

## Commission on Parole Review

Virginia General Assembly Building – House Room C

August 27, 2015

### **Members Present:**

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

### **Members Not Present:**

Luke E. Torian, Member, Virginia House of Delegates  
Jill Vogel, Member, Senate of Virginia  
Mindy M. Stell, President, Virginia Victim Assistance Network  
Alvin Edwards, Ph.D., Pastor, Mt. Zion First African Baptist Church  
Sandra W. Brandt, Executive Director, STEP-UP Inc.

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### **Other Participants:**

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

### **Welcome/Opening Remarks**

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

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

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

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

### **Approval of July 20, 2015 Meeting Minutes**

Chairman Earley presented the July 20, 2015 minutes for review and approval.

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

### **Virginia Sentencing Commission**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sheriff Stolle asked if the data provided included all offenders. Ms. Farrar-Owens advised yes.

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

Mr. Wolf stated that every sentencing system is developed with goals in mind. Ms. Farrar-Owens advised that guidelines for sentencing are determined by the General Assembly. The goals of the Sentencing Commission were presented at the opening of the presentation.

Mr. Vassar asked how many offenders had served terms beyond their sentence. Ms. Farrar-Owens advised 706 offenders served terms beyond their sentence.

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

### **Overview of Sentence Finance Report**

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

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

Sheriff Stolle asked Director Clarke to provide information regarding the current caseload for probation officers. Director Clarke advised the current caseload is approximately one probation officer to 80 offenders. One to 80 is an average as caseloads may vary depending on the crime. Caseloads are determined based on the type of crime (sex offender, larceny, assault etc.) therefore, a PO may only have a caseload of 40. The industry has gone away from standards and each state decides the complexity of caseload distribution.

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

### National Perspective from Right on Crime

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

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

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

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

Sheriff Stolle asked if parole is an incentive to do the right thing (i.e., by getting them to engage they would do better). Sheriff Stolle advised Mr. Reddy that he did not agree with his commentary. Mr. Reddy advised their views are actually closer in agreement than thought. The prospect of parole is an incentive; intuitively data does not change behavior.

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

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

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

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

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

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

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

Bobby Scott, U.S. Representative, 3<sup>rd</sup> District of Virginia thanked the Commission for inviting him. He commended Governor McAuliffe for appointing the Commission. Congressman Scott reported that you can reduce crime or you can politic, but you cannot do both. Research shows that the tough on crime initiatives failed to reduce crime and over-incarceration is counter-productive. The United States is number one in the world in incarcerating people. Truth-in-sentencing is a half-truth; the funds used for incarceration could be redirected into evidence-based practices. Supporters recently released a study on violent recidivism. By abolishing parole, the recidivism rate was supposed to decrease by 2%. There was no consideration of violent crimes and all incentives were eliminated. Project Exile decreased the crime rate by 25%; however in areas without Project Exile crime decreased more. Congressman Scott shared that we need to change the business as usual mind-set, we must address the crisis we are dealing with. He further stated that we need prevention and rehabilitation in lieu of the pipeline to prison. Two-thirds of federal drug offenses are the result of mandatory minimums.

Per Ms. Cooper, we hear a lot about risk-assessments and they are not one-size fits all. The Static-99 is a deeply flawed tool and her organization does not support it. Regarding the SAFE Justice Act, at the first Commission meeting the geriatric population was identified as the single largest first time offender population a majority having committed sex crimes. Ms. Cooper referenced data compiled by the DOC Statistical Analysis

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and Forecast Unit, the FY2015 Geriatric Offenders within the SR Population. She identified two relevant points from the report:

Page 1, *"In Virginia, the increase in the number of geriatric confined offenders has been dramatic. From FY1990 to 2014, Virginia's State Responsible (SR) Confined population age 50 and older increased over eight-fold from 822 to 7,202, accounting for 19.1% of the SR Confined population. Similarly, older offenders have been an increasing percentage of New Court Commitments (NCC), increasing from 2.8% in FY1990 to 12.6% in FY2014."*

Page 4, *"The most common violent crime for older offenders was Rape/Sexual Assault, which accounted for 32% of the age 65 and older age group."* Please consider reviewing that data before making any final decisions.

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

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

### **Public Comment**

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

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

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

### **Overview of Open Meeting Laws**

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

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

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

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



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

The meeting adjourned at 5:22 PM.