REPORT OF THE JOINT COMMITTEE FOR THE COURTS OF JUSTICE OF THE HOUSE AND SENATE STUDYING SENTENCING IN CRIMINAL CASES TO THE GENERAL ASSEMBLY OF VIRGINIA

HOUSE DOCUMENT NO. 26

COMMONWEALTH OF VIRGINIA
Richmond, Virginia
1980

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Report of the Joint Committee for the
Courts of Justice of the House and Senate
Studying Sentencing in Criminal Cases
To
The General Assembly of Virginia
Richmond, Virginia
January, 1980

To: The General Assembly of Virginia

In view of the increasing incidence of crime, the crowded dockets of the courts of the Commonwealth, particularly in urban areas, the alleged overcrowding of the penal institutions, recidivisim, and allegations of the inadequacy of Virginia system of probation and parole, the General Assembly, in its Session of 1978, agreed to House Joint Resolution No. 36, the text of which is as follows:

HOUSE JOINT RESOLUTION NO. 36

Requesting the Committees for Courts of Justice of the House of Delegates and of the Senate to study the problems of sentencing in criminal cases.

WHEREAS, fixing a just sentence of a defendant convicted of a crime is one of the more difficult tasks which face courts; and

WHEREAS, sentences imposed should be equitable, considering the offender, the nature of the offense, the conditions under which the offense was committed and the protection of society;a nd

WHEREAS, strong differences of opinion exist regarding the effectiveness of different types, methods and policies of sentencing and the proper use of probation and parole; and

WHEREAS, a systematic study should be made of all aspects of the problem, in order that our system of criminal justice should continue to improve; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Committees for Courts of Justice of the House of Delegates and of the Senate are requested to study all aspects of the problem of criminal sentencing, including, but not limited to, methods designed to (1) impose fair sentences, (2) equalize sentences imposed for the commission of similar crimes under similar circumstances, (3) examine alternatives to incarceration for certain offenses, (4) rehabilitate offenders, and (5) seek the safety, protection and well-being of society. The Committees are requested to study in depth (1) the problem of whether or not juries, in criminal cases which are tried by jury, should continue to impose sentences, and, if so, under what circumstances, (2) the use of indeterminate, flat-time, presumptive or other types of sentencing, (3) the possibility of providing to the sentencing authority policies and guidelines for sentencing and (4) the relationship of probation and parole to sentencing.

The study shall be conducted by a joint subcommittee, which shall be composed as follows: five members of the Committee for Courts of Justice of the House of Delegates, to be appointed by the Chairman thereof, and four members of the Committee for Courts of Justice of the Senate, to be appointed by the Chairman thereof. In addition, there shall be appointed seven advisory members of the subcommittee, who shall have no vote, to be selected as follows: two circuit court judges, one attorney for the Commonwealth and one person trained in psychiatry or psychology to be appointed by the Chairman of the Committee for Courts of Justice of the House of Delegates, one Justice of the Supreme Court, one attorney for the Commonwealth and one person trained in psychiatry or psychology to be appointed by the Chairman of the Committee for Courts of Justice of the Senate.

The Committee shall complete the study and report to the General Assembly no later than November one, nineteen hundred seventy-nine.

Under the mandate of the resolution, the Chairman of the House Committee for Courts of Justice, Delegate George E. Allen, Jr., appointed Delegates J. Samuel Glasscock, Suffolk, C.

Hardaway Marks, Hopewell, Theodore V. Morrison, Jr., Newport News, A. L. Philpott, Henry and Raymond R. Robrecht, Salem. Senator William F. Parkerson, Jr., Chairman of the Senate Committee for Courts of Justice appointed Senators Herbert H. Bateman, Newport News, Dudley J. Emick, Jr., Fincastle, Frederick T. Gray, Chesterfield and J. Harry Michael, Jr., Charlottesville. Appointed also pursuant to the resolution were the Honorable Alex M. Harman, Jr., Pulaski, Associate Justice of the Supreme Court of Virginia, Honorable John D. Hooker, Judge of the 21st Judicial Circuit, Honorable Ligon L. Jones, Judge of the 6th Judicial Circuit, Robert F. Horan, Esquire, Commonwealth's Attorney, Fairfax, Aubrey M. Davis, Esquire, Commonwealth's Attorney, Richmond, Sherman M. Master, M.D., Richmond and Thomas A. Williams, M.D., Norfolk, Psychiatrists.

At its organizational meeting, the Joint Subcommittee elected Delegate Glasscock as Chairman. Numerous public hearings were held as well as business meetings, during which the joint subcommittee fully explored the matters assigned to it, and it now makes its report.

The Clerks of the House of Delegates and of the Senate furnished support for the work of the Joint Subcommittee. The Division of Legislative Services also furnished support and counsel to the Joint Subcommittee.

We are also indebted to the Honorable James B. Wilkinson, Judge of the 13th Judicial Circuit, Robert G. Cabell, Jr., Esquire and Matthew N. Ott, Jr., of the Richmond defense bar, who, together with Aubrey M. Davis, Jr., Esquire, a member of the Subcommittee and a Commonwealth's Attorney, served as a special advisory committee on the desirability of establishing degrees of offenses.

The Joint Subcommittee also expresses its appreciation to Professor Stephen Saltzburg, of the University of Virginia School of Law, Honorable Pleasant C. Shields, Chairman of the Virginia Parole Board, Mr. Bowen Ault, Supervisory Probation Officer, United States District Court for the Eastern District of Virginia and Dr. Jack M. Kress, Professor, Graduate School of Criminal Justice, State University of New York, New York.

GENERAL STATEMENT

The Subcommittee has heard hours of testimony, collected a mass of material, and has carefully reviewed and distilled this testimony and materials. Its conclusion is that the system of sentencing criminals in Virginia, while not perfect, generally suits the needs of the Commonwealth, and needs no major adjustment.

The Subcommittee also finds that, despite allegations to the contrary, that no gross pattern of sentencing disparity exists within Virginia. While it is true that isolated cases of disparity do exist, such cases are rare, and can be dealt with through the use of the extraordinary judicial remedy or through executive clemency.

Local community standards do, and should, have a part in criminal sentencing. Such standards are reflected, in large part, by jury sentencing. To a lesser extent, they are reflected in judge sentencing, since the judge is a member of the community and also reflects its values. For instance, livestock theft commands an importance in rural areas that the urban juror may not understand. Citizen tolerance of the drug subculture differs from community to community. Aversion to or belief in the death penalty varies from place to place. As long as human beings administer justice to other human beings, complete uniformity is neither achieveable, or, indeed desirable.

This report will take up and deal with the matters considered by it, *seriatim* .

PRESUMPTIVE SENTENCING

Presumptive sentencing is generally bottomed on the theory that certainty of confinement is more important than severity or length thereof. Offenses would be broken down into various categories. For each, the legislature would fix a presumptive sentence to be imposed in the "normal" case. Criteria for aggravating or mitigating factors would be built into the statute. Sentencing hearings would be required to establish these factors. A sentencing court would not be permitted to deviate from the presumptive sentence beyond that allowed within the range fixed by the statute.

Senate Bill 180, introduced in the 1978 Session of the legislature and carried over for interim study in the 1979 Session, was such a proposal. It would have substantially altered sentencing procedures in the Commonwealth. In contrast with the present maximum and minimum sentencing system, the bill proposed maximum punishments in terms of imprisonment and fines, for all classes of crimes. The parole board would have been abolished, and a Sentencing Council would have been substituted; appointed by the Governor, subject to confirmation by the General Assembly. Its duty would be to draft guidelines for every crime classified in the Code and recommend a sentence within the range allowed by the bill. The Council would also make a list of mitigating and aggravating factors as to these offenses, which the trial judge would be required to take into account when sentencing. His discretion as to the weight to be accorded these factors would be set out by the council.

Parole, by the abolition of the parole board, was eliminated. Good time credit leading to release was substituted for parole.

While this bill failed endorsement by the General Assembly, the Joint Subcommittee deemed it advisable to take a close look at it again, and so spent considerable time studying the measure.

The Joint Subcommittee believes strongly in judicial discretion. It believes strongly in the exercise of discretion by a jury. Presumptive sentencing would largely eliminate this discretion. Judge discretion would be substituted by the discretion of the Sentencing Council. Jury discretion would be eliminated. Sentencing could be done with a slide rule or computer. Community standards would no longer be a factor in sentencing.

Each sentence which deviated from a presumptive sentence would be subject to review by the Supreme Court. Already burdened, that Court would be inundated.

The Joint Subcommittee finds that the present system of criminal sentencing is working well. It sees no need to scrap it for a new and untried experiment. So long as the General Assembly persists in its resolve to obtain and keep the best judges available, it will continue to endorse judicial discretion.

OTHER SENTENCING ALTERNATIVES

The Subcommittee also looked at the theories of indeterminate sentencing, flat-time sentencing, mandatory sentences and mandatory-minimum sentences. These proposals generally lend themselves to even less discretion than the presumptive sentencing measure, and for this reason, the Subcommittee cannot recommend any of them.

SENTENCING GUIDELINES

A great deal of work has been done in other jurisidictions in developing sentencing guidelines. Guidelines may be a useful tool that judges might utilize in enhancing fairness in sentencing, while discretion would still be retained. Essentially, these guidelines would provide information to the sentencing judge, whereby he could readily determine what other judges, and juries in the Commonwealth had determined what a proper punishment for a particular crime should be. Armed with that information, the sentencing judge would be able to use his discretion in tailoring the punishment to the individual defendant, based on community standards.

The Subcommittee finds this concept attractive. The problem is how to go about assimiliating this concept into our jurisprudence. Since the guidelines are intended to be a judicial tool, we feel that this tool should be fashioned by the judges. We therefore request that the Supreme Court and the Judicial Council of Virginia commence a study of the establishment of a system of voluntary sentencing guidelines, including an analysis of the cost of gathering and storing statistics on sentencing. A joint resolution requesting this study is attached as Appendix I of this report.

JUDGE VS. JURY SENTENCING

Each new Session of the General Assembly brings new proposals to abolish jury sentencing,

leaving the function of the jury to the determination of guilt or innocence. A number of states now have this practice, as do the federal courts. All the arguments for and against judge sentencing have been made in other reports, and need not again be set out here. An overwhelming majority of the joint subcommittee voted against any change in the present procedure of jury sentencing in jury cases.

BIFURCATED JURY TRIALS

It was proposed to the Joint Subcommittee that it endorse legislation requiring a two-stage trial in serious felony cases; that is, a guilt or innocence step, at which the rules of evidence would be strictly observed; followed with, if the verdict were guilty, a sentencing phase at which evidence in aggravation or mitigation of the sentence, including the past record of the defendent, if any, would be presented to the jury. This is now required in capital cases (Chapter 15, Article 4.1, § 19.2-264.2, et. seq.).

Considerable sentiment in favor of the proposal on the part of some of the members of the Joint Subcommittee was evident in the discussions of the proposal, in fact, the vote which was taken with less than a full Committee was affirmative for the proposition by a small majority. However, a majority of the full membership either opposed the proposal or are yet undecided. For that reason the Committee takes no position on bifurcated trials.

Moreover, it was felt that before a recommendation be made that the Commonwealth take the bifurcated trial route, a further effort should be made to enact an effective recidivist statute.

DEGREES OF OFFENSES

Upon a suggestion that too wide a spread exists in the punishment limits for certain crimes in the Class 2 (twenty years to life) and Class 3 (five to twenty years) felonies, and that the spread should be "fine-tuned", the Chairman, at the suggestion of the Subcommittee, appointed a study committee composed of the Honorable James B. Wilkinson, Judge of the 13th Judicial Circuit, Aubrey M. Davis, Jr., Esq., Commonwealth's Attorney for the City of Richmond, and a member of the Subcommittee, and Robert G. Cabell, Jr., Esq. and Matthew N. Ott, Jr., Esq., defense attorneys from the City of Richmond, to determine if need exists to reduce the punishment spread by establishing degrees thereof. This committee met, studied a computer printout of all Class 2 and 3 felonies, and those which are unclassified but which carry penalties within the Class 2 and 3 felony range. The conclusion of the Committee, which the Subcommittee endorses, is that any changes or narrowing of the limits heretofore imposed by the legislature, would serve as a dimunition of judge or jury discretion, which would not be desirable. This is in keeping generally with the overall conclusions of the Joint Subcommittee.

PAROLE

The Virginia Parole Board is a five member quasi-judicial body having exclusive jurisdiction over parole. Its stated goal is to release at the earliest possible time those eligible offenders deemed suitable for release, and whose release will be compatible with the welfare of the prisoner and of society.

The Parole Board interviews each prisoner eligible for parole, averaging between five and six thousand interviews a year. Interviews are held throughout the Commonwealth at thirty-two different sites. They are conducted by a team of two board members on a rotating basis. After the interview, each case is reviewed by another board member until a majority decision whether to grant parole or not is recorded.

In reaching a decision whether an individual should be released on parole, the board is guided by rules, and procedures and policies adopted by it pursuant to authority of statute.

Of particular concern to the Subcommittee is parole eligibility, and the method by which it is determined.

53-251 of the Code of Virginia sets out the criteria for parole eligibility. In the session of the General Assembly of 1979, the time required to be served before parole eligibility was raised in the case of repeat offenders, while the recidivist law (§ 53-296) was repealed.

The 1979 Session also produced House Bill 1731, which, when enacted became Chapter 415 of the Acts of Assembly. Known as the Early Release Bill, this measure was designed as a prison reform measure. It provided two innovations: (1) that "good time" credit be considered in the determination of eligibility for parole and (2) that each person commited be required to be discharged on parole when only six months remain to be served in his sentence.

Since this law became effective, it has been a source of confusion to the public, to the parole board and to the General Assembly. Conflicting interpretations of the law have emanated from the Office of the Attorney General.

The primary purpose of the measure was to keep a few strings on each prisoner upon release, on the theory that he would require guidance and counseling, of the kind which a parole officer would be qualified to offer, for the months following his release.

Allowance of the "good time" credit was designed as an incentive to the prisoner to behave himself while incarcerated. It also incidentially serves to keep the prison population down.

The mathematical calculations required of the Department of Corrections to maintain parole eligibility records for each prisoner is awesome.

Attached is a copy of the form that has been developed, and charts, used by the Department to determine month to month parole eligibility, as Appendix II.

There was strong sentiment on the part of some Subcommittee members to repeal the Early Release Law. Others felt that the purpose is good and the Department should be given more time to work out the problems which have developed, and to determine whether the benefits of the law outweigh its administrative difficulties. The Subcommittee voted on a motion to recommend repeal. The vote was tied. Therefore, the Joint Subcommittee makes no recommendation on the proposal, and leaves each legislative member free to propose or oppose any measure which may be introduced to carry out repeal of this law.

§ 53-214 of the Code authorizes the Director of Department of Corrections to restore "good time", if the prisoner's conduct justifies such action. This restoration is done routinely, testimony before the Subcommittee shows, and this complicates record-keeping enormously. The Joint Subcommittee finds that the loss of "good time" is designed for punishment, and if restored simply because the prisoner has been good for a short period of time, the punishment loses whatever effect it may have had. For this reason, the Subcommittee recommends that the law be amended to provide that "good time" loss cannot be restored. A bill to accomplish this purpose is attached as Appendix III.

Respectfully submitted,

J. Samuel Glasscock, Chairman

Dudley J. Emick, Jr., Vice-Chairman
*See Separate Statement

Herbert H. Bateman
*See Separate Statement

Aubrey M. Davis
*See Separate Statement

Frederick T. Gray

Alex M. Harman, Jr.

John D. Hooker

Robert F. Horan

Ligon L. Jones

C. Hardaway Marks

Sherman M. Master

J. Harry Michael, Jr.

Theodore V. Morrison, Jr.

A. L. Philpott

Raymond R. Robrecht

Thomas A. Williams

Separate Statement of Senator Dudley J. Emick, Jr.

I concur in the draft report with the exception of a recommendation to allow bifurcated trials in certain felony cases. This concept would be at the option of the defendant and limited initially to crimes which carry sentences in excess of twenty years.

Bifurcated trials in capital cases are permitted now by Virginia law and limited expansion of this concept initially appears to be an idea worth trying.

Dissenting Statement of Senator Herbert H. Bateman

Regrettably, I am unable to concur in certain aspects of the Joint Committee's report and recommendations. While I strongly agree in other regards, I must dissent from the Joint Committee report as it relates to sentencing by juries in criminal jury trials.

I have long advocated returning to the common law practice in criminal jury trials pursuant to which the judge imposes sentence after a finding of guilt by the jury. The Joint Committee report does not properly reflect the fact that Virginia is but one of six or seven states in which juries determine the sentence of the person convicted.

As has been frequently pointed out, juries under our law are not, except in special circumstances, allowed to know of a defendant's prior criminal record. Nor are juries routinely familiar with probation and parole, consecutive or concurrent sentencing, good time credit for persons convicted, and other matters which are inherently and obviously essential to an informed determination as to a just sentence. The Joint Committee report ignores this and implies that Virginia sentencing procedures cannot be improved upon.

It is not fair to Virginia jurors that they be required to impose sentence when they are not allowed by Virginia law even if they ask for the information, to have information or instruction on the laws which vitally affect their ability to discharge their solemn duty as jurors. Citizens who have served on juries in my experience, without exception, believe that they should not be required to impose sentence because of the limitations the law imposes upon them and their right to know matters which are obviously inherently necessary to determining a just sentence.

Unlike a jury, the trial judge knows the law as to concurrent or consecutive sentencing. He knows the probation and parole laws and procedures and policies. The judge, unlike the jury, has available, prior to sentencing, an in-depth, pre-sentence report on the convicted defendant. This report includes his prior record of criminal convictions. The judge can mete out a proper and just sentence sentence on an informed basis where a jury must do so in legally imposed ignorance of essential facts.

I again urge that Virginia return to the common law practice of the judge imposing sentence following a finding of guilt by juries. At the very least, I urge as an alternative, that the law of Virginia be changed to provide for a bifurcated trial. In such a system the jury would first determine the question of guilt or innocence. Immediately following a dtermination of guilt, the same jury would hear appropriate evidence, receive appropriate instructions from the court, and then on an informed basis, determine what was a just and proper sentence for the person it has convicted. The Joint Committee report makes much of the jury as reflecting community standards and attitudes. I have no quarrel with this but where the jury is without knowledge of critically important information, its ability to accurately and fairly reflect community thinking is negated. The judge, as a member of the community, especially, and hopefully wisely chosen, is also able to reflect in his sentence the attitude and standards of the community in which he lives. The judge, unlike the jury, has the knowledge of critical importance concerning the law and the whole record of the convicted defendant to guide him in properly applying community standards and attitude.

Community standards and attitudes indeed should be applied but through the judge or, at least, through a bifurcated criminal jury trial system in order that they may be applied in light of all essential information.

Only if ignorance is superior to knowledge, can the present sentencing practices in criminal jury trials in Virginia be justified.

Dissenting Statement of Aubrey M. Davis, Jr.

I have read the draft of the report of our Joint Committee. I concur n the report except that I too recall some discussion about a bifurcated trial. However, I must admit I don't recall what the vote was.

In any event I would like to join Senator Herbert H. Bateman in his dissent from the report as it relates to sentencing by juries in criminal jury trials.

APPENDIX I

HOUSE JOINT RESOLUTION NO.....

Requesting the Supreme Court of Virginia and the Judicial Council to make a study of the feasibiiity of establishing sentencing guidelines for the use of the judges in the several judicial circuits.

WHEREAS, criminal sentencing in bench trials, is one of the more difficult aspects of criminal practice, requiring a high degree of wisdom and judgment on the part of the court; and

WHEREAS, the judge has need of all the information available to accurately fit the sentence imposed to the individual, taking into consideration the crime, the individual and the rights of the community; and

WHEREAS, systems of sentencing guidelines have been established in other states, so that a sentencing court would have all the available statistics as to what all other courts in the State have done with respect to various offenses, and be guided thereby; and

WHEREAS, a study should be made as to advisability and feasibility of establishing such a system in the Commonwealth of Virginia, including an analysis of the cost of gathering and storing statistics in sentencing; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Supreme Court of Virginia and the Judicial Council are requested to make a study and report on the advisability and feasibility of establishing a system of sentencing guidelines in Virginia. The Court and Council shall consider all relevant aspects of the problem, including the methods employed in other states and an analysis of the cost of gathering and storing statistics on sentencing. The Court and the Council are authorized to employ consultants to assist them in the study.

Appendix II

Commonwealth of Virginia

RECEIVED
OCT 18 1979
MANAGER, CLASSIFICATION AND RECORDS UNIT

OFFICE OF THE ATTORNEY GENERAL

MARSHALL COLEMAN
ATTORNEY GENERAL

900 Fidelity Building
830 East Main Street
RICHMOND, VIRGINIA 23219
804 786 6563

October 16, 1979

Mr. Joseph B. Hinchey, Jr., Manager
Classification and Records Unit
3117 West Clay Street
P. O. Box 26963
Richmond, Virginia 23261

Dear Mr. Hinchey:

This letter is written as a supplement to my letters to you of April 4, 1979, April 11, 1979, May 11, 1979, May 17, 1979, May 24, 1979, June 6, 1979, June 7, 1979, June 25, 1979, June 29, 1979, July 10, 1979, July 16, 1979, July 19, 1979, July 23, 1979, August 1, 1979, August 7, 1979, August 20, 1979, September 4, 1979, September 6, 1979, OCtober 3, 1979, October 4, 1979, October 12, 1979, and October 15, 1979, relating inter alia to House Bill 1731, relating to mandatory parole and eligibility for discretionary parole.

I am in receipt of correspondence from you of October 15, 1979, with attachments thereto, wherein methods for computation of discretionary parole and mandatory parole are set out. A copy of that correspondence is attached hereto. These methods have been revised so that inmates will not be given credit for good conduct which has not actually been earned. The methods set out are hereby approved and should be utilized immediately.

Very truly yours,

Linwood T. Wells, Jr.
Assistant Attorney General

3:6/57
Enclosures
cc: Honorable James E. Kulp
Honorable Guy W. Horsley
Honorable Alan Katz
Mr. Carlton B. Bolte
Mr. Robert M. Landon
Mr. C. S. Laushey
Mr. P. C. Shields
Ms. Jean Anderson

COMMONWEALTH of VIRGINIA

TERRELL DON HUTTO
DIRECTOR

Department of Corrections

P. O. BOX 26963
RICHMOND, VIRGINIA 23261
804/257-1900

October 15, 1979

Mr. Linwood T. Wells, Jr.
Assistant Attorney General
900 Fidelity Building
9th and Main Street
Richmond, Virginia 23219

Dear Mr. Wells:

Attached is a copy of the formula we have developed to be in accord with the recent opinion of the Attorney General on computing Mandatory Parole, Discretionary Parole and Good Time Release. In testing the formulas on numerous sentences, they have proven out and we are confident they will work in all cases so that no inmates time properly figured using these formulas will be released giving credit for any good time not earned.

Also attached is a chart for using standardized periods for the purposes of being able to show non-credit for periods when good time should not be credited.

Should there be questions or if we need to change the attached, please let me know as soon as possible. The only item not taken into consideration is adjusted discharge dates which we can easily include, but which I shall discuss with you separately.

Very truly yours,

Joseph B. Hinchey, Jr., Manager
Classification and Records Unit

JBH/vm

cc: Mr. R. M. Landon

TIME TO DISCRETIONARY PAROLE

$$20\left[(\text{SENTENCE} + \text{LOST GOODTIME} + \text{UNEARNED GOODTIME} - \text{JUDICIAL GOODTIME})(\text{CONSTANT})\right] + \left\{(\text{SENTENCE} + \text{LOST GOODTIME} + \text{UNEARNED GOODTIME} - \text{JUDICIAL GOODTIME}) - 10\left[(\text{SENTENCE} + \text{LOST GOODTIME} + \text{UNEARNED GOODTIME} - \text{JUDICIAL GOODTIME})(\text{CONSTANT})\right](\text{FRACTION})\right\} - 20\left[(\text{SENTENCE} + \text{LOST GOODTIME} + \text{UNEARNED GOODTIME} - \text{JUDICIAL GOODTIME})(\text{CONSTANT})\right] - \text{EXTRAORDINARY GOODTIME} = \text{TIME TO PAROLE ELIGIBILITY}$$

Where the SENTENCE is expressed in days, the term $\left[(\text{SENTENCE} + \text{LOST GOODTIME} + \text{UNEARNED GOODTIME} - \text{JUDICIAL GOODTIME})(\text{CONSTANT})\right]$ is rounded <u>down</u> to a whole number, the term $\left\{(\text{SENTENCE} + \text{LOST GOODTIME} + \text{UNEARNED GOODTIME} - \text{JUDICIAL GOODTIME}) - 10\left[(\text{SENTENCE} + \text{LOST GOODTIME} + \text{UNEARNED GOODTIME} - \text{JUDICIAL GOODTIME})(\text{CONSTANT})\right](\text{FRACTION})\right\}$ is rounded <u>up</u> to a whole number <u>after</u> the first term has been rounded down, and the term $\left[(\text{SENTENCE} + \text{LOST GOODTIME} + \text{UNEARNED GOODTIME} - \text{JUDICIAL GOODTIME} - 10(\text{SENTENCE} + \text{LOST GOODTIME} + \text{UNEARNED GOODTIME} - \text{JUDICIAL GOODTIME})(\text{CONSTANT})(\text{FRACTION}) - 20(\text{SENTENCE} + \text{LOST GOODTIME} + \text{UNEARNED GOODTIME} - \text{JUDICIAL GOODTIME})(\text{CONSTANT})\right]$ is never allowed to be greater than 20. The terms FRACTION and CONSTANT depend on the felon term an inmate is serving., They are:

<u>FELON TERM</u>	<u>CONSTANT</u>	<u>FRACTION</u>
FIRST TERM FELON	1/90	1/4
SECOND TERN FELON	1/70	1/3
THIRD TERM FELON	1/50	1/2
FOURTH TERM FELON	3/110	3/4

FIFTH OR GREATER TERM FELONS ARE NOT ELIGIBLE FOR DISCRETIONARY PAROLE AND SHOULD NOT HAVE THE FORMULA APPLIED TO THEM.

TIME TO MANDATORY PAROLE

$$20\left[(\text{SENTENCE} + \text{LOST GOODTIME} + \text{UNEARNED GOODTIME} - \text{JUDICIAL GOODTIME} - 180)(\text{CONSTANT})\right] + \left\{(\text{SENTENCE} + \text{LOST GOODTIME} + \text{UNEARNED GOODTIME} - \text{JUDICIAL GOODTIME} - 180) - 10\left[(\text{SENTENCE} + \text{LOST GOODTIME} + \text{UNEARNED GOODTIME} - \text{JUDICIAL GOODTIME} - 180)(\text{CONSTANT})\right] - 20\left[(\text{SENTENCE} + \text{LOST GOODTIME} + \text{UNEARNED GOODTIME} - \text{JUDICIAL GOODTIME} - 180)(\text{CONSTANT})\right]\right\} - \text{EXTRAORDINARY GOODTIME} = \text{TIME TO MANDATORY PAROLE}$$

Where the sentence is expressed in days, the term $\left[(\text{SENTENCE} + \text{LOST GOODTIME} + \text{UNEARNED GOODTIME} - \text{JUDICIAL GOODTIME} - 180)(\text{CONSTANT})\right]$ is rounded down to a whole number, and the term $\left\{(\text{SENTENCE} + \text{LOST GOODTIME} + \text{UNEARNED GOODTIME} - \text{JUDICIAL GOODTIME} - 180) - 10\left[(\text{SENTENCE} + \text{LOST GOOD TIME} + \text{UNEARNED GOODTIME} - \text{JUDICIAL GOODTIME} - 180)(\text{CONSTANT})\right] - 20\left[(\text{SENTENCE} + \text{LOST GOODTIME} + \text{UNEARNED GOODTIME} - \text{JUDICIAL GOODTIME} - 180)(\text{CONSTANT})\right]\right\}$ is never allowed to be greater than 20. The CONSTANT for Mandatory Parole is 1/30. If the computed time to Mandatory Parole is less than 90 days, the time to Mandatory Parole is 90 days.

Discretionary Parole

(SENTENCE) (CONSTANT) = Periods to Serve
PERIODS = Periods to serve rounded down to a whole number

20 (PERIODS) = Unadjusted Time To Serve (UTS)
10 (PERIODS) = Statutory Good-Time (SGT)

(SENTENCE SGT) (FRACTION) = Unadjusted Total Time (UTT)

UTT-UTS = Time Adjustment (TA)
If TA $\leq$ 20, TA = TA
If TA $\geq$ 20, TA = 20

Extraodinary Goodtime = EGT

UTS + TA - EGT = Time to Discretionary Parole (TDP)

Mandatory Parole

The time requirement to Mandatory Parole may be calculated by the same process if the CONSTANT used is 1/30, the FRACTION is one (1), and an adjustment is made to the term SENTENCE to account for the six (6) month period the inmate will be on Mandatory Parole.

The Adjusted term SENTENCE (which is the court sentence plus goodtime lost and goodtime not earned, minus Judicial Good-Time) must have 180 days (six months) subtracted before the calculation is made.

The formula which has been presented would look like the following:

(SENTENCE - 180)(CONSTANT) = Periods to Serve
PERIODS = Periods to Serve rounded down to a whole number

20 (PERIODS) = Unadjusted Time To Serve (UTS)
10 (PERIODS) = Statutory Good-Time (SGT)

(SENTENCE - 180 - SGT)(FRACTION) = Unadjusted Total Time (UTT)

- but since FRACTION = 1, the equation becomes -

SENTENCE - 180 - SGT = UTT

UTT - UTS = Time Adjustment (TA)
If TA < 20, TA = TA
If TA ≥ 20, TA = 20

Extraordinary Good-Time = EGT

UTS + TA - EGT = Time to Mandatory Parole (TMP)
If TMP > 90, TMP = TMP
If TMP ≤ 90, TMP = 90

APPENDIX III

A BILL to amend and reenact § 53-214 of the Code of Virginia, which provides for forfeitures of good conduct allowance of prisoners under certain conditions.

Be it enacted by the General Assembly of Virginia:

1. That § 53-214 of the Code of Virginia is amended and reenacted as follows:

§ 53-214. Forfeiture and restoration of good conduct allowance.—Any jail prisoner or convict under the control of the Director who violates or who has violated any jail or prison rule or regulation shall forfeit such portion of his accumulated credit for good conduct as may be deemed proper by the Director. ~~The Director may, however, whenever he finds that the conduct of the prisoner justifies such action, restore any portion of the prisoner's forfeited good conduct allowance which was taken for any reason.~~ *No good conduct allowance which has been forfeited shall be restored.*