

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

Members Present:

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

Members Not Present:

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

Thomas M. Wolf, Partner, LeClairRyan

Welcome/Opening Remarks

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

Approval of October 26, 2015 Meeting Minutes

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

Subcommittee Presentations and Recommendations

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

Best Practices for Reducing Recidivism:

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

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

Recommendation 1: Carefully review recent research findings

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

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

- ✓ The Commission adopted Recommendation 1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

✓ **Recommendation 3 was adopted.**

Recommendation 4:

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

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

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

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

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

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

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

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

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

- ✓ **Recommendation 4a was adopted as amended.**
- ✓ **Recommendation 4b was adopted.**
- ✓ **Recommendation 4c was adopted.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- ✓ **Recommendation 4g was adopted.**

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

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

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

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

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

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

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

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

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

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

Recommendation 5: Address procedures and policies that correct prior errors

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

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

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

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

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

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

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

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

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

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

Recommendation 7: Recommendations for studies to be conducted

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

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

✓ Recommendation 7 was adopted.

Recommendation 8: We are Not done!!!

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

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

Public Comment

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

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

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

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

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

Appropriate Classification of Offenses Subcommittee

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

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

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

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

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

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

- ✓ **Recommendation 1 was adopted.**

Recommendation 2: Virginia Three Strikes Law

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

- ✓ **Recommendation 2 was adopted.**

Recommendation 3: Raise the larceny and simple larceny threshold

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

- ✓ **Recommendation 3 was adopted.**

Recommendation 4: Drug-Related Offenses

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

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

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

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

Recommendation 5: Participation in Drug Treatment Courts

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

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

- ✓ **Recommendation 5 was adopted.**

Efficiencies & Fiscal Impact Subcommittee

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

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

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

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

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

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

Mr. Heaphy proposed further studying this recommendation.

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

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

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

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

Next Steps/Closing Remarks

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

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

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

The meeting concluded at 4:36PM.