

## Commission on Parole Review

Virginia General Assembly Building – House Room C

October 26, 2015

### **Members Present:**

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  
Dave Albo, Member, Virginia House of Delegates; Chairman, Courts of Justice Committee  
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  
Thomas M. Wolf, Partner, LeClairRyan  
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  
Cynthia Hudson, Chief Deputy Attorney General, Office of the Attorney General

### **Members Not Present:**

The Honorable Brian Moran, Secretary of Public Safety and Homeland Security  
The Honorable Mark L. Earley, Sr., Owner, Earley Legal Group, LLC; former Attorney General of Virginia  
Harold Clarke, Director, Virginia Department of Corrections  
Sandra W. Brandt, Executive Director, STEP-UP Inc.  
Kimberly Lettner, Retired Chief of Police, Division of Capitol Police  
Marcus M. Hodges, President, National Association of Probation Executives  
Jill Vogel, Member, Senate of Virginia

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Kenneth W. Stolle, Sheriff, Virginia Beach Sheriff's Office

### **Other Participants:**

A. David Robinson, Chief of Corrections Operations, Virginia Department of Corrections for  
Harold Clarke, Director, Virginia Department of Corrections  
Mark D. Sickles, Member, Virginia House of Delegates  
Ann Fisher, Executive Director, Virginia CARES  
Wendy Lohr-Hopp, Director, Victim Services Unit, Virginia Department of Corrections  
Emily Sattie, Victim Services Coordinator, Virginia Parole Board

### **Welcome/Opening Remarks**

Secretary Stoney convened the meeting at 1:07 PM. Secretary Stoney provided an overview of the agenda. He advised the audience that after visiting Lynchburg and Ferrum College's last week, he is pleased to report citizens of the Commonwealth are paying close attention to the Commission. The citizens believe the Commission is tasked with a worthwhile charge. He expressed thanks to the members for working diligently and the public for their participation as the Commission reviews the critical issue of parole review and other criminal justice reform issues.

### **Approval of September 28, 2015 Meeting Minutes**

Secretary Stoney presented the September 28, 2015 minutes for review and approval. Upon a motion by Delegate Albo and duly seconded, the members voted unanimously to approve the September 28, 2015 Parole Review Commission meeting minutes as presented.

### **Legislative Presentations**

Senator Marsden presented an overview of Supreme Court cases Miller v. Alabama and Graham v. Florida, which he introduced legislation to address over the last couple of years, and are relevant to the work of the Commission. Miller v. Alabama is considered extremely controversial. The case addresses anyone under the age of 18 years old charged with a homicide and transferred to an adult court. A minor is required to have a sentencing hearing, which considers mitigating factors. For example, in Virginia, if a 15 year old is charged with a capital offense there are two options, death, or life without parole. The U. S. Supreme Court has determined it is unconstitutional to impose a death sentence on a juvenile therefore that only leaves the option of life without parole. With only one option, this eliminates the necessity for a sentencing hearing. Currently prosecutors are charging juveniles with a capital offense then reducing the charges to 2<sup>nd</sup> degree felonies to ensure mitigating factors are considered during sentencing determination. Senator Marsden reported he is considering introducing a bill that will ensure that anyone under the age of 18 that is charged with a homicide is charged with a Class 2 felony (20 years to life) upfront. This requirement would eliminate the step of determining a charge and then having to reduce the charges. Senator Marsden then opened the floor for questions.

Mr. Vassar asked if the bill would affect current cases. Response, several states have retroactively corrected cases. They have searched all cases in which mitigating circumstances were not presented because the juveniles were not afforded a sentencing hearing and scheduled hearings to retry and resentence. It may be difficult for Virginia to consider looking back retroactively to retry or resentence and as a result, this option was not included in the bill.

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Senator Marsden presented an overview of Graham v. Florida. Senator Marsden has presented this bill on two separate occasions. Graham v. Florida addresses individuals under the age of 18 years old charged with life sentences in which there was no loss of life and transferred to adult court.

The U.S. Supreme Court has determined it is unconstitutional to sentence someone to life in prison without the possibility of parole for a non-homicide offense committed under the age of 18. It also states that the juvenile must be given a meaningful and realistic opportunity for release. The Virginia Supreme Court has determined that geriatric parole is meaningful and realistic. However, the U.S. Eastern District Court has determined that geriatric parole is not a remedy for Graham v. Florida. For example, in Virginia, a 15 year old sentenced to life would not be eligible for geriatric parole would have to serve 45 years before becoming eligible. Senator Marsden's bill would provide an opportunity for individuals to serve 20 years or age 35 whichever comes last to petition a four-judge panel, which would include one judge from the sentencing jurisdiction. The judges would then review reports from Probation and parole districts, an institutional report, victim input, and offender rehabilitation providers to make a determination. The individual would then come back every five years with a similar petition.

Secretary Stoney asked CA Jenkins for her input regarding Commonwealth's Attorneys. Per CA Jenkins, Senator Marsden presented his bill to Commonwealth's Attorneys last year. As an organization, when bill is presented they are reviewed and considered.

Mr. Wolf asked why a four-judge panel was chosen. Response- it was felt that a super majority of three or four would create a bar high enough satisfy Virginia criminal justice practices.

Secretary Stoney asked Ms. Brown to address how the bill differs from current Parole Board practices. Ms. Brown advised that out of the entire DOC population there are currently four inmates eligible for geriatric release that came in as juveniles. These cases are reviewed no differently from other geriatric eligible offenders with the exception of updated psych evaluations are requested prior to each review.

Ms. Cooper asked of the 22 juvenile offenders what types of crimes were committed. Senator Marsden advised in addition to homicides some of the crimes reviewed were horrible (i.e., rape, torture, abduction etc.). On the other side, there is Travion Blount, a 15 year old that received 15 separate charges for robbery. He received six life terms and has served eight or nine years. His adult co-defendants took plea bargains and received shorter sentences. Prior to leaving office Governor McDonnell adjusted Travion's sentence to 40 years. The Blount case is complicated and currently being litigated in Virginia Supreme Court.

Ms. Cooper asked Senator Marsden if he was familiar with 17.1-805 the part of the Code that deals with sentencing enhancements. Response, consideration of prior records should be taken into account. Mandatory sentences are Travion's issue. Senator Marsden advised that he is not thoroughly familiar with sentencing enhancement. He reported that he participated in the drafting the first blended sentencing laws as the former head of DCJS. If a 15 year old committed an armed robbery, they were sent to juvenile detention. The blended law required juveniles to begin their adult sentences in juvenile detention. Once they reached 20 ½ years old, they were returned to the sentencing jurisdiction for a review. This is not dissimilar in what we are asking for with Graham.

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Delegate Mark D. Sickles, Member, Virginia House of Delegates thanked the members for allowing him to present. Delegate Sickles provided an overview of Bill 2288. Delegate Sickles advised that the bill fit with the mission of the Governor's Commission on Parole Review. Delegate Sickles reports receiving numerous letters from concerned constituents regarding parole. Delegate Sickles plans to introduce a bill that would address the approximately 4,000 old law inmates currently serving lengthy sentences. The bill would require the Parole Board to give fair and meaningful review of each case. Delegate Sickles advised that the Parole Board primarily responds with "the serious nature and circumstances of your crime" however, they should be considering truth-in-sentencing guidelines and who the inmate is now not who they were at the time of the crime. The Parole Board purports that they do not have the resources to perform extensive reviews. If this is the case, Delegate Sickles recommends the Governor seriously consider providing the funds necessary to acquire the additional staff necessary to perform the reviews. Per Delegate Sickles, it is a matter of basic fairness to review this multi-faceted issue of approaching crime. Delegate Sickles commends the Governor for establishing this Commission to tackle this issue. Delegate Sickles advised that Virginia has an injustice that needs to be fixed.

CA Jenkins asked how many of the 4,000 parole eligible offenders that have been denied would benefit from Bill 2288. Delegate Sickles advised that the number is unknown and he cannot answer with any precision. He indicated that he has been told the cases affected are the worse of the worse however, these are crimes were committed by teenagers.

Ms. Farrar-Owens reported a study was completed six years ago which included a little over 3,000 parole eligible inmates. Research found that 700 inmates were considered to have served past the high end of their sentencing guidelines range. Delegate Sickles advised that he does not believe that the intention of the General Assembly was to remove the discretion of the Parole Board in 1995 however; current events are an unintended consequence that must be addressed.

### **Overview of PAPIS**

Ann Fisher, Executive Director, Virginia CARES provided a comprehensive overview of PAPIS: Virginia Re-entry Coalition. Ms. Fisher's report included but was not limited to the historical background of PAPIS, funding sources, number of clients served, assistance provided, and number of referrals made FY14-15. PAPIS is a community based, non-profit organization that provides re-entry services to local and regional jails.

Ms. Ecker advised the members that although they may not be familiar with PAPIS, there are many programs such as OAR, Virginia CARES, and STEP-UP that fall under the PAPIS umbrella, which they may be more familiar with.

Mr. Wolf asked if there are any studies that tie program completion with recidivism rates following completion. Response, PAPIS is currently in the process of compiling that information. The PAPIS Coalition in Hanover is currently performing its strategic planning initiative. They are reviewing the mission, vision and develop consistent measurements to ensure consistency as they move throughout DOC and the Probation and Parole offices. So that as an individual moves through the system they receive consistent input.

Ms. Fisher reported that Virginia CARES a study was performed 4 years ago that identified an 11% recidivism rate. Ms. Arnall reported that the medium/high-risk population in Arlington has performed a recidivism study that reflected an 8% recidivism rate of those who are in the program from eight to six months. Ms. Fisher and

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Ms. Arnall advised that the individuals served are not assigned but are volunteer. PAPIS has become more prominent as the face of reentry and because of that, we have seen larger numbers of individuals. The population tends to fluctuate dependent upon the geographic location in which they are released. Virginia CARES has reorganized and anticipates some fluctuation in the population of individuals served in the upcoming year.

Ms. Cooper asked if a process could be implemented to assist returning citizens in obtaining birth certificates and social security cards prior to release. Response, DOC currently collaborates with DMV staff visits institutions to provide photo IDs for returning citizens upon release. Per Ms. Fisher, they work with returning citizens once released to obtain social security cards and birth certificates. Ms. Fisher advised no agreements have been made with federal agencies to get them into the institutions to provide social security cards prior to release.

Ms. Cooper asked if Re-entry programs work with employers and landlords that are open to accepting returning citizens as employees and tenants. How many are able to maintain housing and employment after a background check. Response, Virginia CARES has built a collaborative with employers and landlords in our areas who will accept individuals. Returning citizens are steered towards those employers and landlords that are open to providing employment and housing. This creates a more successful transition into jobs as opposed into putting them in the general market.

Ms. Cooper advised approximately 13,000 offenders are released annually. Ms. Cooper asked for clarification regarding 1808 jobs reflected in the presentation, are they medium and/or high-risk. Response, in most cases the medium to high-risk individuals are the ones requiring the majority of reentry services. Returning citizen that obtain employment without assistance are not included in the total number reported.

Ms. Arnall advised that obtaining housing is a huge problem in urban areas. Most returning citizens are medium to high-risk offenders go immediately to shelters and halfway houses for approximately nine months. They have difficulty obtaining employment. Banning the box is helpful but does not guarantee employment but does give the opportunity for an interview. There are federal programs that offer tax credits for hiring an ex-offender, \$2400 per year for two years.

Mr. Robinson advised the members that one of the first things DOC does upon entry is assist offenders in obtaining social security cards and birth certificates. Mr. Robinson reported DOC does have an agreement with Social Security Administration for returning citizens to obtain Social Security cards. DMV representatives come in to the facilities and provide ID cards. Re-entry Programs Director, Scott Richeson can provide the specific numbers.

### **Overview of National Perspective**

Peggy Burke provided an overview of the national perspective. Ms. Burke advised the members additional information could be found by visiting [www.nationalparoleresourcecenter.org](http://www.nationalparoleresourcecenter.org). Ms. Burke reported the elimination of parole, 3-strikes laws, and mandatory minimums resulted in an increase in incarceration between 1978 and 2014. Many states have moved away from parole while others have continued the use of parole. Paroling authorities are still key decision makers in t states that have sentencing structures are governed by indeterminate sentences. Research has identified that recidivism can be reduced with evidence based intervention, empirically based risk and needs assessment tools and intrinsic motivation as a key to

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behavior change. Low risk populations can be identified where interventions will not have significant risk reduction potential and may even increase risk.

In 2011, as states refocused with a desire for fair and evenhanded punishment, a national study identified the consensus around best practices. The goal was to have dialog in determining good practices for paroling authorities while keeping public safety in mind. To achieve fair and evenhanded punishments it was determined that it was necessary to identify areas of reform, enhance basic capacities of Boards, expand responsibilities to include policy making, key input to Commission and look to the future. Lessons learned from the past and present identified the following needs to strengthen the future, balanced and strategic sentencing including fair and proportionate punishment, accountability, community safety, and wise use of resources.

The National Parole Resource Center has outlined best practices for how an effective parole board operates. Enhancing risk reduction impacts and strategic use of resources by parole, and basic capabilities of paroling authorities' responsibilities to include policymaking and effective collaboration with other state agencies will assist in broadening paroling authorities responsibilities in assessing the criminogenic needs of offenders.

Ms. Burke reported paroling authorities are making efforts to take of advantage of their position in the sentencing system, after the severity of the crime has been established and the limits of punishment set.

Secretary Stoney recognized the members of the Virginia Parole Board in attendance, Karen Brown, Chairman, Adrienne Bennett and Sherman Lea, board members.

Mr. Heaphy asked if there was a model for what the commission is considering. Response, Pennsylvania is a good example. A Sentencing Court imposes a sentence and the Parole Board reviews and deliberates any serious infractions that may have occurred within the past year. If the investigation uncovers any serious infractions, this will result in a no release decision.

Questions were asked regarding parole reform efforts and how to make them available in Virginia. Response, Indeterminate sentencing is being reassessed to determine basic underlying goals that are less costly and are not a serious threat to community being embraced as emerging best practices. The challenge is to develop a strategic approach to paroling authorities across the board.

Mr. Vassar asked if there have been any cost savings. Response, a balanced approach to sentencing and not using resources where they really are not needed is the general practice. There have been no specific studies, we are still learning from experiences. It is important to develop strategy and distribute resources to the appropriate people. The Robina study encompasses a lot and will provide valuable information.

Mr. Richardson asked if there are parole reforms that should be considered. He suggested parole board members being appointed by panel in addition to the gubernatorial appointment. Further, the parole board should not deny based on time served. He went on to advise risk assessments should be validated by sound research and should be transparent. Decision making tools should develop guidelines of presumptive release dates. Response, decisions should not depreciate the nature of the crime. Community safety must always be the primary concern. Parole is a privilege not a right.

**Overview of Victims Services**

Wendy Lohr-Hopp, Director of the Victim Services Unit, Virginia Department of Corrections, provided an overview of DOC's Victim Services Unit duties and responsibilities. She shared concerns and statements of crime victims. Victims have expressed frustration with the recent changes requiring new law offenders to be considered for parole. Victims state that any additional changes to parole consideration for existing new law offenders would betray the agreements and decisions of the court. Victims request that the Commission honor the decision of the court on existing cases and not allow new rules and laws to abandon the agreements made during prosecution and sentencing.

Emily Sattie, Victim Services Coordinator, Virginia Parole Board (VPB), provided an overview of VPB's Victim Services' Unit. She provided excerpts of letters from victims of crime as submitted to the VPB. At the request of victims and their families, Ms. Sattie requested the Commission consider the impact any new action will have on the population of those who have been victimized.

Mr. Richardson asked how many decisions do not involve victims. Ms. Lohr-Hopp advised she was not in possession of individual case information.

Ms. Jenkins asked if Ms. Lohr-Hopp or Ms. Sattie were aware how many staff were in place prior to 1995. Response, the Victim Services unit was not in place prior to 1995. Pennsylvania has a staff of 12-15 however; the majority of DOC's have a large number of staff to address victim needs.

Senator Marsden asked are we at a point where nobody should be released unless a victim is ok with it. If yes, that cannot be a determining factor. Ms. Sattie advised her commentary was not meant indicate only releasing someone unless the victim approved. The message she was attempting to convey was that the commission consider the impact its decisions will have on victims.

Secretary Stoney reported the preliminary report to the Governor was due November 2. The next meeting will be held November 18. Please consider for discussion at the next meeting that some items discussed by the commission do not pertain specifically to parole. Therefore, please be prepared to discuss changing the name of the Commission to Criminal Justice Reform.

**Presentations from Subcommittees**

Efficiencies and Fiscal Impact: Mr. Vassar reported that the Subcommittee on Efficiencies and Fiscal Impact has met three times. He advised the members that the subcommittee has made steady progress utilizing various avenues to address the subcommittee's charge. The subcommittee has determined with a fair consensus that there is much to consider but it will be difficult to reach consensus on all topics. Controversial elements of the report will be presented even though a consensus has not been reached. Following the commission's directives for points to consider discussing various aspect we are seeking precise language, more details, and better clarification. We are making progress and will be in a position to present our considerations at the next meeting.

Delegate Albo shared that he has served in the House of Delegates for 22 years. He reported the Efficiencies and Fiscal Impact meeting was interesting and there were many differences of opinion. He stated that the Commission on Parole Review is not a legislative body and therefore cannot overturn the abolition of parole. The 64 Republican members of the General Assembly will never reinstate parole. He further stated whether it is referred to as second look or eliminating parole, reinstatement will never happen. He reported he would be

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absent for the meeting on November 18 due to a scheduling conflict however, he expressed although there were differences of opinion, they were able to reach a consensus on the things that actually helped people (i.e., helping people stay out of prison and helping them when they get out of prison so they do not come back in). He advised the members of the Efficiencies and Fiscal Impact subcommittee that if they were able to compile a report consisting of the things that they were able to reach consensus on they would actually have report that would actually be read and would be helpful. A report that the General Assembly would consider taking into consideration.

**Best Practices for Reducing Recidivism:** Senator Marsden provided an update on behalf of the Subcommittee on Best Practices for Reducing Recidivism. He identified several recommendations for the Committee as they relate to recidivism and reentry.

**Appropriate Classification of Offenses:** Timothy Heaphy provided a summary of the work of the Subcommittee on the Appropriate Classification of Offenses. The subcommittee has met four times and reviewed the classification of violent crimes and various Code sections. The subcommittee is in the process of recommending considerations to the full Committee on November 18.

Mr. Wolf asked if any crimes been identified that could referred to as non-violent. Response, yes some have been identified

### **Public Comment**

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

- John Saunders shared his concern for truth-in-sentencing and spoke of the matter in which his wife brutally murdered their son. He asked that parole not be reestablished.
- Judy Choenly shared that her father, an Alexandria police officer, was killed while responding to a bank robbery. She continues to fight parole for those charged with his killing.
- Laurie Crawford spoke of her experience as a juvenile victim and asked that Committee to be mindful of how broken the system was before the abolishment of parole.
- Clarence Dunnavelt thanked the Governor and the Committee members for their work and shared that the criminal justice system needs to be reformed.
- Corey Burden, a victim witness, shared his wish that offenders serve the time given.
- Kina Davis shared supper for her loved one who is serving a life sentence. She posed the question of what the next steps should be for offenders who have done everything that was asked of them. She further shared that it is unconstitutional to sentence a juvenile with no opportunity for release.
- Raheem Mohammed stated that he benefited from discretionary parole. At the age of 17, he was sentenced to 29 years. After being denied parole for several years, he was granted discretionary parole after serving 12 years. He shared his appreciation for the work that the Committee is doing, but shared that criminal justice must also be added to the equation.

Secretary Stoney thanked everyone for their participation and informed everyone that the subcommittee presentations will be due at the next meeting on November 18, 2015.

A motion was made and properly moved and unanimously approved to adjourn at 4:20 PM.