

## Commission on Parole Review

Virginia State Capitol – House Room 3, Richmond, Virginia

July 20, 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  
Jill Vogel, Member, Senate of Virginia  
Dave Albo, Member, Virginia House of Delegates; Chairman, Courts of Justice Committee  
William Richardson, Jr., Member, Virginia CURE; Retired partner, Wilmer, Cutler, Pickering, Hale and Dorr, LLP  
David R. Lett, Public Defender, Petersburg Public Defender's Office  
Tonya Chapman, Deputy Secretary of Public Safety and Homeland Security  
Cynthia E. Hudson, Chief Deputy Attorney General, Office of the Attorney General  
Francine Ecker, Director, Virginia Department of Criminal Justice Services  
Marcus M. Hodges, President, National Association of Probation Executives  
Kimberly Lettner, Retired Chief of Police, Division of Capitol Police  
Camille Cooper, Director of Government Affairs, The National Association to PROTECT Children & PROTECT  
Harold Clarke, Director, Virginia Department of Corrections  
La Bravia J. Jenkins, City of Fredericksburg, Commonwealth's Attorney  
Luke E. Torrian, Member, Virginia House of Delegates  
Mindy M. Stell, President, Virginia Victim Assistance Network  
Kenneth W. Stolle, Sheriff, Virginia Beach Sheriff's Office  
Alvin Edwards, Ph.D., Pastor, Mt. Zion First African Baptist Church  
Karen Brown, Chair, Virginia Parole Board  
Jack Gravely, JD, Executive Director, Virginia State NAACP  
Sandra W. Brandt, Executive Director, STEP-UP Inc.  
Timothy Heaphy, Partner, Hunton & Williams, former US Attorney, Western District of Virginia  
Dave Marsden, Member, Senate of Virginia  
Thomas M. Wolf, Partner, LeClairRyan

### **Members Not Present:**

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

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### **Other Participants:**

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

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

### **Welcome/Opening Remarks**

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

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

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

Secretary Moran provided an overview of the agenda and turned the floor over to Chair Mark L. Earley, Sr. General Earley stated it was a pleasure to serve with Secretary Moran, Secretary Stoney and the rest of the Commission.

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

### **Introductions**

All members present introduced themselves and stated their affiliations.

### **Swearing In**

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

### **Overview of the 1994 Commission on Parole Abolition and Sentencing Reform**

Eric Finkbeiner, Former Executive Director of Governor Allen's Commission on Parole Abolition and Sentencing Reform, provided a presentation on the history and impact of 1994 parole abolition and sentencing reform. Mr. Finkbeiner commended Governor McAuliffe for taking the time to review reform. Mr. Finkbeiner's report provided a historical overview of the 1994 objectives. Topics presented included but were not limited to the 1993 gubernatorial campaign, the significant increase in crime, percentage of violent offenders with prior criminal convictions, the development of a comprehensive sentencing reform plan, review of federal guidelines and experiences in Florida, North Carolina, Pennsylvania, and Texas, sentencing and time served.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Overview of the Department of Corrections**

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

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

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

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

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

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

Dr. Taxman asked for the percentage of offenders that score high on the COMPAS assessment. Dr. Celi advised that COMPAS is used for offenders' general recidivism and criminogenic needs to help prepare

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offenders to leave prison and transition back into the community. The COMPAS assessment is performed on every offender and has been in use since 2008.

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

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

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

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

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

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

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

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

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

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

Mr. Heaphy asked about recidivism and if there was any data about the percentage of the population that participates. Dr. Celi advised that the numbers are where they expected them to be. Director Clarke advised that an effective re-entry program is the best plan for public safety. Five years ago, the VADOC set out to shift the environment. The VADOC continues moving in the direction to build engagement with offenders.

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

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

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### Current State of Parole in the Commonwealth

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

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

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

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

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

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

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

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

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

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

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

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### **Public Comment**

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

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

### **Next Steps/Closing Remarks**

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

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

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

The meeting was adjourned at approximately 4:25.