

Commission on Parole Review

Virginia General Assembly Building – House Room C

September 28, 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
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
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
Thomas M. Wolf, Partner, LeClairRyan
Margaret Schultze, Commissioner, Virginia Department of Social Services
Sandra W. Brandt, Executive Director, STEP-UP Inc.
Jill Vogel, Member, Senate of Virginia
Alvin Edwards, Ph.D., Pastor, Mt. Zion First African Baptist Church
Mindy M. Stell, President, Virginia Victim Assistance Network

Members Not Present:

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

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Other Participants:

Tama S. Celi, Ph.D., Statistical Analysis & Forecast Unit Manager, Virginia Department of Corrections
Grady McLean, MPA, CSAC, Statewide Program Manager, Virginia Department of Corrections

Welcome/Opening Remarks

Secretary Stoney convened the meeting at 1:36 PM. Secretary Stoney reported that the Parole Review Commission web portal was accessible by visiting <http://vpb.virginia.gov/parole-commission/index.html> and provided an overview of the agenda. Secretary Stoney then turned the floor over to Secretary Moran.

Secretary Moran stated that he was pleased with the public's participation. He advised that the Department of Corrections (DOC) has invested a lot into re-entry and requested that the members pay close attention to the information provided and think of ways to improve and expand. Secretary Moran then turned the floor over to Chairman Earley.

Chairman Earley stated that he has received numerous phone calls from family and friends expressing their support for incarcerated loved ones.

Approval of August 27, 2015 Meeting Minutes

Secretary Stoney presented the August 27, 2015 minutes for review and approval. Upon a motion by Secretary Stoney and duly seconded, the members voted unanimously to approve the August 27, 2015 Parole Reform Commission meeting minutes as presented.

Overview of DOC Programs and Re-Entry

A. David Robinson, Chief of Corrections Operations, DOC, provided an overview of DOC's re-entry system. Topics presented included but were not limited to the offender population, the recidivism rate, the re-entry initiative, empirical risk and needs assessments, re-entry preparation through work, Step Down program outcomes, interagency collaborations, and ongoing challenges.

Mr. Heaphy asked about higher education and distance learning opportunities and the resistance regarding the use of state funds for obtaining an education while incarcerated. Mr. Robinson advised that the Darden program is currently being utilized at Dillwyn and the Virginia Correctional Center for Women. Liberty University is currently trying to obtain funding. DOC met with University of Virginia (UVA) to discuss expansion of program accessibility to include online courses.

Mr. Heaphy asked about the creation of secure pipelines to obtain training. Mr. Robinson advised that although DOC has the ability to offer online programs, he believes it would be through a secure portal. Mr. Robinson advised that DOC has no funding in the budget for higher education, but they are exploring options to expand such opportunities.

Secretary Stoney asked Mr. Robinson to provide an overview of President Obama's Pell Grant proposal. Mr. Robinson advised that Pell grants were used years ago. For many years, instructors would come into prisons and teach courses until it was abolished. Community colleges must apply, but have been assured that DOC will partner with them if the grant is received. DOC currently partners with seven or eight community colleges.

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Sheriff Stolle asked about Wallens Ridge and Red Onion as it pertains to restrictive housing. Mr. Robinson advised they are maximum security facilities which include restrictive housing units.

Sheriff Stolle if there has been any comparison regarding re-entry programs at any of the facilities. Tama Celi advised that only one level was reviewed and that DOC also looked at a step-down program. Ms. Celi also advised that information regarding re-entry is still in the early stages and will require more time to obtain results. Mr. Robinson advised there will be a three and a five year look back period; however, the programs did not begin until 2011-2012.

Mr. Wolf asked about the lack of resources and the effect on program availability. In addition, he asked if there is a way to quantify the lack of resources for cognitive programming and how can one determine the most cost effective way to do so. Mr. Robinson advised more funding is the key to being able to offer more cognitive programs to offer. Approximately four years ago, for every 128 offenders that went through a program that did not return, it was determined that a budget request of \$3.5 million was required and the savings was justified. Mr. Robinson explained diversion and detention centers are more costly because of the number of offenders that go through them. DOC currently has five diversion and detention centers that judges utilize to send non-violent offenders to. Currently, DOC is in the process of looking at diversion and detention centers to ensure that the dollars that we have we are getting the most effective results.

Secretary Stoney asked if DOC has private partners willing to hire returning citizens. Mr. Robinson advised that local Re-entry Councils identify organizations that hire returning citizens. Most Probation and Parole Districts work with employers in localities on hiring. Secretary Stoney asked if skills obtained while incarcerated enable returning citizens to obtain employment. Mr. Robinson advised that each Chief has contacts within their localities, work with Re-entry Councils, and is aware of employment needs in their communities.

Chairman Earley asked if all offenders go through 12-month re-entry programming. Mr. Robinson advised that it is DOC's goal that every offender go through re-entry; approximately 33-40% go through re-entry.

Chairman Earley asked which minimum security facility is within a 50 mile radius of Northern Virginia. Mr. Robinson advised Coffeewood. Chairman Earley asked where offenders are sent when Coffeewood is at capacity. Mr. Robinson advised Haynesville. Buckingham and Nottoway also accommodate when necessary.

Ms. Cooper asked the following questions: is COMPAS used based on historical data, are there specialized programs for women (is any of the programming trauma based and are the providers trauma certified), is sex offender housing due to living restriction laws? Mr. McLean of DOC advised that the COMPAS information is based on historical data and is validated by Northpointe. Ms. Cooper requested copies of the scoring sheets to be able to review the questions that offenders have to answer. Mr. McLean advised that an assessment will be available in early spring to identify the needs of women beyond the current assessment. Mr. Robinson advised that all facilities are staffed with well qualified mental health professionals and groups are available to offenders to address trauma. Mr. Robinson advised that individuals identified as sexual offenders create concerns in the community; therefore, making it difficult to determine where an individual can reside.

Sheriff Stolle commented that localities are experiencing difficulty obtaining bonds. Mr. Robinson advised the bonds are issued through a federal program and the bond program is an employer incentive to hire at-risk

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employees. *The bond protects the employer in case of any loss of money or property due to employee dishonesty up to \$5,000. It is like a "guarantee" to the employer that the person hired will be an honest worker.* Mr. Robinson reported that DOC has issued 14,000 letters and 117 bonds have been accepted.

Ms. Arnall reported that there are instances of returning citizens who have completed highly-qualified vocational training and were still unable to obtain employment. Ms. Arnall stated that job placement opportunities are not working well in the localities. She encourages forming relationships with local business. She stated that the Governor banned the box and maybe we could go one step further and require states that desire to do business with Virginia, to ban the box also. This would not mean an employer must hire; the requirement would be to interview only.

Overview of Local Re-Entry

DeVon Simmons, Esq., Re-Entry Program Coordinator, Office of the Attorney General (OAG), provided a brief overview of the future direction in re-entry. Mr. Simmons' presentation included but was not limited to the following topics: the definition of re-entry, the current landscape, transition from jail to community model, and initiatives and resources. Mr. Simmons reported that it currently costs \$75 per day to incarcerate the approximately 5,000 state responsible offenders. State responsible offenders have been charged with a felony offense, received a sentence of longer than a year and serve their entire incarceration in a local/regional jail; these offenders never enter a DOC facility during their term of incarceration. Currently, there are no state led re-entry programs. Each locality is solely responsible for their programs and how they operate. Norfolk is the only jurisdiction that has re-entry court. If an offender is successful, they graduate with a reduced sentence. Western Virginia Regional Jail (WVRJ) was built specifically to offer programming. WVRJ offers faith-based programming and partners with the local probation office to assist with transition plans. Virginia Peninsula Regional Jail has an in-house re-entry staff. Facilities that have in-house Re-entry Specialists are often more successful. Re-entry Specialists are able to go before Re-entry Council's to identify offenders and address specific criminogenic needs and connect people with the resources necessary to be successful. Albemarle/Charlottesville Regional Jail utilizes the Transition from Jail to the Community model (TJC). This model is the standard that would like to be implemented across the state. This model is adaptable and can be adjusted to meet the needs of jails. The TJC model has four main benefits: long term public safety, cost effectiveness, improved individual outcomes, and resource expansion. The framework of the system focuses on leadership, vision, organizational culture, collaborative structure and joint ownership, data driven understanding of local re-entry, targeted intervention strategies, self-evaluation and sustainability. The OAG is in the process of developing a web portal to have a centralized place where all information is available.

Senator Marsden asked how many people in local jails are being released prior to the completion of their sentence to work release or some other type of program. Mr. Simmons advised that he does not have specific numbers. However, on the local level, work release is determined by the sheriff and is a separate issue from re-entry.

Deputy Chapman asked how many local or regional jails have re-entry programs in comparison to those that do not. Mr. Simmons advised that the numbers have not been verified.

Sheriff Stolle asked what studies have been done on the recidivism rate. Mr. Simmons advised that a study was done in 2009 and he would be happy to follow-up with specific information about the study. He further shared that it is cheaper to keep offenders in jail than to put them on work release.

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Mr. Wolf asked if it is correct that low risk inmates have better outcomes if you they are not offered treatment. Mr. Simmons advised that risk is based on what will happen when they are released. Having a good support system is a factor.

Dr. Edwards asked if Re-entry Councils collaborate or assess community needs to ensure skills learned meet employment need. Mr. Simmons advised that each program is run independently and only a few have relationships with employers. Mr. Simmons stated he is only aware of one (Shenandoah Valley) that invites employers and informs them of why hiring ex-offenders is beneficial to their businesses.

Mr. Hodges spoke on the lack of funding. He applauded the local re-entry's efforts in this regard.

Secretary Stoney applauded Mr. Simmons and thanked him for his presentation.

Overview of Pre-Trial Services, Virginia Community Criminal Justice Association (VCCJA)

Hal Diggs, Colonial Community Corrections, provided a comprehensive overview of pre-trial services. The presentation included but was not limited to the Comprehensive Community Corrections Act/Pretrial Services Act, probation and pre-trial services. Mr. Diggs reported that there are 37 local probation agencies serving 127 localities. The average daily local probation cost in FY14 was \$1.90 per client. The return on investment for the Commonwealth has been calculated at \$6.2 million in payments to communities. He also reported that there are 31 pretrial agencies serving over 99 localities. In FY14, agencies completed more than 42,000 investigations. Research indicates that detaining low and moderate risk offenders increases the possibility for future criminal activity. Pretrial is efficient, cost effective and significantly less expensive than incarceration. The benefits of pretrial agencies include additional screenings to assist in early identification of mental health, substance abuse, and veteran status. In addition, pretrial reduces local and state cost for jail expansion. Mr. Diggs reported there is a large gap in pretrial agencies and the goal is to expand to underserved areas to evenly distribute caseloads and lessen the burden on local and regional jail populations.

Chairman Earley asked what tips the scales for someone to go on pre-trial versus general conditions of bond. Ms. Smith, OAR/Jefferson Area Community Corrections, advised that the determination is subjective and begins with the judge and the number of points calculated based on pre-trial risk assessment.

Delegate Albo reported pretrial services do a fantastic job saving the Commonwealth money through its investigations and assessments. Some people believe taxpayers should not be paying for services if someone is financially capable of paying through a bond company.

Ms. Jenkins asked for clarification regarding the statistical information provided on page 4 of the presentation. *"When held 2-3 days, low-risk defendants are almost 40% more likely to commit new crimes before trial than equivalent defendants held no more than 24 hours."* Ms. Jenkins also asked if the information was provided by the Arnold Foundation Study. Mr. Diggs advised that the information was provided by the Arnold Foundation and the report should be available on the Department of Criminal Justice Services (DCJS) website.

Ms. Jenkins asked if the study was Virginia-specific or national and how controlled was the study. Mr. Diggs advised it was a national report however; their 30-month study was specific to Virginia. The study

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encompassed thousands of individuals. When low-risk offenders are the ones that we are trying to release and are sitting for lengthy periods, this often results in an increase in the possibility for commission of a crime.

Ms. Cooper requested copies of the risk assessment sheets for review and for additional information regarding the information from the study found on pages 4-5 of the presentation. Clarification of the requested information was not available at the time; however, VCCJA staff will provide the link to the study for additional review.

As a follow-up, Deputy Chapman asked if pretrial offers additional services that bond services would not address, specifically catering to mental health and substance abuse needs. Mr. Diggs advised that pretrial services supervise all aspects of an offender to ensure they meet all requirements.

Secretary Stoney asked if they had reviewed any of the New York studies. Mr. Diggs advised that they had not.

Ms. Ecker reported that from an agency perspective, VCCJA is one of the most professional and hardworking groups that she has the pleasure of working with in state government. If you are able to pay a bond, you walk away with no supervision. Virginia has one of the most highly respected pretrial programs which offer a level of supervision that is nationally recognized. In addition, she will be happy to provide copies of the reports referenced by Mr. Diggs.

Chairman Earley stated that his observation is that government loves a client. For some, it makes sense. For others, it does not. He posed the question of what is it that we're using as criteria to place people in the program.

Ms. Ecker shared that pre-trial only deals with people in jails. Risk assessments are administered to determine who may be released.

Chairman Earley stated that it seems to vary across the board as to who gets it. For some it ends up that some stay in jail longer.

Mr. Heaphy stated that he agreed with Ms. Ecker's comments. He stated that the problem is that not enough resources are allocated to the agencies performing the work and that the Commission must also take into consideration that resource reallocation is important.

Sheriff Stolle asked how much of the DOC budget was cut last year. The Commonwealth's budget is growing and the DOC budget is decreasing. Deficits in budgets creates problems. Mr. Clarke advised that \$20 million were cut from DOC's budget last year.

Community-Based Treatments

Daniel Herr, J.D., Assistant Commissioner Department of Behavioral Health and Developmental Services (DBHDS), provided an overview of the Virginia Department of Behavioral Health and Developmental Services' perspective. The presentation included but was not limited to an overview of the Community Services Board

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(CSB) services, individuals referred for services, costs for behavioral health services, access to behavioral health services, and access to housing.

Sheriff Stolle thanked Mr. Herr for the department's work. He further stated that we need to deal with the recidivism rate of mental health offenders and those with CSA needs.

Ms. Cooper asked what triggers referrals as there is a disproportionate number of African Americans referred. She asked if any post service recidivism rate information was available. Mr. Herr answered that this was worth paying attention to and deferred to DOC and the Parole Board on what triggers referral.

Mr. Heaphy questioned the 70% incarcerated rate with substance abuse issues. Director Clarke answered that DOC's figure reflects 80% of those incarcerated having a history of substance abuse or substance abuse being included in the crime committed. Ms. Robinette agreed with Director Clarke.

Deputy Secretary Chapman questioned if 1,124 were referred to DBHDS? She further questioned who is served? Mr. Herr answered that we can assume that this is an under-reported number. Ms. Robinette stated that the majority of referrals are services. Deputy Secretary Chapman asked if some of those referred did not receive services for up to four months. Mr. Herr answered yes.

Sherriff Stolle asked about veterans. Director Clarke answered that the services and responses that DOC gets from CSB varies. Some refuse service to sex offenders. Some decide based on services sought. Ms. Robinette agreed that she too is aware of CSB's doing so.

Tom Steinhauser, Director of the Division of Benefits, Department of Social Services, provided a presentation on Public Assistance for Former Drug Felons. Topics included but were not limited to federal requirements for temporary assistance for needy families (TANF), work requirements, and the Personal Responsibility and Work Opportunity Reconciliation Act.

Secretary Stoney raised that fact that folks in the possession of substances cannot get TANF, but can get SNAP. Mr. Steinhauser responded that general funds are in the program.

Chairman Earley asked if the federal ban is where states can opt out. Mr. Steinhauser answered yes.

Secretary Stoney asked if murderers can receive TANF, to which Mr. Steinhauser answered yes.

Sheriff Stolle asked if \$128,000 is the state's contribution, to which Mr. Steinhauser confirmed. Sheriff Stolle asked if \$165,000 is needed, to which Mr. Steinhauser confirmed.

Ms. Cooper questioned the details of the legislation and asked what does it do? Mr. Steinhauser answered that victims of Code Section 18.2-250 may receive TANF.

Secretary Stoney thanked Mr. Steinhauser for his report.

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Updates from Subcommittees

Secretary Stoney advised that the Commission will meet one more time before the final report is due to the Governor. He asked for an update from each of the subcommittees.

Mr. Vassar reported that the Subcommittee on Efficiencies and Fiscal Impact met on September 28 to discuss its work plan. The subcommittee's next meeting is October 9.

Mr. Hodges reported that the Subcommittee on Best Practices for Reducing Recidivism will meet on October 5.

Ms. Brandt reported that the Subcommittee on Appropriate Classification of Offenses met on September 28.

Geriatric Population

Karen Brown, Chairman of the Virginia Parole Board, delivered a presentation. Topics included but were not limited to geriatric consideration, parole evaluation factors, and statistics on crimes committed by geriatric offenders, to name a few. Ms. Brown addressed truth-in-sentencing versus the parole system as they relate to the state responsible confined population.

Secretary Moran thanked Ms. Brown for her presentation. He stated that a recent posting about the geriatric population had prompted his request for Ms. Brown's presentation. Ms. Brown shared that the offenders in question are the absolute worst cases imaginable, involving multiple rape and/or murder victims.

Mr. Heaphy spoke of compassion release which is available in federal prisons. He asked if a similar provision is available. Ms. Brown answered that it is not available in that sense. If offenders are terminally ill, the Governor can issue a pardon.

Ms. Cooper asked what triggers availability? Ms. Brown answered those 60 years old and serving 10 years or those 65 years old serving five years. Ms. Cooper suggested everyone to review the static 99 scoring sheet.

Public Comment

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

- Maria Dee, a Juvenile Justice Advocate with the Virginia Coalition for the Fair Sentencing of Youth, shared her concern for Virginia's sentencing of juveniles.
- Peggy Williams expressed her concern for her son who is serving a juvenile sentence of life without parole.
- Kimberly Hoffman shared her concerns regarding her son who received a 30 year sentence at the age of 16.
- Dr. Lindsay Michie addressed Virginia's violent and non-violent offenses.
- Marcus Sandridge shared his concern for an offender who received 89 years with our parole.
- Mercedes Buck, shared her concern for her husband who received a 23 year sentence at the age of 18. She voiced her concerns for multiple issues faces by offenders.

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- Kina Davis and Benny Lavelle shared concern for a loved one who has been incarcerated since the age of 16 years. Ms. Davis expressed her interest in hearing from the Commission about old law inmates. She also questioned the next steps for offenders who have done everything that was required of them.
- Kay Brandon spoke of her husband who received a 142 year sentence at the age of 16. He has been denied parole 12 times.
- Monique Santiago shared that no child should be left in prison to die. She further spoke on the need to rehabilitate youth.
- Leonie May shared her concern for her son, who is a first time offender under truth-in-sentencing. She shared that the jury was not aware that parole was abolished and thus, her son received a 15 year sentence.
- Mrs. Barnes spoke of her husband receiving a 150 year sentence when he was 19 years old.
- Katherine Wilson shared her concern for her husband who is incarcerated.
- Christina Sanchez shared her concern for her husband who received a life without parole sentence at the age of 17.

Secretary Stoney thanked everyone for their participation and reminded everyone of the purpose of the Commission. He thanked the public for their attendance and also shared the importance of attendance at the General Assembly.

A motion was made and properly moved and unanimously approved to adjourn at 5:12 PM. The next meeting is scheduled for October 26, 2015 at 1:00 PM.