

DRAFT

Report of the Legislative Subcommittee

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Proposal A

BACKGROUND

The subcommittee was established in June 1994 to assist the legislative Commission Studying Sentencing and Parole Reform, which was continued from 1993 pursuant to House Joint Resolution 249 (1994). The Subcommittee met five times, considering such issues as legislative intent and goals in sentencing, sentencing guideline systems, correctional "good time" policies, parole policies, crime victim issues, average time served in Virginia prisons for specific offenses, and the prison bed space requirements of potential reforms. During the period, we met with officials of the Departments of Corrections and Criminal Justice Services, representatives of the Parole Board and the Office of the Attorney General, and the Director of the Pennsylvania Commission on Sentencing. We also received briefings on proposals being considered by the Governor's Commission on Parole Abolition and Sentencing Reform.

RECOMMENDATIONS

General Principles

- The legislature, by statute, should clearly articulate the Commonwealth's public policies on and goals of sentencing by defining the purposes of sentencing, the authorized types of sanctions and the range or limits of those sanctions. Public policy is the province of the legislative branch of government, as elected representatives of the citizenry. If the legislature does not articulate clearly our goals, sentencing and corrections will have no direction, and thus there will be no way to measure our success. The legislature therefore has a responsibility to

articulate clearly the Commonwealth's policies and goals on sentencing, which provide the framework within which courts and other public officials must operate. It is then the responsibility of the sentencing court to adapt the sentence to the relevant circumstances of the offense and offender, applying the goals and principles established by the legislature.

- **A Sentencing Guidelines Commission should be established to formulate new "sentencing guidelines" to provide guidance in the setting of sentences.** The new sentencing guidelines should:

- Be based on the policies articulated by the legislature;
- Be based on the historical time actually served for offenses, not historical time imposed, and be increased for violent and repeat offenders;
- Be voluntary, as with the current sentencing guidelines (i.e. be true "guidelines" not a mandate);
- Require a written justification for going beyond the recommended guideline sentence;
- Not be subject to appeal;
- Require that the guidelines "worksheet" for all felony cases be submitted to a central authority so that data reflecting actual sentences imposed may be analyzed;
- Have narrower ranges than under the current sentencing guidelines; and
- Include, as under current law, consideration of a defendant's prior criminal record, including felony convictions when the defendant was a juvenile.

- **The Sentencing Commission should be a legislative branch agency.** Under the current sentencing guidelines system, the judiciary establishes its own sentencing guidelines using historical data. A Sentencing Commission should not base its guidelines solely on historical data, but should make policy judgments about the extent to which historical sentences should be increased or decreased. Such decisions traditionally have been -- and should be -- a legislative decision, not a decision for the executive or judicial branches. Thus, the Sentencing Commission should be a legislative-branch entity, with membership representative of the judicial and executive branches of government and the public.

Truth in Sentencing

- **Offenders should serve full, mandatory sentences. The amount of time to be served should be unequivocally clear from the outset. Early release on parole should be abolished.** A convicted offender should serve the full mandatory sentence fixed according to the sentencing guidelines established by the Sentencing Commission. Early release on parole should be abolished. The mandatory time imposed should be the time served.
- **No "good time" credits; offenders will serve 100% of the mandatory sentence.** The beneficial effect of good time credits on correctional management appears to be arguable, and can only be considered in the context of the totality of sentencing policies and practices. Virginia's current system of good time credits is excessively generous, fails to achieve its originally intended purposes, and is perhaps the single most confounding factor in being able to predict the true duration of an imposed sentence. For these reasons, there is widespread agreement that the availability of good time credits should be severely reduced, or, as has been done in a number of other states, the practice should be abandoned altogether. Under our proposal "good time" will be abolished. No good time will be credited against the mandatory sentence; the offender will serve 100% of that sentence.

Improved Public Safety

- **Violent offenders should serve considerably longer sentences than is current practice.** The public's clear call for longer periods of imprisonment, and the longer "incapacitation effect" should be implemented. The Sentencing Commission should establish sentencing guidelines that provide for a sentence that is long enough to achieve the goals of incapacitation, deterrence, and retribution.
- **Mandatory and Extended Terms.** A recent, tragic case from California, involving the abduction and murder of 12 year old Polly Klaas, has often been cited as an example of the reason

parole reform is needed. The murderer was a man recently released from prison. In fact however, the man who abducted her was not "paroled" from prison; he was released under California's determinate sentencing laws. He had been denied parole repeatedly while incarcerated, and at the time of the offense was on a form of mandatory post-release supervision which California statutes refer to as one form of parole. If the California laws had allowed for an individualized judgment to be made that the offender was still dangerous, this tragic death might have been avoided. Clearly, he was still dangerous. There should have been a way to confine him longer -- much longer.

The sentence imposed by the judge is an "up front" determination of how much retribution is appropriate, how much deterrence is needed, and how long the offender must be incapacitated to keep the offender from committing additional crimes. As an "up front" judgment or prediction, however, -- one that many times is made years before a prisoner is released -- it may be wrong. A mechanism is also needed to control the offender who, after serving the time imposed under the sentencing guidelines, is still dangerous. At the time of sentencing, an offender should be given not only a mandatory minimum sentence, but also he should be sentenced to an extended, maximum term. Once he has served the mandatory sentence, a determination needs to be made whether the offender is sufficiently rehabilitated to be released or whether he still constitutes a danger to society. Clearly prescribed release criteria or other risk assessment tools should be used in this evaluation.

The offender who makes no serious attempt to be rehabilitated, or who is a continued danger to society, should continue to be restrained. A judicial type entity such as a Public Safety Commission should be created to determine whether the offender is sufficiently rehabilitated to be returned to society or whether he still poses a danger. To provide for administrative efficiencies and to save money, such a Commission should also be responsible for overseeing and phasing out the remnants of the old parole system. On the basis of case law, it appears that the benefits and limitations of the existing parole system must,

regrettably, remain available for those inmates currently serving time in the prison system.

- **Post-Release Supervision.** All released inmates should continue to receive some form of supervision for a period after release to assure that the judgment of the Commission furthers public safety goals.

Crime Victims

- **Bill of Rights for Crime Victims. Victim Impact Statements.** Much has been done over the past two decades to recognize the needs of crime victims, their families and friends. These efforts, however, have resulted in a patchwork series of laws, and it sometimes is difficult therefore to discern the rights of victims and the justice system's responsibilities to them. Statutes should be codified and recodified to expand the rights of victims of crime. Existing statutes providing for the preparation of victim impact statements should be amended to allow for the presentation of such information, upon request, in all felony convictions, not just convictions where a pre-sentence investigation is conducted.

Respectfully Submitted

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The Honorable Jay W. DeBoer
The Honorable Helen F. Fahey
The Honorable J. Randy Forbes
The Honorable Richard J. Holland
The Honorable Thomas M. Jackson, Jr.
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The Honorable Stephen D. Rosenthal
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**Report of the Alternative Sentences
Subcommittee**

Report of the Alternative Sentences Subcommittee

BACKGROUND

The Subcommittee was established in June 1994 to assist the legislative commission Studying Sentencing and Parole Reform, which was continued from 1993 pursuant to House Joint Resolution 249 (1994). The Subcommittee met four times, examining such issues as legislative intent and goals in sentencing, jury sentencing, institutional correctional programs, intermediate sentencing sanctions, juvenile delinquency prevention and state and local community-based corrections. During the period we met with officials from the Departments of Corrections and Criminal Justice Services, representatives of the Office of Attorney General, the Sheriffs of Richmond, Norfolk, Newport News, Henrico County and Charles City County, and local government juvenile delinquency prevention officials. We also received several briefings from staff of the Virginia State Crime Commission, the Senate Finance Committee and the House Appropriations Committee.

RECOMMENDATIONS

General Principles

- The General Assembly should establish, by statute, the purposes and goals of criminal sentencing by the courts of the Commonwealth. Those goals may include incapacitation, retribution and deterrence however guidance in applying these goals to actual sentencing should also be provided. A public statement on the purposes and goals of sentencing constitutes the first step in establishing truth and simplicity in sentencing by clearly informing the citizenry and the criminal justice system of the Commonwealth's policies. After the overall goals of sentencing are stated, the General Assembly has a responsibility to the judiciary, as an equal partner in government, to provide guidance on how these goals should be applied to the various offender groups. For example, the primary goal of sentencing those who steal may be retribution,

with restoration of the victim and restitution as integral parts of the sentencing policy.

- **Sentencing guidelines should include a range of punishment options for all non-violent offender groups.** In addition to the incarceration/ probation dichotomy currently employed, sentencing guidelines should identify additional punishment options that exist between the two extremes of imprisonment and regular supervised probation. Where employed, such intermediate sanctions protect public safety in a cost-effective manner while reducing the incidence of repeat offenders. Studies by the Rand Corporation indicate that offenders view tough intermediate sanction programs as being a more severe punishment than incarceration.
- **The range of intermediate sanctions should be expanded and made uniformly available to every judicial circuit.** The current number of intermediate sanctions available to the circuit courts are limited in type and range, appear to be disproportionately applied to certain offender groups and are not uniformly available. While circuit judges in Fairfax County may have a wide variety of intermediate sanctioning programs from which to choose, the only sentencing options available to judges in Carroll County may be imprisonment or regular probation supervision. The result is justice and public safety by geography. A comparison of felony offenders in boot camps, community diversion incentives programs, intensive probation supervision and regular probation supervision found marked similarities to certain incarcerated offender groups. In addition, the Criminal Justice Research Center at the Department of Criminal Justice Services, using the current sentencing guidelines scoring system, identified borderline offender groups that are currently incarcerated but may be appropriate candidates for other forms of punishment.

Community-based Corrections

- **The General Assembly should, by statute, establish a community-based corrections system.** A community-based corrections system would serve several purposes, which

include: increasing the number of punishment options available for sentencing and providing a means for returning inmates to free society in a graduated manner. The General Assembly has, over the past several years, developed many of the components required for such a system, however an overall statutory framework which identifies these components, operational responsibilities and policy direction are missing. The Joint Subcommittee on Jail Financing identified the need for this framework in its 1993 report. The system should consist of two elements: a statewide system for those offenders sentenced by the Circuit Court who are the responsibility of the State and a local system for those offenders sentenced by the General District Court who will remain the responsibility of local government. Both elements should identify the minimum level of services required, specify the targeted offender groups, and be state funded. The existing Community Diversion Incentive Act can be broadened to form the basis for a locally based community corrections system that could include public inebriate diversion, home incarceration/electronic monitoring, community service, community supervision, substance abuse testing and treatment, pre-release services and jail farms.

- **The General Assembly should create additional punishment options based on the boot camp/shock incarceration program model.** The boot camp model of shock incarceration has proven to be a successful sentencing tool for the Commonwealth. Corrections officials have indicated that requiring a period of intensive probation supervision following release and that strengthening probation condition requirements would enhance the program even further. However the boot camp program is designed for a specific offender group. Variations on this model have been successfully used for other offender groups in the state of Georgia for the past 15 years. The General Assembly should establish a diversion center incarceration program that emphasizes employment and restitution for certain non-violent felony offenders. A detention center incarceration program that emphasizes a structured program of regimented drill and public works for those non violent felony offenders whose age

or physical condition does not permit sentencing to the boot camp program should also be developed.

- **The General Assembly should authorize a pilot program in selected courts for day fines.** Day fines are truly a system in which " the punishment fits the crime" for those offenses suitable for punishment by fine. Day fines permit the amount of a fine to be tailored to an offenders ability to pay. This results in more equal justice and increased fine collection. As an example, a \$500 fine for an offender who earns \$100 per week is substantial while the same fine to an offender who earns \$1,000 each week is far less punishment. A day fine system would permit this disparate practice in sentencing to be addressed.

Pre-trial Services

- **The General Assembly should enact a Pre-Trial Services Act.** A pre-trial services act would authorize a range of programs and services to assist judicial officials in bail decisions regarding the risk to public safety and the assurance of appearance of persons detained while awaiting trial in the courts of the Commonwealth. Sheriffs have indicated that such programs could help in relieving serious crowding in our local jails, without compromising public safety.

Jury Sentencing

- **Jury sentencing should be retained in its present form however sentencing guidelines should be provided to the jury for their consideration.** Truth in sentencing means the jury should have substantially the same amount of information as that available to the judge. The General Assembly, in creating the bifurcated trial system directed that a defendant's prior criminal record should be made available to the jury. Sentencing guidelines are a representation of the Commonwealth's sentencing policies in terms of appropriate punishment for felony offenders. While a jury, just like a sentencing judge, is not bound by these guidelines, truth in sentencing requires that they be provided this information.

Juvenile Crime Strategy

- A juvenile crime strategy must be developed by the General Assembly. Crime by juveniles has reached epidemic proportions. The 1994 General Assembly enacted a major overhaul of sentencing practices for serious juvenile offenders, and substantial resources will be committed to implementing this change. However, the juvenile justice system in Virginia, perhaps more than the adult criminal justice system, is plagued by a lack of services to deal with those juvenile delinquents who, starting with school truancy, begin to engage in activities that if unchecked, may lead to serious juvenile crime. A strategy that targets services at this stage of delinquent behavior, using local ideas and direction but assisted with state funding, is required. Also of concern is the lack of definitive data on juvenile offenders. The General Assembly may wish to assign to an appropriate agency the responsibility for collecting, analyzing and reporting this data on a regular basis. A small investment in a juvenile crime strategy may be one of the most cost-effective policies ever adopted by the General Assembly.

Respectfully Submitted

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