

**REPORT OF THE  
JOINT SUBCOMMITTEE TO STUDY**

**Financing Mechanisms  
For Jail Construction**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**HOUSE DOCUMENT NO. 58**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1993**

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FINANCING MECHANISMS FOR JAIL CONSTRUCTION**

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## EXECUTIVE SUMMARY

This report is submitted as directed by House Joint Resolution 148 of the 1992 General Assembly, which continued a study previously authorized by Senate Joint Resolution 203 of 1991.

The recommendations in this report are intended to maintain the commitment of the Commonwealth to encourage regional solutions to the problem of jail overcrowding. At the same time, the expectation of slower growth in state revenues requires that the General Assembly adjust the manner of approving and paying for projects.

The time has passed when the Commonwealth could approve any jail project and provide capital cost reimbursement without limit. In today's fiscal environment, no project should be approved which cannot pass muster as an efficiently and economically designed and operated facility. Equally important, localities and regions must develop community corrections plans to provide a range of alternative sanctions. No jail construction project should be approved which is not an integral part of such a plan.

In short, jail construction can no longer be planned in isolation of the broader needs of the criminal justice system to provide a range of alternative types of punishment. This report recommends that general funds to operate alternative sanctions should be approved by the Board of Corrections, in tandem with the request for construction assistance.

This report further recommends that the Commonwealth continue to provide 50 percent reimbursement for regional jail projects, but with certain restrictions, for three or more cities and/or counties (but not towns). At least three of the participating localities should already operate a jail. All other approved projects should receive 25 percent reimbursement. Minimum security projects are specifically included, and capital costs eligible for reimbursement are specified, in proposed legislation.

The Commonwealth should have the option of paying its share on either a lump sum basis, or over a period of time. Lump sum payments should include one half of the cost when the project is 50 percent complete and the other half when the project is finished. If the reimbursement is paid over time, the amount should consist of 50 percent of the capital costs, as approved by the Board of Corrections, as well as 50 percent of the financing costs, as approved by the Treasury Board. In this case, the Commonwealth would contribute to the cost of debt service based on the actual interest rate achieved on the bonds sold for the project.



**Report of the  
Joint Subcommittee to Study  
Financing Mechanisms for Jail Construction  
to  
The Governor and the General Assembly of Virginia  
Richmond, Virginia  
January, 1993**

**To: Honorable L. Douglas Wilder, Governor of Virginia  
and  
The General Assembly of Virginia**

**INTRODUCTION**

The Commonwealth and her localities face a very different fiscal environment in the 1990's than that which was experienced in the 1980's. As a result of basic, structural changes in the Virginia economy, state government anticipates slower growth in revenues for several years. On the other hand, demographic and other changes are driving state expenditures for medical assistance, corrections, and public schools. In short, Virginia faces a structural imbalance between slow growth in revenues and rising expenditures. Localities are experiencing similar fiscal pressures.

At the same time, the field of corrections is undergoing a critical reexamination at both the state and local level. Beginning with the Commission on Prison and Jail Overcrowding in 1989, the General Assembly has wrestled with the challenge of providing sufficient resources to incarcerate a growing prison and jail population.

Current forecasts suggest the adult state and local responsible offender populations will increase rapidly in the 1990's. The number of state responsible offenders is expected to grow 30 percent from June, 1992 to 1996. The local responsibility population, likewise, is expected to grow 25 percent during the same period.

Juvenile corrections will also be a major issue. After a decade of decline, the population of young Virginians age 13 - 17 is projected to increase 30 percent by the year 2005. The number of juvenile arrests for serious offenses is projected to increase 114 percent over the next decade. Violent crime committed by juveniles is a growing concern.

The challenge of responding to prison and jail population growth cannot be met entirely through construction of new facilities. Not only would this be unaffordable in the economic climate of the 1990's, but it would not necessarily provide the most effective punishment. A new approach is needed, which balances public safety with the actual ability of state and local government to pay for jails and prisons.

The thrust of this report is that localities should be encouraged to address these problems on a regional basis, and that sufficient jail cells must be provided for those offenders who pose a threat to society. At the same time, localities should be encouraged to build only the minimum number of cells needed, and to provide effective sanctions outside of jail, for those offenders who can be supervised safely.

## BACKGROUND

State support for construction of local jails was provided beginning in 1968, apparently modeled after similar statutes providing state support for juvenile facilities. The original enactment specified the Commonwealth would reimburse localities or a combination of localities up to one half the cost of construction or enlargement of a jail, not to exceed \$25,000 for any one project. This philosophy of providing one half the cost, up to a specified maximum, has been retained by the General Assembly ever since.

The State Board of Welfare and Institutions was charged with developing standards to implement the original statute. In 1970, the statute was amended to allow for reimbursement of up to one-half the cost of the project -- not to exceed \$25,000 for each participating locality.

In 1981, the General Assembly adopted amendments to the jail construction statutes which accomplished two purposes:

- First, authorization was established to provide state reimbursement for renovation as well as construction or enlargement projects in local jails; and,
- Second, a new schedule of reimbursement was enacted, providing maximum reimbursement thresholds for the amount each locality could receive based on the size of the facility in which work was being done.

Part of the intent of these amendments appears to have been promotion of multi-jurisdictional cooperation through regional jails.

In 1986, the General Assembly added new jail size thresholds, and in 1987 the reimbursement amounts for facilities of all sizes were doubled. The Appropriation Act in 1988 created a joint subcommittee to study state support for construction and operation of jails and juvenile detention facilities.

### 1989 General Assembly Actions

Following the recommendations of that joint subcommittee, (see House Document 21 of 1989), the General Assembly substantially revised the jail construction statutes. Foremost among the changes was a provision that the state would pay fifty percent of the cost for construction, enlargement and renovation of regional jail facilities, while maximum reimbursement amounts for local jails were increased by fifty percent.

This change formalized, through monetary incentives, the Commonwealth's policy of promoting regional jails. For reimbursement purposes, a regional jail was defined as one which had three or more localities as participants.

Additionally, the Board and Department of Corrections were given substantially increased responsibility for developing construction project guidelines and generally improving the system of project review, needs assessment and priority setting. This change was precipitated by a subcommittee finding that the cost of operating local jails was greatly influenced by jail design. The subcommittee found that the Commonwealth, as the major provider of local jail operating funds, should have some control over the jail design.

The 1989 General Assembly actions served as a catalyst for regional jail planning efforts throughout the Commonwealth. However, as jail and prison populations increased, many questions remained, such as:

- How to foster programs to protect public safety while providing a less costly means of imposing criminal sanctions;
- How to control or reduce jail construction and operating costs;
- How to fix a patchwork system of state reimbursement for construction and operating costs; and,
- How to address the unique needs of Virginia's major urban areas, which included construction of additional jails rather than replacement jails, the size or scale of urban jail facilities and the difficulty in finding regional jail partners.



Also left unanswered was the question of how the Commonwealth was to pay for these new regional jail construction cost obligations. (Currently, the state share of construction costs for regional jails which will have to be included in the 1996 Appropriation Act is \$96.7 million.)

### 1990 General Assembly Actions

The 1990 Appropriation Act created a joint subcommittee to study state support for jail construction and related issues. The study was to give special consideration to the appropriate level of state support for large urban jail facilities, the number of participating localities which should be required to establish regional jails, and the procedures and timing for the disbursement of state funds for these facilities. (This study language was contained in Chapter 972, Acts of Assembly 1990, Item 629, Paragraph G, at page 224.)

In the 1990-92 biennium, the Commonwealth was faced with general fund revenue shortfalls and budget gaps totaling over \$2.3 billion. The energies of the 1991 and 1992 sessions of the General Assembly were largely focused on closing that gap through a combination of spending reductions, fund transfers, and other actions. As a result, several of the issues to be addressed in the original 1990 study were not resolved.

### 1991 General Assembly Actions

The 1991 General Assembly, however, did adopt several measures to improve the system. The first was a requirement that regional jail contracts between localities be based on a 30-year contract period rather than a five-year period. Also, a number of recommendations were adopted to strengthen the regulations of the Board of Corrections regarding approval of jail facilities. These new requirements included use of:

- A standard population forecasting model to measure the actual and potential impact of alternative sanctions in determining construction needs and subsequently the amount approved for reimbursement;
- Projected inmate-to-staff ratios and operating costs to evaluate the efficiency of jail construction plans; and,
- Revisions in construction standards to encourage construction of less costly minimum and medium security facilities, where appropriate.

Finally, the 1991 General Assembly recognized the question left unanswered by previous studies regarding the Commonwealth's financial obligation for regional jail construction, and responded by creating this joint subcommittee.

### AUTHORITY FOR THE STUDY

The 1991 General Assembly adopted Senate Joint Resolution no. 203, which created a joint subcommittee to study alternative financing mechanisms for jail site acquisition, construction, renovation and furnishing costs. The study was to examine the feasibility of debt issuance, payment methods for debt amortization, and other related financing issues.

The joint subcommittee consisted of two members of the Senate appointed by the Senate Committee on Privileges and Elections; three members of the House of Delegates appointed by the Speaker of the House of Delegates; one member of the Virginia Association of Counties appointed by the Senate Committee on Privileges and Elections; and, one member of the Virginia Municipal League appointed by the Speaker of the House. The Secretary of Finance was requested to serve ex-officio.

Upon the recommendation of the Joint Subcommittee, the 1992 General Assembly adopted House Joint Resolution 148, which continued the study for another year (See Appendix A). HJR 148 recognized the importance of the availability of mechanisms for long-term financing of jail construction. However, given the financial situation facing the Commonwealth at that time, the resolution called for further study, with final recommendations to be made to the 1993 General Assembly.

As a companion to this report, legislation will be introduced in the 1993 General Assembly to revise Sections 53.1-80 through 53.1-82, *Code of Virginia*. Accordingly, a number of bills proposed during the 1992 session which were carried over pending the completion of this study, are proposed to be passed by indefinitely. In addition, a new House Joint Resolution is proposed to continue the study until 1994. This resolution is intended to address the operating expenses of jails and the need to clarify the appropriate state and local responsibility for paying these expenses.

## ACTIVITIES OF THE JOINT SUBCOMMITTEE

The Joint Subcommittee met in Richmond on June 18, 1992, to organize itself and to review current information about jail crowding, population forecasts, alternative financing mechanisms, and carry-over legislation. On October 9, the subcommittee toured the new Western Tidewater Regional Jail in Suffolk and held a public hearing at the Suffolk City Council Chambers. Information about operating expenses of jails was also reviewed at that time. A final meeting was held on December 2 in Richmond to review a proposed draft of the report. During December, additional discussions were held with the Virginia Municipal League, Virginia Association of Counties, and affected local government officials, prior to finalizing this report.

### Acknowledgments

The Joint Subcommittee would like to acknowledge the assistance of Secretary of Finance Paul W. Timmreck in the conduct of this study, along with Deputy State Treasurer Ronald L. Tillett and Director of Debt Management Susan Dewey. Bruce Haynes, Executive Director, and Jim Matthews of the State Compensation Board provided detailed information about state funding for jail operations, and the budget directors of several jurisdictions completed detailed surveys to identify the total operating costs of the 14 largest jails in Virginia. Their efforts are very much appreciated. Also, the assistance of the Virginia Municipal League and Virginia Association of Counties in reviewing the initial drafts of this report is gratefully acknowledged.

## A RANGE OF ALTERNATIVE SANCTIONS

Virginia is at a crossroads. Prison and jail forecasts continue to increase, despite a decade of investment in new facilities which have more than doubled Virginia's bed capacity.

In the 1996-98 biennium, assuming business as usual, the General Assembly will have to appropriate over \$500 million in new state funds for the debt service and operating expenses for new prisons and jails. Given current demographic projections and crime trends, the demands on the general fund will only increase. Half a billion dollars in new state funds -- above and beyond the amounts needed for public education, higher education, Medicaid, and other essential state needs -- is not likely to materialize from economic growth under current projections.

Prison and jail beds are an expensive and limited resource. The Commonwealth must provide sufficient prisons and jails to protect society from the criminal element. However, for some offenders, punishment other than imprisonment may be equally or more effective in protecting public safety and reducing the likelihood of future criminal activity. Therefore, the joint subcommittee believes that the state and local governments must allocate limited resources carefully in order to maximize public safety.

Previous reports of this joint subcommittee have emphasized the need for the Commonwealth to encourage localities to expand alternative methods of punishment. For example, Senate Document 17 of 1991 stated: "Current jail construction and operating formulas are not designed to encourage the use of less expensive alternatives to incarceration. Policies can be developed to insure that jail construction is the option of last resort for dealing with increasing offender populations."

The key to achieving public support for such alternatives may be to recognize that punishment can include sanctions other than just incarceration. In fact, for some offenders, time in jail or prison may not be the most effective deterrent. If there is another, equally effective sanction available at lower cost, it should be encouraged. And, it should be factored into the needs assessment which is used to determine the number of jail beds required by a locality.

For example, the combination of electronic monitoring, work programs, intensive supervision, education, treatment, and regular drug testing, into a single regimen of punishment, may actually be "tougher" on non-violent offenders than having them sit idly in jail or prison.

This perspective requires that society define punishment more broadly than incarceration. Within the resources that the Commonwealth is able to spend for this purpose, what is the best mix of incarceration and other forms of punishment to protect society and reduce the likelihood of future crime? In asking this question, a basic assumption is made that for some offenders, time spent in prison is neither an appropriate punishment nor an effective sanction to deter future criminal behavior.

Accordingly, the joint subcommittee proposes that Virginia continue to provide sufficient prison and jail facilities for those who require this form of punishment to protect the public, and develop a more effective system of punishment for those who do not require incarceration.

## CONSOLIDATION OF EXISTING JAILS

While the joint subcommittee encourages localities to address these issues on a regional basis, the purpose of providing an additional financial incentives (in the form of 50 percent capital cost reimbursement) must be limited to consolidating existing jails into regional facilities or regional systems. In so doing, the highest priority must be to solve the most pressing jail overcrowding problems in our urban areas.

There are currently 94 jails in the 135 local jurisdictions in Virginia. It is not a priority at this time to encourage those localities with no jails to undertake new jail projects. That is of secondary importance in this period of limited growth in state revenues.

An analysis of regional differences in jail crowding was presented to the joint subcommittee on June 18. The data confirmed that the most serious crowding was found in the Eastern and Central Virginia regions (of the Department of Corrections).

On the other hand, the local responsibility jail population in the Northern and Western regions is actually lower than the combined capacities of the jails in each of those regions. In other words, in the Northern and Western regions, if state and federal prisoners were removed from the jails, the combined regional population would actually be lower than the overall jail capacity in each of those regions.

As of September 1, 1992, Virginia's 14 largest jails accounted for 63 percent of the total statewide jail population and 75 percent of the overcrowding. Cities in the Central and Eastern regions with high fiscal stress account for several of the largest of these jails, including Richmond, Norfolk, Portsmouth, Newport News, and Hampton. Two of these (Richmond and Norfolk) account for 25 percent of the overcrowding in Virginia's jails. A true regional approach must address this situation.

However, because there is no restriction on which jurisdictions may form a regional jail, some cities have been effectively shut out of the regional option. In some cases, suburban jurisdictions have created regional partnerships with jurisdictions that have no jail, thereby qualifying for 50 percent state reimbursement. The practical effect of permitting this unrestricted process of selecting regional partners is frequently not to solve the jail problem on a regional basis, but to assist some suburban jurisdictions in avoiding joint efforts with the central cities.

## VIRGINIA'S LARGE URBAN JAILS

| Locality                              | <u>As of September 1, 1992</u> |                    |                 | Expansion Plans                                   |
|---------------------------------------|--------------------------------|--------------------|-----------------|---|
|                                       | Population                     | Capacity           | % Over Capacity |   |
| Richmond                              | 1,369                          | 882                | 55%             | 100-bed expansion open                            |
| Norfolk                               | 1,303                          | 578                | 125%            | 213-bed expansion open<br>Regional jail approved  |
| Fairfax County                        | 926                            | 589                | 57%             | 850-bed expansion plan                            |
| Virginia Beach                        | 708                            | 563                | 26%             | Capacity increased from<br>268 to 563 as of 1/92  |
| Portsmouth                            | 457                            | 248                | 84%             | Regional jail approved                            |
| Newport News <sup>a</sup>             | 560                            | 368                | 52%             |   |
| Henrico County                        | 535                            | 178                | 201%            | Regional jail approved                            |
| Prince William -<br>County & Manassas | 521                            | 467                | 12%             | Part of A.P. Hill plan                            |
| Alexandria                            | 423                            | 343 <sup>b</sup>   | 23%             | Part of A.P. Hill plan                            |
| Chesapeake                            | 459                            | 211                | 118%            | Regional jail approved                            |
| Roanoke City                          | 453                            | 216                | 110%            |   |
| Arlington County                      | 378                            | 174                | 117%            | New jail opening - 2/93<br>Part of A.P. Hill plan |
| Chesterfield County                   | 340                            | 154                | 121%            | Regional jail approved                            |
| Hampton                               | <u>339</u>                     | <u>131</u>         | <u>159%</u>     |   |
| Total                                 | 8,771 <sup>c</sup>             | 5,102 <sup>d</sup> | 72%             |   |

<sup>a</sup> This includes the Newport News City Jail (Population=397, Capacity=248) and the Newport News Jail Farm (Population=163, Capacity=120)

<sup>b</sup> Includes 103 beds reserved for federal prisoners

<sup>c</sup> This total represents 63 percent of total jail population as of this date.

<sup>d</sup> This total represents 56 percent of total local jail capacity.

The Commonwealth should not encourage localities to avoid working out regional solutions with central cities in the name of regional cooperation. If the outlying jurisdictions need a small number of jail cells, they should be permitted to contract for those cells with a larger jail. However, no locality that does not currently have a jail should be counted towards the minimum of three jurisdictions required to form a regional jail.

This will not pose a hardship on the rural areas of Virginia. There is relatively little or no jail crowding in the rural areas of Virginia. Rural localities that do not currently have jails are not where the problem of jail crowding exists. If that situation changes in the future, it should be addressed at that time. Of course, where three or more rural localities desire to consolidate three or more of their smaller jails into one more efficient facility, the recommendations of the joint subcommittee would continue to support this effort with 50 percent reimbursement.





## A NEW FINANCING MECHANISM

In the 1990's, Virginia is expected to experience slower economic growth. As a result, financing large capital projects with cash will become more difficult. By 1996, when three large regional jail projects are expected to be complete, the current method of providing state reimbursement for jail construction would require an up-front commitment of over \$96 million. These projects are shown in the table below:

| <b>APPROVED JAIL CONSTRUCTION PROJECTS</b>             |   |                                   |                     |                        |
|--|---|-----------------------------------|---------------------|------------------------|
| <u>Project</u>   | <u>Net New<br/>Beds</u>   | <u>Capital Cost (\$ Millions)</u> |                     |                        |
|  |   | <u>Total</u>                      | <u>State Share</u>  | <u>EDC<sup>a</sup></u> |
| Riverside Regional<br>Jail Authority (d)               | 780   | \$66.7                            | \$33.3 <sup>b</sup> | 1/95                   |
| Henrico/New Kent<br>Goochland Regional Jail            | 985   | 68.5                              | 34.3 <sup>b</sup>   | 4/96                   |
| Hampton Roads<br>Regional Jail Authority (e)           | 1,008   | 58.3                              | 29.1 <sup>c</sup>   | NA                     |
| Martinsville, Henry County<br>and the Town of Ridgeway | NA  | NA                                | c                   | NA                     |
| Northern Neck Regional Jail (f)                        | NA  | NA                                | c                   | NA                     |
| <b>TOTAL</b>   | <b>2,773</b>  | <b>\$193.5</b>                    | <b>\$96.7</b>       |                        |
| <i>a</i>   | <i>EDC = estimated date of completion. NA indicates date not available.</i>   |                                   |                     |                        |
| <i>b</i>   | <i>Approved by the Board of Corrections</i>   |                                   |                     |                        |
| <i>c</i>   | <i>Approved in concept by Board of Corrections but without a specified amount for reimbursement at this time, pending further negotiations.</i> |                                   |                     |                        |
| <i>d</i>   | <i>Petersburg, Hopewell, and Colonial Heights, and Chesterfield, Prince George, Charles City, and Surry Counties</i>                            |                                   |                     |                        |
| <i>e</i>   | <i>Norfolk, Portsmouth, and Chesapeake</i>  |                                   |                     |                        |
| <i>f</i>   | <i>Westmoreland County, and Richmond County and the town of Warsaw</i>  |                                   |                     |                        |
| <i>NA</i>  | <i>Unknown at this time</i>   |                                   |                     |                        |

The typical means of financing large jail projects includes creation of a regional authority (or negotiation of a regional contract) by the participating localities. In the past, when the Commonwealth reimbursed the localities for 50 percent of the construction cost at the completion of the project, this infusion of cash permitted the localities to pay off short term debt and minimize their long term debt. However, the Commonwealth did not participate in the cost of financing, or debt service.

The difficulty of setting aside large amounts of general funds for lump-sum reimbursement upon project completion suggests that a new means of financing is needed. The basic approach outlined in this report recommends that the Commonwealth pay its share of the total capital cost over time, rather than all at once. For example, if bonds with a term of 20 years are sold by a regional authority, then the Commonwealth would contribute 50 percent of the debt service cost each year for 20 years.

Terms and conditions of state participation in financing should be negotiated by the Treasury Board. (Section 2.1-179.4, *Code of Virginia* requires that the Treasury Board approve all debt issued by the Commonwealth for which an appropriation is made for debt service.) In addition, upon the recommendation of the Treasury Board and the Department of Planning and Budget, the Commonwealth should have the option of paying its share on a one-time, lump sum basis. This may be appropriate in the case of some smaller projects. Overall, the commitment of the state to absorb 50 percent of the debt service on larger projects reduces the debt burden on the localities and improves the security for the bond issue, from the perspective of the bond rating agencies and the market.

The subcommittee heard from several localities, including Richmond and Lynchburg, that have been unsuccessful in their attempts to form regional jail partnerships. Jails in cities such as these, which can be of sufficient size to achieve economies of scale, can be operated as efficiently as smaller regional jails in rural areas. Data presented to the joint subcommittee demonstrated that regional jails are not necessarily any more efficient, in terms of lower operating cost per inmate, than large, single-jurisdiction jails. Still, the joint subcommittee did not wish to eliminate the special incentive for regional cooperation to address jail needs.

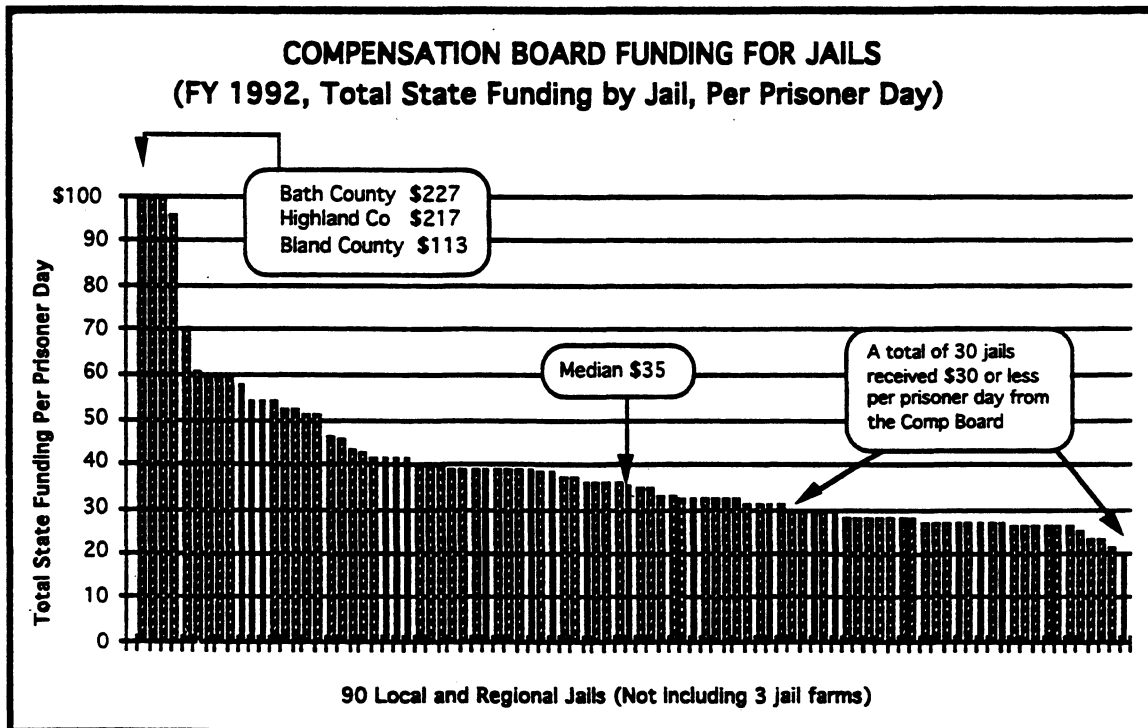
Accordingly, the joint subcommittee recommends a further step to assist central cities, by paying up to 25 percent of the cost of projects undertaken by one or two localities. The state share of the project cost should be paid on the same basis, with the Commonwealth having the option of paying over time or on a one-time, lump sum basis. The assumption is made that no project will be approved by the Board of Corrections that is not, by definition, an efficiently and economically designed and operated facility.

## OPERATING COST REIMBURSEMENT

The Commonwealth, through the State Compensation Board, pays a very large percentage of the operating costs of local jails. Given the long term budgetary impact of operating costs for jails, increased attention should be directed towards the system of reimbursement, to determine whether the system includes incentives for efficiency as well as use of alternative sanctions where appropriate.

An analysis of operating costs was presented to the joint subcommittee on October 9, 1992. In fiscal year 1992, the State Compensation Board provided over \$126.4 million (general funds) for operating expenses for 94 jails and another \$2.4 million for three jail farms. Total funding for all jail facilities exceeded \$129 million.

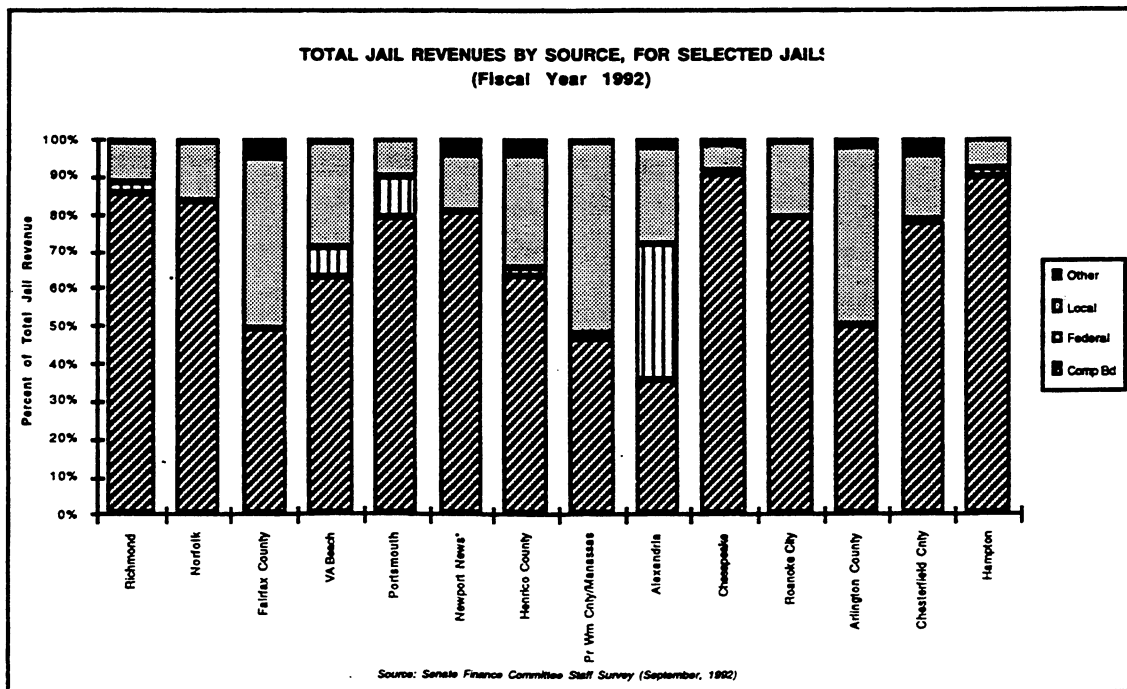
Total state funding per prisoner day varied from a high of \$227 in Bath County to a low of \$19.95 in Lynchburg, as shown in the chart below. These figures represent total Compensation Board funding to each jail for one year, divided by the total number of prisoner days for that jail. (This should not be confused with the \$8.00 or \$6.00 per diems, or the total operating cost of the jail, per prisoner day, from all fund sources.)



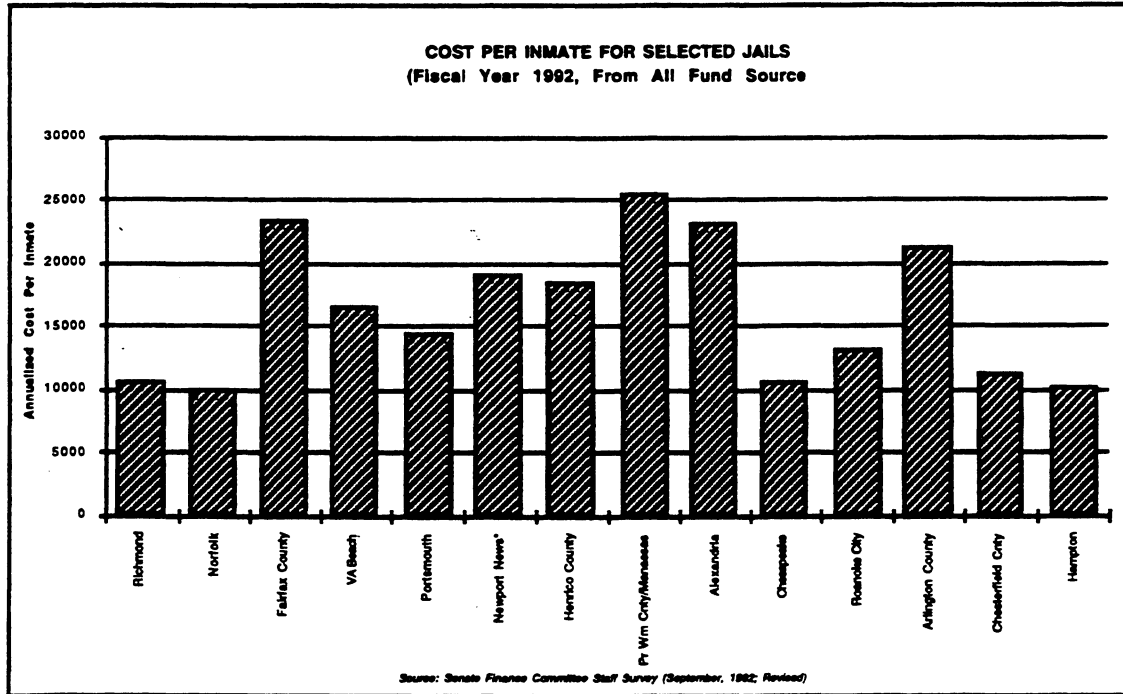
State Aid as a Percentage of Total Cost. Previous reports have concluded that, for the median jail, the Compensation Board funds represent about 86 percent of total operating costs. For the 14 largest jails, which account for 63 percent of the total jail population, the Compensation Board provided \$72 million, or about 56 percent of total state funding for jail operations.

Staff of the joint subcommittee surveyed local budget directors in the jurisdictions represented by the 14 largest jails, to determine total operating expenses from all sources. The results indicated that total costs for these 14 facilities totaled \$116.3 million. State revenues from the Compensation Board accounted for \$75.3 million (according to local records), or almost two-thirds of the total. Compensation Board estimates of state payments do not correspond exactly to local records of state revenues received.

For the 14 largest jails, state funding as a percentage of total expenditures ranged from a low of 36 percent in Alexandria to a high of 91 percent in Chesapeake. In general, state funds represented a lower percentage of total jail operating costs for the localities in Northern Virginia. On the other hand, state funding for the central cities in the Central and Eastern regions represented a higher percentage of operating costs. In Richmond and Norfolk, for example, state funds provide 86 and 84 percent of total expenditures, respectively. Total revenues by source for the 14 largest jails are shown in the chart below:



**Total Cost Per Inmate.** The survey of the 14 largest jails indicated that total operating costs, from all fund sources, ranged from a low of \$9,864 per prisoner per year in Norfolk, to a high of \$25,469 in the Prince William-Manassas Adult Detention Center.



**Disincentives in the Current System.** The current system of reimbursing localities for the operating costs of their local and regional jails should be reviewed by the General Assembly. The current system is complex, with a combination of per diems, formula funding, and actual cost expenditure reimbursement on a very detailed level.

The current system provides line item control of all expenditures (including supplies and equipment) and positions (including correctional officers, treatment and clerical positions, and cooks). The system requires extensive paperwork, and no incentives for improving efficiency. In fact, there is a disincentive for using alternative forms of punishment.

Accordingly, this report includes a proposed Joint Resolution to continue the joint subcommittee to review the current jail operating reimbursement system and make recommendations for improvement. This further study during 1993 should take into account the recommendations of the Joint Legislative Audit and Review Commission for rethinking the appropriate roles of the state and the localities in operating jails.

The JLARC report, entitled State-Local Relations and Service Responsibilities: A Framework for Change in the 1990's and Beyond, was presented in draft form to the Commission on December 14, 1992. The report indicated that the Commonwealth's involvement in paying for jails is very high compared to other states. In 1989, according to a survey conducted by the National Conference of State Legislatures, Virginia spent \$27 per capita for local corrections -- the highest level of any state. In fact, the next closest state (California) was far behind Virginia, at about \$9 per capita.

The JLARC report found that "...local support for jail operations has not typically been extensive. Yet, the State's extensive role in funding local jail operations does not correspond with responsibility for jail operations. Local governments are still responsible for the daily operation of the facilities. Given the extensive State role in funding the local jails' operating costs, assigning responsibility to the State for operating local jails may be appropriate."

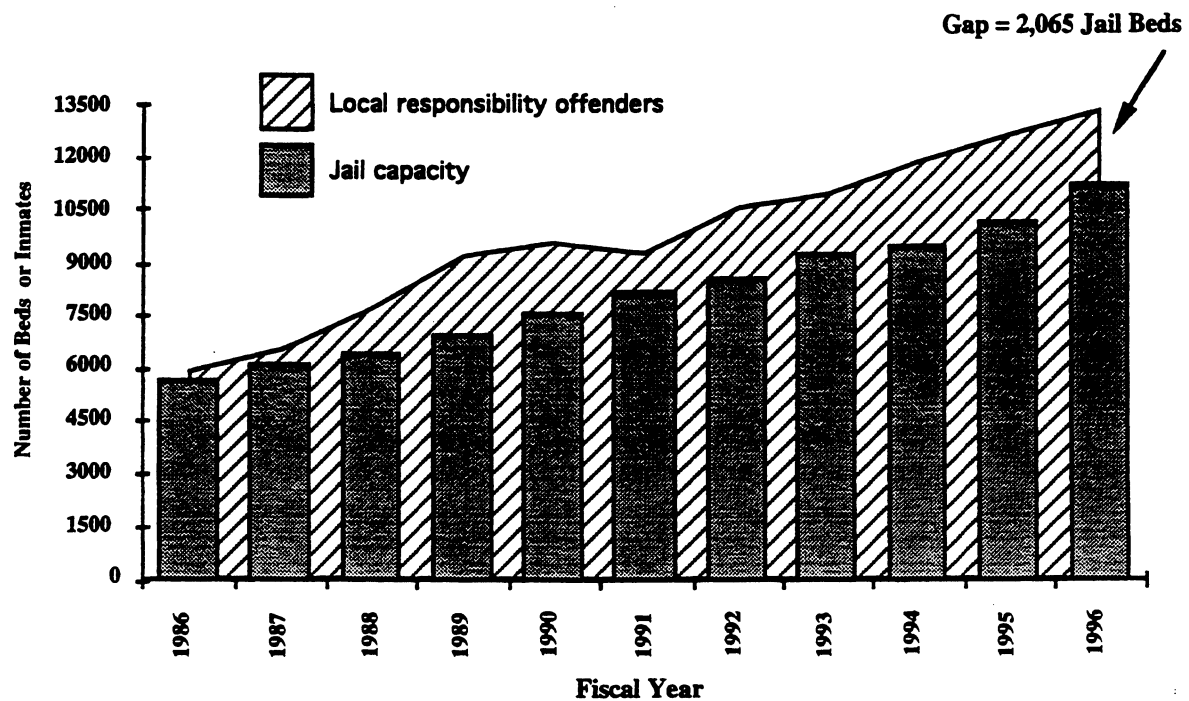
However, based on the survey research conducted for this study, the localities represented by the 14 largest jails contributed \$32.6 million in fiscal year 1992 to their local jail operations. Almost two-thirds of this amount was contributed by Fairfax County, Arlington County, Prince William County and the City of Alexandria. Therefore, any decision for the state to assume operations of local jails in Northern Virginia would have important fiscal consequences.

Nevertheless, the time has come to rethink the Commonwealth's current approach to reimbursing localities for the capital and operating costs of local jails. This report is intended to address capital cost reimbursement. A subsequent report to the 1994 General Assembly will address operating reimbursement.

## FINDINGS AND RECOMMENDATIONS

The local responsibility population of Virginia's jails is expected to increase from 10,604 in June, 1992, to 13,305 in June, 1996. This is an increase of 25 percent in the next four years. However, when the new jail projects already approved by the Board of Corrections are completed, the jails collectively will still be 2,065 beds short of the projected population. The gap, as shown in the chart below, will increase after 1996.

**LOCAL JAIL DEMAND AND CAPACITY**  
(Fiscal Years 1986 - 1996)



Additional facilities are needed. However, the resources available at the state and local level for jail construction and operation are not unlimited.

While sufficient space must be provided for those offenders who pose a threat to society, other offenders may be supervised appropriately and safely in alternative programs.

For these offenders, sanctions other than confinement in jail may be equally or more effective in protecting public safety, punishing the offender, and reducing the likelihood of future offenses.



The time has come for the Board of Corrections and localities to develop plans for essential correctional facilities in the context of systematic efforts to improve the operation of the justice system and develop a range of sanctions. Plans should provide maximum flexibility for the judiciary to tailor the sanctions to fit the crime and the offender.

At the same time, the Commonwealth should provide incentives to insure that sufficient funds are available for the range of sanctions needed at the local level.

### Objectives of the Approval Process

Virginia's 94 jails and three jail farms are not simply independent local facilities. They are a system of locally-operated, but to a large extent state-funded and state-regulated, facilities. The Commonwealth has an obligation to ensure that state funds for jail construction and operations are allocated and spent efficiently, and that the total number of jail beds bears a reasonable relationship to the current and projected statewide jail population.

Require Efficient and Economical Facilities. It is the intention of the joint subcommittee that no project be approved by the Board which cannot be operated on an efficient and economical basis, consistent with public safety.

- Jail construction projects should no longer be considered or approved, either in concept or in a fixed dollar amount, in isolation from the future operating costs which are incurred when a capital project is approved.
- Therefore, the Board of Corrections should be required by statute to insure that no project be approved until an assessment has been completed to determine the expected staffing requirements and annual operating budget for the facility. At minimum, no project should be approved for which the projected operating costs exceed the annual statewide median on a per diem basis, adjusted to reflect regional differences in personnel costs.

Require Alternative Means of Punishment. It is the intention of the joint subcommittee that the commitment made by the locality(ies) to ensure use of alternative means of punishment be documented before the Board approves a jail project, either in concept or in a fixed dollar amount.

- Jail construction projects should no longer be considered or approved in isolation from other methods of punishment available at the local or regional level.

- Therefore, the Board of Corrections should be required by statute to insure that no project be approved until a needs assessment has been presented which outlines clearly a plan to make the maximum responsible use, consistent with public safety, of alternative means of punishment, and that the projection of beds needed is calculated on that basis.

### Capital and Financing Cost Assistance

Beginning in 1989, the Commonwealth committed to providing up to 50 percent reimbursement upon completion for regional jail projects involving three or more localities. Traditionally, this reimbursement has been provided in a single lump sum payment upon completion of the project. However the expectation of slower revenue growth in the 1990's now requires a refinement of that payment method, in order to maintain the state's commitment for increasingly large jail construction projects.

A basic thrust of the following recommendations for jail construction assistance is that the state should pay up to 50 percent of the approved costs for regional projects and up to 25 percent for other jails projects. The state should have the option to pay its share over time, or in two lump sums (mid-way through and upon completion of the project). This approach allows the Commonwealth to maintain its commitment to assist localities with the cost of jail construction and permits localities or regional entities to manage financing arrangements for their share of jail project construction costs as they determine to be appropriate.

Recognizing the unique circumstances facing some jurisdictions that are, in effect, unable to join a regional arrangement, the state should also pay up to 25 percent of the cost for all other approved jail construction projects, on the same basis as above. At the same time the joint subcommittee should examine barriers to such regional arrangements and, should it find circumstances warrant, consider the need to mandate certain types of regional arrangements.

Recommendations: The joint subcommittee makes the following recommendations with regard to State assistance for the capital and financing cost of local and regional jails:

1. A local or regional jail facility should be approved by the Board of Corrections only if it is incorporated into a systematic plan for a range of alternative sanctions, and the jail facility should be approved, as an element of such a plan, only if it can be built and operated efficiently.

2. In order to accomplish this intent, the statutory requirements for jail project approval should be strengthened. Specifically, the following steps should be completed and incorporated into the proposals which are presented to and adopted by the Board of Corrections, and the requests for general funds made by the Board of Corrections to the Governor and the General Assembly should include the following:
  - a. A staffing requirements plan and six-year operating budget analysis for the proposed facility should be submitted to and adopted by the Board of Corrections as part of the facility plan. The analysis should be required to demonstrate how projected operating costs will not exceed the annual statewide median on a per diem basis, adjusted to reflect regional differences in personnel costs, as determined by the Board of Corrections.
  - b. A systematic local or regional (or community) corrections plan for a range of pre-trial detention and post-disposition punishment alternatives should be submitted to and adopted by the Board of Corrections. This plan is intended to provide an overall framework for the facility proposal. Prior to its adoption, the Board should provide the community corrections plan to the Department of Criminal Justice Services (DCJS), which should review and make such recommendations for modification or approval as it deems appropriate, to the Board of Corrections.
  - c. The community corrections plan should be based on a local (jurisdiction-specific) jail population forecast, which should be submitted by the Board of Corrections to the Department of Criminal Justice Services for its review and comment, consistent with the process outlined in 2.b. above.
  - d. The plan should be consistent with statewide guidelines and methods approved by the Board of Corrections for developing a range of alternatives and determining the effect of such alternatives on the need for jail bed space.
  - e. A schedule for implementing and funding a range of pre-trial and post-disposition alternatives should be included in the plan. The Board should request general funds for implementing the plan at the same time funds are requested for capital and financing cost assistance.
  - f. The planning cycle for local or regional jail construction projects seeking state assistance should be codified in a manner similar to the Commonwealth's capital outlay planning process.

3. The current statutory methods for creating regional jail agreements should be retained. These include regional authorities, regional boards, and 30-year regional contracts. However the 30-year regional contract should be revised to require a board comprised of at least one representative from the host locality and each contracting locality to advise the host locality on matters affecting regional jail operations.
4. The Commonwealth should continue to pay up to 50 percent of the capital cost of regional jail facilities, with certain restrictions, for regional jails or regional systems involving three or more cities and/or counties, at least three of which must currently be operating a jail.
  - a. Regional authorities created on or before February 1, 1993, involving three or more localities of which fewer than three were operating a jail should be grandfathered, or considered approved.
  - b. Towns should be excluded as one of the minimum of three required localities for a regional jail for state construction financing. Regional jails already approved in concept by the Board of Corrections, including those involving the towns of Warsaw and Ridgeway, and those projects involving a town for which an authority had been created on or before February 1, 1993, should be grandfathered, or considered as approved.
5. The Commonwealth should pay up to 25 percent for all approved jail projects involving one or two cities or counties.
6. The Commonwealth should have the discretion, based on the recommendation of the Treasury Board and the Department of Planning and Budget, to provide reimbursement on a lump sum basis for any project, with half paid upon certification that construction is 50 percent complete and the balance paid upon final completion of the facility. Or, the Commonwealth should have the discretion to provide reimbursement over time, under contractual agreements approved by the Treasury Board (as described in Recommendation 7).
7. Lump sum payments for jail construction assistance should continue to be appropriated to the Department of Corrections. The Commonwealth's aggregate share of jail capital and financial assistance, to be paid under contractual agreements with the Treasury Board in each biennium, should be specifically identified among the Treasury Board appropriation amounts.

8. The following modifications in the method of payment are recommended for jail projects in which the state share of project costs is paid over time:
- a. The Commonwealth (through the Treasury Board and with the approval of the Governor) should enter into a contractual agreement with the regional authority (or local government) to pay up to 50 percent of the capital cost as approved by the Board of Corrections and up to 50 percent of the financing cost as approved by the Treasury Board, over a specified period of time. The following definitions of terms are recommended:
    - (1) The contractual agreement should specify the terms, conditions, and structure of state participation in project financing;
    - (2) The term "capital costs" for all jail projects should be defined to include construction, land acquisition (if purchased exclusively for purpose of a jail), architectural and engineering fees, and fixed equipment, but not to include loose equipment or furnishings (except in minimum security facilities), or overhead (e.g. administrative salaries of local officials); and,
    - (3) The term "financing cost" shall mean the sum total of all costs incurred by the authority (or local government ) as are deemed reasonable and necessary by the Treasury Board to execute the financing of the state's share of capital costs and to fund such funds and accounts as the Treasury Board determines to be reasonable and necessary.
  - b. Qualified debt service amounts should be determined by the Treasury Board. However, the state's interest cost should be based on the coupon interest rates received by the jail authority (or local government) at the time the bonds for the project are sold. That is, the Commonwealth should pay debt service based on the actual interest rates achieved on the bonds.
9. Minimum security facilities (including pre-release, work release, and day reporting centers) should be specifically identified in the statute as qualifying for state reimbursement. The Board of Corrections should reexamine its construction standards for such facilities to assure that such facilities are built as efficiently as possible.

10. The Board of Corrections should promulgate regulations pursuant to its authority under Section 53.1-68, *Code of Virginia*, and its duties under Section 53.1-69, to require that a locality submit a needs assessment study and local action plan within one year after the Average Daily Population of the jail of that locality exceeds 100 percent of operational capacity for three consecutive months.

### Operating Cost Reimbursement

Capital and operating expenses should be considered together, since the operating expenses will constitute over 90 percent of the lifetime costs associated with the facility. Therefore, along with the steps outlined above to improve the capital reimbursement process, the joint subcommittee intends to address operating reimbursement in the coming year.

**Recommendations:** The joint subcommittee makes the following recommendations with respect to operating cost reimbursement:

1. By resolution, the joint subcommittee should be continued for the purpose of reviewing the jail operating reimbursement system. The joint subcommittee should complete its work and make recommendations to the 1994 General Assembly.
2. In the resolution, the joint subcommittee should be requested to consider the feasibility of consolidating all state operational assistance to localities for correctional services into a comprehensive community corrections program which would, at a minimum, encompass:
  - a. Developing minimum statewide operating and staffing standards and formulas to determine the appropriate operating cost per offender per diem;
  - b. Strengthening the Department of Corrections' certification process as an important means of assuring that every jail meets minimum operating standards;
  - c. Requiring an annual audit of all revenues and expenditures relative to the jail operation to assure financial accountability;
  - d. Decentralizing the management responsibility for expenditure decisions to locally-elected Sheriffs or regional jail boards;

- e. Allowing state funds not spent in a given fiscal year to roll over into the next year for certain designated expenses, such as treatment or alternative sanctions;
  - f. Developing a reasonable basis for dividing operational funding responsibility between the Commonwealth and the localities;
  - g. Enabling the Commonwealth to assume all operational costs for regional jail facilities; and
  - h. Increasing training for the judiciary in the use of alternative forms of punishment.
3. The joint subcommittee should be requested to consider further incentives for regional jail systems and barriers to regional cooperation, and to consider whether or not the General Assembly should add a population threshold for projects in large urban areas.
4. The joint subcommittee should also be requested to consider and, if appropriate, follow up on the recommendations of the Joint Legislative Audit and Review Commission study on State and Local Relations and Service Responsibilities.

## CONCLUSION

The findings and recommendations of this report are intended to maintain the commitment of the Commonwealth to encourage regional solutions to respond to the projected growth of the local responsibility offender population in the 1990's. At the same time, the expectation of slower growth in state revenues requires that the General Assembly adjust the manner of approving and paying for projects.

The priority for providing 50 percent reimbursement for the capital costs of regional facilities must be to consolidate existing jails. Accordingly, this incentive should be restricted to partnerships of three or more cities and/or counties, of which at least three currently operate a jail.

The time has passed when the Commonwealth could approve any jail project and provide capital cost reimbursement without limit. In today's fiscal environment, no project should be approved which cannot pass muster as an efficiently and economically designed facility. Equally important, localities and regions must develop broad-based community corrections plans to provide a range of alternative sanctions. No jail construction project should be approved which is not an integral part of such a plan. State support for capital and financing assistance should be conditioned upon approval of such plans.

Requests for operational funding for alternative sanctions should be adopted and presented by the Board of Corrections along with the requests for construction assistance. In short, jail construction can no longer be planned in isolation of the broader needs of the criminal justice system to provide a range of alternative types of punishment.

Further attention is needed to address the operating cost reimbursement system for jails in Virginia. A joint resolution is proposed to continue the joint subcommittee for this purpose.



**Respectfully Submitted,**

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# GENERAL ASSEMBLY OF VIRGINIA--1992 SESSION

## HOUSE JOINT RESOLUTION NO. 148

*Continuing the Joint Subcommittee to Study Financing Mechanisms for Jail Construction.*

Agreed to by the House of Delegates, February 9, 1992

Agreed to by the Senate, March 3, 1992

WHEREAS, the Joint Subcommittee to Study Financing Mechanisms for Jail Construction was authorized by the 1990 Session of the General Assembly as an outgrowth of the 1991 study of state financial support for construction and operation of local and regional adult jail facilities; and

WHEREAS, including federal, state, and local prisoners, the total population of Virginia's jails was 12,122 as of December 1991, which exceeds the statewide capacity by almost 4 percent; and

WHEREAS, including all currently planned projects, the statewide capacity will increase by 44 percent by 1996; and

WHEREAS, as a result of a recommendation by the Commission on Prison and Jail Overcrowding, statute provides that many prisoners who were formerly the State's responsibility now serve their sentences in local facilities; and

WHEREAS, Virginia's state responsibility inmate population grew by 94 percent from 1981 to 1991 and is projected to grow an additional 36 percent by 1996; and

WHEREAS, local inmate responsibility, although relieved somewhat by the reduction of state inmate population and other factors such as the decline in drug arrests, pre-trial diversion program expansion, and direct parole from jail, is still plagued by the doubling of the population of prisoners being housed in Virginia's jails; and

WHEREAS, the joint subcommittee continues to believe that a significant issue affecting both state and local government is the mechanisms which are available for the long-term financing of jail construction; and

WHEREAS, the joint subcommittee is currently reviewing a number of options which will provide alternative financing mechanisms for jail site acquisition, construction renovation, and furnishing costs; but, given the current financial situation in the Commonwealth, the subcommittee wishes to continue to evaluate such options prior to making any recommendations; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Joint Subcommittee to Study Financing Mechanisms for Jail Construction be continued. The membership of the joint subcommittee shall remain the same and any vacancies shall be filled in the manner as directed in the original resolution. Staff support will continue to be provided by the House Appropriations Committee and the Senate Finance Committee, and the Department of the Treasury shall continue to provide assistance as needed.

The joint subcommittee shall complete its work in time to make its recommendations to the Governor and the 1993 Session of the General Assembly as provided in the procedure of the Division of Legislative Automated Systems for the processing of legislative documents.

The indirect costs of this study are estimated to be \$8,255; the direct costs shall not exceed \$3,780.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of this study.