints and inadequacies of the current parole system in the Commonwealth.

B. Recommendations

Expand the number of Board members and open parole hearings to the public. Currently, the parole-eligible inmate meets with a part-time parole examiner and the victim(s) either meet with one Board member or provide written input. To maximize transparency and ensure that victims are actually heard, it is necessary to overhaul how parole hearings are conducted.

The Chairman recommends a legislative package to expand the number of full-time Board members to six (including the Chair) with staggered terms. With an increased number of full-time Board members, the Chairman envisions being able to assign panels of Board members to conduct hearings around the Commonwealth. Currently, examiners are conducting the only “hearing” that takes place between the Board and the inmate. Under the proposed new structure, the examiners will continue to conduct the inmate “hearing” which will now function as a pre-interview, and assemble comprehensive reports for the Board members to review prior to the actual parole hearing. These reports include everything from the inmate’s institutional history to psychological evaluations to previous input from the community.

With comprehensive reports, the Board members will be able to conduct at least quasi-public parole hearings virtually. At the hearing, the Board members will question the inmate directly. Victims and advocates for the inmate will provide their input directly to the Board members making the decision, if they so choose. Commonwealth’s Attorneys and law enforcement will be invited to appear at the hearings. In the interest of complete transparency, media will be allowed to request access to the hearings.

After the hearing concludes, Board members will make the decision on parole, by a majority vote after discussion among the members. Appeals could then be made to the full Board, if there were adequate grounds.

Increase number of staff members to assist Board panels in preparing for and conducting public hearings. If the Board is expanded as recommended, the Chair recommends no fewer than three and up to five classified staff members to help facilitate the re-envisioned public hearings.

Prior to the abolition of parole in 1995, each Board member was employed full-time and each had a “confidential secretary” to assist with inmate interviews and hearings. Currently

nearly three-quarters of VPB's current staff are part-time wage employees. Current staffing levels are inadequate to provide the level of transparency in parole operations that we are seeking to implement.

Explore potential move to new office space independent from DOC. Currently, VPB is located in the DOC headquarters. There are multiple staff members sharing office spaces designed for one individual, and there are not offices available for all of our Board members. There are DOC employee offices interspersed among VPB offices. VPB does not currently have its own board room for meetings.

Explore creation of a new VPB computer system/database and/or updating existing system to better serve VPB's needs. Currently, DOC essentially owns all VPB data. There are frequently delays obtaining data from DOC which affects VPB's ability to conduct timely statistical analyses. The Chair recommends exploring whether a new, independent database should be created or whether there are upgrades that can be made to the DOC CORIS database that improve VPB's access to the data in a timely manner.

We need a computer system that is designed to meet VPB's usage needs. VPB has a duty to protect victims and to protect intel shared with us by other law enforcement and government agencies. The new or updated computer system/database should be designed to allow us to enter information for victims, inmate advocates/family members, and government entities (Commonwealth's Attorneys, DOC, police, etc.), and keep that information grouped together. Currently, we have to scroll through pages and pages of entries in CORIS to find information we need to conduct agency business and make parole decisions. Further, our own proprietary system or improved access to CORIS will allow us to expand VPB's ability to provide better reasoning for our decisions and more feedback for victims, offenders, and the general public.

Legislation eliminating dual eligibility for parole. Certain offenders are eligible for discretionary parole (because they were sentenced before 1995, for example), and later become eligible for geriatric release as well. An inmate should be eligible for one or the other. This has been traumatic for victims because CORIS does not automatically merge the two together, and

so inmates have the ability to be considered twice in one year. As a result, victims can get notifications that an inmate is up for parole twice each year.

Legislation that will return sentencing of Post-Release Supervision cases to local Circuit Court judges. When a Circuit Court judge sentences a defendant, the judge may order that the defendant complete a period of “probation” or a period of “post-release supervision” after serving their active period of incarceration. If a defendant is placed on probation, they will be supervised by a local probation & parole officer. If they violate any condition of that probation, they will be returned to the local Circuit Court, where the judge can decide whether they should be found guilty of a probation violation. The judge then sentences accordingly.

If the judge orders the defendant to complete a period of “post-release supervision” rather than “probation,” the offender will similarly be supervised by a local probation & parole office. However, if they violate any condition of that post-release supervision, the case is [currently?] sent to the Parole Board instead of the sentencing judge. The Parole Board then must decide whether that offender violated any condition, and then must decide on the sentence to impose.

The result is that a Board, consisting often of civilians with minimal knowledge of the criminal justice system, is required to make decisions about whether to sentence an offender (the Board does not interact with) to incarceration for six months or three years, etc. In most instances, these offenders have never been under the jurisdiction of the Parole Board, and have never been released on parole. But because a local judge orders “post-release supervision” instead of “probation,” the case is taken out of the judge’s hands and handed to a Board that has no knowledge of the case and no expertise in crafting sentences.

The Chair’s recommendation should not remove VPB’s ability to supervise those offenders whom the Board releases on parole or the ability of VPB to re-incarcerate those individuals who violate conditions placed on their release by the Parole Board. This recommendation is meant only apply to those offenders who are given post-release supervision by a local judge.

Legislation requiring Governor to seek victim input on pardons. The Chair recommends legislation that requires future Governors to seek victim input on all conditional and absolute pardons before they can be granted. The Parole Board – through our Special Investigations Unit

(SIU), VPB's team of part-time investigators comprised of all retired law enforcement officers – can seek that input while conducting the investigation before making a recommendation to the Governor. By statute, SIU only conducts investigations on pardon petitions at the Governor's request, however Governors are not required to request an investigation in order to grant a pardon.

Legislation requiring the Parole Board seek input from Commonwealth's Attorneys. The current Board seeks input from CAs prior to making a decision to grant parole. This practice is incorporated into new policies and procedures, but the Chair recommends codification in order for the policy to be binding on future Boards.

Increase transparency through website upgrades. The website is the public face of the agency. It is imperative that it is a helpful resource for the public.

Pardon recommendations. On February 25, 2022, the Chairman and Secretary of the Commonwealth Kay Coles James jointly submitted recommendations for the granting of pardons, and forwarded those recommendations to the Governor's office. These recommendations are focused on demonstrating the Governor's belief in granting second chances when earned, and streamlining the process for granting pardons. See **Enclosure C**.

Establish a classified executive-level position serving under the Parole Board Chairman. A classified, executive-level position will permit some internal administrative functions to be realigned, freeing up limited time to focus on matters that only the agency head can act upon. While noting that VPB is small relative to other agencies, most other agencies have a chief deputy. Whether the position is called a chief operations officer, chief of staff, or administrative director, the duties would primarily entail the management of certain personnel and assignments of work. This executive-level position is envisioned to help provide a more seamless transition across administrations and facilitate efficiencies in operations.

IX. CONCLUSION

The Virginia Parole Board serves a vital public safety function, but has operated in the shadows for far too long. The recommendations herein are offered as a means to ensure that public trust in this agency will be restored through increased transparency, and that the failures of past Boards will never again be repeated. The 8.6 million Virginians who we serve deserve nothing less.

Judge (ret.) Chadwick S. Dotson
Chairman
Virginia Parole Board

Enclosures

- A: Executive Order Number Three (2022)
- B: Parole Examiner's Scale
- C: Pardon Recommendations



*Commonwealth of Virginia
Office of the Governor*

Executive Order

NUMBER THREE (2022)

RESTORING INTEGRITY AND CONFIDENCE IN THE VIRGINIA PAROLE BOARD AND THE COMMONWEALTH'S SYSTEM OF CRIMINAL JUSTICE

By virtue of the authority vested in me as Governor, I hereby issue this Executive Order to restore integrity and confidence in the Commonwealth's System of Criminal Justice by terminating the current Virginia Parole Board, naming five highly qualified individuals to the Parole Board, directing the Secretary of Public Safety to perform a programmatic review of the Parole Board's procedures, and requesting the Attorney General conduct a full investigation.

Importance of the Initiative

Article I, Section 8-A of the Constitution of Virginia affords certain rights to victims of crime in the Commonwealth, including the right to reasonable and appropriate notice, information, and protection. Virginia law further requires the Virginia Parole Board provide notice of its decision to grant discretionary parole or the conditional release of an inmate. Virginia law and internal policy and procedure manuals govern the Virginia Parole Board's decisions.

The Virginia Office of the State Inspector General ("OSIG") recently conducted an independent investigation into allegations involving the Virginia Parole Board. These allegations were brought forward by citizens, crime victims and their relatives, and elected Commonwealth's Attorneys. The OSIG investigation revealed some of the inmates released by the Virginia Parole Board had been recently denied parole or otherwise deemed ineligible for parole, raising questions about the lawfulness of the abrupt reversals of these decisions. The Virginia Parole Board also violated victims' rights and broke Virginia law by releasing multiple violent offenders without complying with the legally required notification to the victim or the prosecutor.

To this day, the family members and victims have no answers as to how or why the Virginia Parole Board failed to abide by the laws governing its operations, and no one has been held accountable.

We therefore must ensure confidence and integrity in our criminal justice system. Too often, victims of violent crime are ignored, silenced, and overlooked. Victims deserve to know their voices matter. In order to ensure that these mistakes never happen again, we must fully understand the decisions that led to them.

The Parole Board's failure to uphold the laws enacted by the General Assembly has damaged the integrity of the Commonwealth's System of Criminal Justice and undermined the confidence of our citizens. We therefore must reform the Virginia Parole Board and replace the current members with qualified and committed public safety experts who will uphold the law, properly apply the policies of the Board, and restore confidence and integrity in our system of criminal justice.

Directive

Accordingly, pursuant to the authority vested in me as Chief Executive of the Commonwealth and pursuant to § 53.1-134 of the *Code of Virginia*, I hereby terminate the current parole board, and hereby appoint:

- The Honorable Chadwick Dotson of Wise County, Chairman
- Tracy Banks of the City of Charlottesville
- Cheryl Nici-O'Connell of Chesterfield County
- The Honorable Hank Partin, Sheriff, of Montgomery County
- Carmen Williams of Chesterfield County

Further, the Secretary of Public Safety and Homeland Security is directed to perform a programmatic review of the Parole Board's duties, procedures, and administration. The review shall include, but not be limited to, increasing the transparency of Parole Board votes, recording reasons for granting parole, and reviewing the management, personnel, and operations of the Parole Board.

This review shall provide recommendations for legislative, administrative, and policy changes that will improve the administration of the agency in fulfilling its solemn public safety mission.

This review shall be submitted to me no later than September 1, 2022.

Attorney General Authorization

By virtue of the authority vested in me by § 2.2-511 of the *Code of Virginia*, I hereby request the Attorney General to coordinate the prosecutorial and investigative efforts and to bring such cases as he may deem appropriate in order to protect the citizens of the Commonwealth and hold accountable any individuals who have violated existing law or violated the rights of victims of crime.

Effective Date

This Executive Directive shall be effective upon its signing and shall remain in force and effect unless amended or rescinded by future executive order or directive.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 15th day of January, 2022.



A handwritten signature in black ink, appearing to read "Glenn Youngkin".

Glenn Youngkin, Governor

Attest:

A handwritten signature in black ink, appearing to read "Kelly Thomasson".

Kelly Thomasson, Secretary of the Commonwealth

Virginia Parole Board Recommendation Scale for Parole Examiners

<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>
Not Recommended			Maybe		Recommended	

Legend:

- 1 Definitely Not Recommend. Considerations: Poor Institutional Adjustment in the past 24 months. Poor attitude during interview. Strong Victim Opposition. Inmate signed PB-16 indicating that he / she is not interested in parole consideration. Not enough time served. Horrendous Crime. Multiple Victims. Lengthy Criminal History.
- 2 Not Recommend. Considerations: Same as #1 – just a matter of degree.
- 3 Leaning towards a Not Recommend. Considerations: Subject is moving in the right direction for a parole recommendation but issues persist (i.e. victim opposition / horrible crime / home plan not great / amount of time served).
- 4 Maybe. Unsure. Equal Number of Positives and Negatives. Considerations: Subject presents well but there are noticeable concerns such as consistent victim opposition / poor release plan / Major Mental Health Issues.
- 5 Leaning towards a Recommend. Considerations: Everything looks good but perhaps one or two areas of concern (i.e. victim opposition / amount of time served).
- 6 Recommend. Considerations: Similar to #7 – just a matter of degree. Candidly, this is where most recommendations for parole fall under – it is doubtful if any of us would select a rating of '7'.
- 7 Definitely Recommend. Considerations: No Victim Opposition. Subject has served a lengthy amount of time. Excellent support system and parole plan. Recommendation from Counselor. No institutional infractions within the past 24 months. Mandatory or Good Time Release Date within 2 years. Remorseful. Excellent presentation during interview.

Factors to Keep in Mind when making a recommendation regarding parole:

1. Severity of Crime
2. Adult Criminal Record / Juvenile Criminal Record
3. Length of Sentence Ordered / Length of Sentence Served
4. Age at time of Offense / Current Age
5. Institutional Behavior
6. Emotional Quotient (Psycho-Social History / Mental Health / Level of Remorse / Motivation of Crime at offense date vs Present Understanding) vs. Intelligent Quotient.
7. Interview Presentation
8. Support System
9. Plan for Release (Is the release plan realistic?)
10. Victim / Victim Family Input / Opposition from other parties (CA / Law Enforcement)



COMMONWEALTH of VIRGINIA

CHADWICK S. DOTSON
Chairman

SAMUEL L. BOONE
Vice Chair

Virginia Parole Board

MICHELLE P. DERMYER
Member

HOWARD C. VICK
Member

STEVEN T. BUCK
Member

May 19, 2022

TO: Governor Glenn Youngkin

FROM: Kay Coles James, Secretary of the Commonwealth
Chadwick Dotson, Chairman, Virginia Parole Board

SUBJECT: Pardon process and recommendations

After a thorough review of past policies and procedures, we present these recommendations concerning pardon petitions and the criteria for submitting each type of pardon:

Simple Pardon:

Simple pardons do not alter the criminal conviction of the petitioner. A simple pardon is official forgiveness from the Commonwealth. The conviction remains on the recipient's criminal history with a notation that a simple pardon has been granted. Simple pardons will not restore the recipient's firearm rights if they were lost due to a felony conviction.

A simple pardon can help the recipient reintegrate into society after they have served their sentence, by assisting them in obtaining better employment, adopting a child, becoming a foster parent, volunteering for their child's school activities, and gaining admission into an assisted living facility or a nursing home.

Currently, in order to submit a petition for a simple pardon, the petitioner must:

- 1) be free of all conditions set by the court (including any probation period, suspended time, or good time behavior) on all convictions followed by a waiting period of five years.
- 2) have been granted Restoration of Rights before petitioning for a pardon (if the petitioner had been convicted of a felony).

It is recommended that the first condition be amended by reducing the waiting period before a simple pardon request can be from five years to two years. This demonstrates this Administration's belief in second chances for persons who have paid their debt to society.

In addition, the Parole Board occasionally sees petitioners who were given a "good behavior" order by the Court for 20 years or life (after they served their sentence and successfully completed supervised probation. It is recommended that these petitioners also be allowed to petition for a simple pardon after two years to allow them the same opportunities as other Virginia citizens.

_____ Approved _____ Not Approved

Conditional Pardon:

A conditional pardon is an act to modify or end a sentence imposed by the Court. Conditional pardons are rare and only available to individuals who are currently incarcerated. There are currently no minimum criteria for petitioning for a conditional pardon.

It is recommended that inmates who are otherwise eligible for parole (discretionary parole, geriatric conditional release, Fishback parole, or juvenile parole) should **not** be eligible for conditional pardon consideration. If the Parole Board will not release the inmate, then this responsibility should not fall on the Governor and the inmate should not get two opportunities for release.

Further, confirmed gang members (i.e., White Supremacists, Bloods, Crips, MS13, Latin Kings, Gangsta Disciples, etc.), convicted sex offenders, and anyone who has been convicted of victimizing a minor shall **not** be considered for conditional pardons to ensure public safety.

_____ Approved _____ Not Approved

Medical Pardon:

A medical pardon is a form of a conditional pardon granted to incarcerated individuals who are terminally ill. In order to be considered for medical clemency, the individual must have a life expectancy of three months or less.

It is recommended that confirmed gang affiliations be added to the Governor's investigation of these petitioners in order to ensure public safety.

_____ Approved _____ Not Approved

Partial Pardon:

A partial pardon is a form of a conditional pardon and has, in the past, been granted to individuals who are experiencing immigration issues. In order to be considered for immigration related clemency, the individual must be facing deportation in 30 days or less, which means these requests have been handled via an expedited process.

In effect, a partial pardon amends a sentence that has already been served from what the Court ordered to a sentence of fewer than 360 days, which would shield the offender from deportation. Historically, partial pardons have been granted for minor misdemeanor convictions such as shoplifting and possession of marijuana to serious felonies such as malicious wounding and cocaine distribution.

Immigrants who are documented and possess a green card are at risk for deportation if they receive any sentence greater than 360 days. Some of these immigrants were brought to the United States when they were small children and may not have ties to their country of birth.

Historically, partial pardons have always been handled as conditional pardons, but in 2016 they were given the name partial pardons. It is recommended the title “partial pardon” be eliminated and these pardons be handled as Immigration Pardons.

_____ Approved _____ Not Approved

Further, in order to conduct a thorough investigation, we should eliminate the requirement that the immigrant be within 30 days of deportation before filing the petition. It takes 60 days to conduct a thorough investigation, which includes obtaining input from victims and the Commonwealth’s Attorney. Petitioners with immigration issues should submit their petitions as early as possible to ensure a thorough investigation and review by the Parole Board and Secretary of the Commonwealth prior to a decision by the Governor. These petitions should not be prioritized over other pardon petitions.

_____ Approved _____ Not Approved

Absolute Pardon:

An absolute pardon may be granted when the Governor is convinced that the petitioner is innocent of the charge for which he or she was convicted. The current criteria requires that the petitioner (a) must have entered a “not guilty” plea at all phases of the judicial process, and (b) the petitioner must have exhausted all forms of judicial appeals and other remedies, including a Writ of Actual Innocence.

These pardons are rare, but important. They are designed for persons who are actually innocent. We believe that this Administration should eliminate these barriers, as the ultimate goal should be justice for these individuals. Historically, some defendants choose to enter a guilty plea when they are actually innocent for a number of reasons. In addition, some convicted individuals do not have the resources to file and pursue a Writ of Actual Innocence.

It is recommended that these criteria be eliminated entirely.

_____ Approved _____ Not Approved

Finally, we recommend that the Governor, the Secretary of the Commonwealth, and the Chairman of the Parole Board hold a press conference to announce these changes. It is an opportunity to demonstrate the Governor's compassion and willingness to provide second chances.

The Honorable Kay Coles James
Secretary of the Commonwealth

The Honorable Chadwick Dotson
Chairman, Virginia Parole Board