

**REPORT OF THE  
COMMISSION ON**

# **SENTENCING AND PAROLE REFORM**

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



## **HOUSE DOCUMENT NO. 18**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1995**



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**Members of the  
Commission on Sentencing and Parole Reform  
HJR 249**

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## Preface

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House Joint Resolution 249, adopted by the 1994 General Assembly, continued the Commission on Sentencing and Parole Reform, a legislative study commission initially created by the General Assembly in 1993. The Commission's work in 1994 was carried out through the efforts of its two subcommittees.

On September 12, 1994, the full Commission met and adopted the reports and recommendations of the two subcommittees. On September 19, 1994 the General Assembly convened in Special Session to consider issues related to criminal sentencing and parole. The work of both the Commission on Sentencing and Parole Reform (HJR 249) and the Governor's Commission on Parole Abolition and Sentencing Reform provided the basis for actions taken during the September Special Session.

This report contains the recommendations of the Commission on Sentencing and Parole Reform (HJR 249) as well as a detailed summary of the actions taken by the 1994 Special Session II in response to the recommendations of the two Commissions which examined sentencing and parole issues.

The report is composed of three sections: a post session wrap up which summarizes the Commission's work, the final reports of the Commission's subcommittees, and a detailed description of the legislation approved in Special Session II. A list of appointments to the new Virginia Criminal Sentencing Commission is provided in the appendix.

The Commission wishes to acknowledge the cooperation and assistance provided by the Department of Criminal Justice Services and Dr. Richard P. Kern, the Department of Corrections and Mr. John T. Britton, and the Senate Finance Committee and Mr. Richard E. Hickman, Jr. in completing its work.

December 23, 1994

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**Wrap Up  
of  
Commission Work**

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# Commonwealth of Virginia

GENERAL ASSEMBLY  
RICHMOND

December 1, 1994

## Memorandum

**TO:** Members,  
General Assembly of Virginia

**FROM:** James F. Almand, Chairman  
Commission on Sentencing and Parole Reform

**SUBJECT:** Wrap Up of Commission Work

With the Special Session behind us, I want to take this opportunity to highlight the accomplishments of the Commission on Sentencing and Parole Reform (HJR 249). Although not spotlighted in the media, most of our recommendations survived their journey through the legislative mill and became part of HB 5001/SB 3001 which the Governor signed on October 11. I am particularly proud that every one of our recommendations dealing with intermediate sanctions and community corrections were enacted into law. Below is a brief description of those recommendations which you approved.

- **Sentencing Policy** - The Commission recommended that the legislature clearly articulate in statute the Commonwealth's public policies on, and the goals of, criminal sentencing. You agreed with this recommendation and the new statute sets forth the overall purposes of sentencing in the state's criminal courts, defines the goals of punishment, requires the wise use of resources, and establishes the "system's" responsibility to the citizenry.
- **Sentencing Commission** - The Commission noted that a sentencing commission will be making policy judgments about the extent to which historical sentences should be increased or decreased, a function which is not consistent with those responsibilities constitutionally assigned to the Executive Branch. We recommended that the sentencing commission be placed in the Legislative Branch.

You placed the new Virginia Criminal Sentencing Commission under the Supreme Court in the Judicial Branch since this group will have a role in *advising* the General Assembly on sentencing policy matters. Attached is a list of the appointees to this new Commission.

- **Risk-Assessment** - The Commission noted that a mechanism is needed to control the offender who, after serving the time imposed under the sentencing guidelines, is still dangerous. It recommended an extended term of confinement for such offenders, combined with use of risk assessment tools to determine whether the offender continues to pose a danger to society. While the extended term concept was not adopted, you shared this concern and directed the Sentencing Commission to develop, as part of its guidelines, "risk-assessment" measures which will be predictive of an offender's relative threat to public safety. Such measures will be used as part of the guidelines to contain the offender who poses a continuing danger to society as well as identifying those who can be appropriately punished using intermediate sanctions.

The Commission further recommended that the new sentencing guidelines include a range of punishment options for all non-violent offender groups. You supported these recommendations by requiring that the risk assessment mechanism described above also be used to identify those non-violent offenders (up to 25%) who can be punished with less costly community-based sanctions.

- **Intermediate Sanctions/Community Corrections** - The Commission recommended expanding the range of intermediate sanctions and making them uniformly available to every judicial circuit, creating a community-based corrections system across the state and establishing additional sentencing options, including more variations of the shock incarceration/boot camp program model and a pilot program of day fines. You enacted every Commission recommendation in this area.

Non-violent offenders who currently would be sentenced to prison are to be handled through methods that are just as severe, but less expensive than prison.

As previously noted a goal of punishing 25 percent of these offenders through intermediate sanctions was adopted. The new statute establishes a Statewide Community Corrections System for State-Responsible Offenders to provide every circuit court with a wider range of options for sentencing criminals. The existing Community Diversion Incentive Program is revamped into a new Comprehensive Community Corrections Act for Local-Responsible Offenders to provide community-based corrections services to every General District Court.

All community-based corrections programs, whether operated by the state or a local government will be required to include substance abuse testing and treatment.

A new work and restitution center program called the Diversion Center Incarceration Program was authorized for other non-violent offender groups, to allow them to work during the day at regular jobs, make restitution and perform community service while returning to a secure facility at night. These facilities, which we envision being available throughout the state, will be known as Diversion Centers.

A new shock incarceration program called the Detention Center Incarceration Program, similar to boot camps, was created for persons whose age or physical condition does not permit them to be sentenced to a boot camp. The programs will operate in a new minimum security facility known as a Detention Center.

- **Pre-trial Services** - The Commission recommended that a Pre-trial Services Act be enacted to authorize a range of programs and services that can assist judicial officials in making bail decisions regarding public safety risk and the court appearance of persons detained while awaiting trial. You adopted this recommendation.
- **Parole** - The Commission recommended that offenders serve full mandatory sentences, that the amount of time to be served be unequivocally clear from the outset and that early release on parole be abolished. You abolished parole for any offense committed after January 1, 1995 and established truth in sentencing.

Members,  
General Assembly of Virginia  
December 1, 1994  
Page Four

- **Violent Offenders** - The Commission recommended that violent offenders serve considerably longer sentences than is current practice. You approved new sentencing guidelines which increase, by up to 500 percent, the minimum time to be served by the most violent of offenders in cases of murder, sexual assault, and repeat drug offenders.
- **Emergency Clause** - Throughout the deliberations of the Commission, the members frequently said there was no reason why this legislation could not go into effect prior to January 1, 1995 so that the sentencing guidelines commission could get right to work and have the new guidelines in place by the beginning of the year. In the Conference Committee, I suggested an emergency clause which you enacted in the final legislation.

In closing, I want to thank all of you, my fellow General Assembly members, for your ideas, suggestions and assistance with the work of the Legislative Commission on Sentencing and Parole Reform. I also want to give particular thanks to the members of the Commission and our very talented General Assembly staff who gave so much of their time and energy to develop important proposals, many of which were enacted into law.

cc: Members,  
Commission on Sentencing and Parole Reform

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**Subcommittee Report**  
**Legislative and Financial Subcommittee**

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# Report of the Legislative & Financial Subcommittee

## 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

H. Lane Kneedler, Chairman  
The Honorable James F. Almand  
The Honorable William W. Davenport  
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.  
The Honorable J. Samuel Johnston, Jr.  
The Honorable Kenneth R. Melvin  
Byrl Phillips-Taylor  
Lynne T. Porfiri  
The Honorable Stephen D. Rosenthal  
Marty M. Tapscott  
The Honorable William C. Wampler, Jr.  
The Honorable Clifton A. Woodrum

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**Subcommittee Report**  
**Alternative Sentences Subcommittee**

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# 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

The Honorable Joseph V. Gartlan, Jr., Chairman  
Penelope S. Anderson  
The Honorable F. Bruce Bach  
The Honorable Robert S. Bloxom  
The Honorable John J. Davies, III  
The Honorable Mark L. Early  
John P. Fishwick, Jr.  
The Honorable J. Samuel Glasscock, Jr.  
The Honorable George F. Heilig, Jr.  
Salim Khalfani  
The Honorable Benjamin J. Lambert, III  
B. J. Roberts  
O. Randolph Rollins  
The Honorable Margaret P. Spencer



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**Special Session II Actions  
Virginia Legislative Issue Brief  
1994 Special Session II:  
Parole, Sentencing, Diversion and Funding**

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# VIRGINIA LEGISLATIVE ISSUE BRIEF

NUMBER 10

OCTOBER 1994

## 1994 Special Session II: Parole, Sentencing, Diversion, and Funding

### Part I: Parole, Sentencing, New Programs

MARY K. GEISEN  
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RESEARCH ASSOCIATE

For its second 1994 Special Session, the General Assembly convened on September 19 to consider Governor Allen's proposals to abolish parole, increase sentences for violent offenders, and establish new sentencing guidelines. At the end of the two-week session, which included numerous public hearings conducted by various House and Senate committees, the General Assembly, on September 30, passed House Bill 5001 and the identical Senate Bill 3001.

### Abolishing Parole and Good Conduct Allowances

#### Parole

House Bill 5001 and Senate Bill 3001 abolish parole and good conduct allowance for any person convicted of a felony committed on or after January 1, 1995. The bills also establish a new policy for noncapital felony sentencing, which (i) allows the court to impose an

additional term of between six months and three years, over and above the sentence of active incarceration, and (ii) requires the court to suspend the additional term and put the convicted felon on post-release supervision for the length of the suspended term. Post-release supervision is to be conducted in the same manner as supervised probation, including any terms and conditions the court may require. Failure to successfully complete post-release supervision or failure to comply with ordered terms and conditions are grounds for termination of the post-release term, and the felon may be recommitted to the correctional facility from which he was released. Procedures for termination and recommitment are the same as for revocation of probation.

#### Earned Sentence Credits

To replace the current good conduct allowance ("good time"), the legislation provides for earned sentence credits, which accumulate at the rate of a maximum of 4.5 days for every 30 days of a sentence served in a state correctional facility — or 15 percent of the sentence. Unlike good conduct allowances, which are calculated at the time an offender is incarcerated and, in effect, "come off the top" of his sentence, the new earned sentence credits are earned over the course of the sentence, and earning the credits requires adherence to the rules and regulations and participation in rehabilitation and educational programs. An inmate sentenced

to a state correctional facility, therefore, will serve a *minimum* of 85 percent of his sentence.

### Virginia Criminal Sentencing Commission

HB 5001/SB 3001 create the Virginia Criminal Sentencing Commission, an agency of the Supreme Court of Virginia. The commission will develop sentencing guidelines based on percentage increases of actual, historical time-served data from the time period 1988 through 1992. After the initial adoption of the sentencing guidelines, the commission will recommend in annual reports any necessary modifications. In addition to the establishment of discretionary guidelines, the commission is charged with:

1. Developing an offender risk-assessment instrument to predict the relative risk of a felon becoming a threat to public safety;
2. Applying the risk-assessment instrument to determine the feasibility of sentencing 25 percent of nonviolent offenders to alternative sanctions;
3. Incorporating 25 percent goal into the sentencing guidelines;
4. Monitoring and maintaining a database on sentencing practices and the use of the guidelines;
5. Monitoring felony sentence lengths, crime trends, correctional facility population trends, and correctional resources and

## Table 1. Violent Felony Offenses

§ 18.2-31	Capital murder	§ 18.2-155	Damage to RR signal (Class 4 felony)
§ 18.2-32	First and second degree murder	§ 18.2-162	Damage to utility (felony only)
§ 18.2-33	Felony homicide	§ 18.2-279	Discharging firearm at occupied building
§ 18.2-35	Voluntary manslaughter	§ 18.2-280B	Discharge of firearm in school zone
§ 18.2-40	Lynching	§ 18.2-281	Setting a spring gun
§ 18.2-41	Malicious wounding by mob	§ 18.2-282A	Brandishing firearm on school property (felony only)
§ 18.2-47	Abduction (Class 5 felony only)	§ 18.2-286.1	Drive-by shooting
§ 18.2-48	Abduction with intent to extort or for immoral purposes	§ 18.2-289	Use of machine gun in crime of violence
§ 18.2-48.1	Abduction by prisoners	§ 18.290	Aggressive use of a machine gun
§ 18.2-49	Attempted abduction	§ 18.2-300A	Use of sawed-off shotgun in crime of violence
§ 18.2-51	Malicious/Unlawful wounding	§ 18.2-308.1	Possession of firearm on school property (felony only)
§ 18.2-51.1	Malicious wounding of law-enforcement officer	§ 18.2-308.2	Possession of firearm by felon (felony only)
§ 18.2-51.2	Aggravated malicious wounding	§ 18.2-308.2:1	Illegal sale of firearms
§ 18.2-52	Malicious/Unlawful wounding by caustic substance	§ 18.2-308.2:2M	Purchase of firearm with intent to illegally transfer
§ 18.2-53	Malicious wounding during commission of felony	§ 18.2-308.2:2N	Illegal purchase of firearm
§ 18.2-53.1	Use of firearm in commission of a felony	§ 18.2-308.3	Use of armor piercing bullets
§ 18.2-54.1	Attempts to poison	§ 18.2-312	Malicious use of tear gas
§ 18.2-54.2	Adulteration of food, medicine	§ 18.2-355	Pandering (Class 4 felony)
§ 18.2-55	Bodily injury by prisoner	§ 18.2-358	Detaining person in house of prostitution
§ 18.2-57.2	Assault and battery of family member	§ 18.2-361B	Crimes against nature
§ 18.2-58	Robbery	§ 18.2-366B	Incest
§ 18.2-58.1	Carjacking	§ 18.2-368	Forcing wife into prostitution
§ 18.2-60.1	Threats against Governor (felony only)	§ 18.2-369	Abuse of elderly (felony resulting in serious bodily injury or disease)
§ 18.2-60.3	Stalking (felony only)	§ 18.2-370	Indecent liberties
§ 18.2-61	Rape	§ 18.2-370.1	Indecent liberty in custodial relationship
§ 18.2-63	Carnal knowledge (Class 4 felony only)	§ 18.2-371.1A	Abuse and neglect
§ 18.2-64.1	Carnal knowledge of delinquent	§ 18.2-374.1	Pornography involving children
§ 18.2-67.1	Forcible sodomy	§ 18.2-374.1:1	Possession of child pornography (felony only)
§ 18.2-67.2	Object sexual penetration	§ 18.2-374.3	Electronic facilitation of pornography
§ 18.2-67.2:1	Marital sexual assault	§ 18.2-379	Employing person to commit obscenity violation
§ 18.2-67.3	Aggravated sexual battery	§ 18.2-381	Subsequent pornography offenses
§ 18.2-67.5	Attempted rape/sodomy/object penetration/aggravated sexual battery	§ 18.2-405	Carrying firearm during riot (felony only)
§ 18.2-77(A)	Arson of occupied dwelling	§ 18.2-406	Carrying firearm during unlawful assembly (felony only)
§ 18.2-79	Arson of occupied meeting house (Class 3 felony only)	§ 18.2-408	Inciting a riot
§ 18.2-80	Arson of occupied building (Class 3 felony)	§ 18.2-413	Insurrection
§ 18.2-89	Burglary	§ 18.2-414	Injury caused by riot
§ 18.2-90	Statutory burglary with intent to murder, etc.	§ 18.2-433.2	Paramilitary activities
§ 18.2-91	Statutory burglary with intent to commit larceny, etc.	§ 18.2-460	Obstruction of justice (felony only)
§ 18.2-92	Breaking and entering with intent to commit misdemeanor	§ 18.2-474.1	Delivery of drugs to prisoners (felony only)
§ 18.2-93	Entering bank, armed, with intent to commit larceny	§ 18.2-477	Escape from jail
§ 18.2-152.7	Personal trespass by computer (felony only)	§ 18.2-477.1	Escape from juvenile facility (felony only)
§ 18.2-153	Injuring power line (Class 4 felony only)	§ 18.2-478	Escape of detainee by force
§ 18.2-154	Throwing missile at train (Class 4 felony only)	§ 18.2-480	Escape by fire
		§ 18.2-485	Inciting a race riot
		§ 53.1-203	Prisoners crimes

Any conspiracy or attempt to commit any offense specified.

Source: Division of Legislative Services.

**Table 2. Initial Sentencing Guidelines: Percentage Increases \***

Offense	No previous conviction of a violent felony offense	Previous conviction of a violent felony offense carrying a maximum punishment of less than 40 years	Previous conviction of a violent felony offense carrying a maximum punishment of 40 years or more
First and second degree murder, rape (§18.2-61), forcible sodomy, object sexual penetration, aggravated sexual battery	125	300	500
Voluntary manslaughter, robbery, aggravated malicious wounding, malicious wounding, burglary or statutory burglary of a dwelling house, burglary or statutory burglary while armed with a deadly weapon	100	300	500
Drug offenses: manufacturing, selling, giving, or distributing (or possessing with intent to) a Schedule I or II controlled substance	-	200	400
Felony offenses not specified above (nonviolent)	-	100	300

\* Percentage increase of the midpoint for time served for similar offenses by offenders released from 1988 through 1992. Source: Division of Legislative Services.

making recommendations on projected requirements for correctional facilities; and

6. Studying felony statutes in the context of judge and jury sentencing patterns and recommending revisions of general criminal offense statutes.

The commission is given its own appropriation and empowered to hire a director and staff. The commission is composed of 17 members: six judges or justices appointed by the Chief Justice; one person who is not an active member of the judiciary appointed by the Chief Justice as chairman of the commission; three persons appointed by the Speaker of the House; two persons appointed

by Senate Privileges and Elections Committee; four persons appointed by the Governor; and the Attorney General of Virginia. Although appointed by the Chief Justice, the chairman of the commission is subject to legislative confirmation.

### Discretionary Sentencing Guidelines

The Sentencing Commission must, by December 1, 1994, develop initial discretionary sentencing guidelines for felony offenses. Prior convictions for certain felonies, listed in Table 1, will enhance the penalties applicable to felony convictions beginning January 1, 1995. Previous convictions include both adult and juvenile convic-

tions. However, nonviolent felonies will only be enhanced if the previous conviction occurred within 16 years before the current nonviolent felony.

Actual time-served data for offenders released from incarceration from 1988 through 1992 will form the basis of the new sentencing guidelines. The time-served data, compiled by type of offense and prior criminal history, will be increased by 13.4 percent and narrowed by eliminating the highest and lowest 25 percent (quartiles). The midpoint (the median of the two middle quartiles) will then be increased by the amounts shown in Table 2 to form the initial discretionary sentencing guidelines.

The sentencing guidelines are to be considered by the court in all felony cases except Class 1 felony (capital murder) cases. The discretionary sentencing guidelines worksheets, prepared in most cases by the probation officer, are to be considered by the court, not the jury, and, if not followed, the court is required to explain its departure. The worksheets and any departure explanations are forwarded to the Sentencing Commission for research purposes. Failure of the court to comply with these procedures or the fact that the court's sentence is outside of the recommended guidelines shall not be subject to appellate review.

The entire restructuring of sentencing, parole, and good conduct applies to persons who commit crimes on and after January 1, 1995. The former procedures will stay in place for those persons already in the system.

### Geriatric Conditional Release

HB 5001/SB 3001 allow for the conditional release of geriatric prisoners serving sentences for felonies committed on or after January 1, 1995, who are at least 65 years old and have served a minimum of five years of their sentence or who are at least 60 years old and have served a minimum of 10 years of their sentence. Conditional release may be granted by the Parole Board according to its regulations. Corresponding and conforming amendment is made to the so-called "three-time loser" statute, which included its own geriatric provision.

### State Prisoners in Local Jails

The bills provide a new definition of "state-responsible" prisoner for purposes of intake into the state system. The current statute has a gradual assimilation of state-responsible prisoners who must be taken into state facilities within 60 days of receipt of the final order from the clerk of the committing court. Beginning July 1, 1996, persons convicted of felonies committed prior to January 1, 1995, who received a sentence of more than two years, must be placed in the custody of the Department of Corrections. For those who were convicted of crimes committed January 1, 1995, or later, intake will be for those who received sentences of more than one year in the state system or more than six months in jail, and receipt must be within the same 60-day period. Intake under this system is also phased in by providing that the new definition will apply to those with sentences of one year or more from January 1, 1995, through July 1, 1996, and thereafter to all persons sentenced for a total period of more than six months.

The reimbursement requirement is adjusted to track § 53.1-20, so that beginning July 1, 1996, the Department of Corrections will have to pay local jails for the keep of offenders convicted of felonies committed on or after January 1, 1995, (i) who are required to serve more than six months in a state correctional facility or (ii) for whom the department does not have space to take into the system within the 60 days after the director's receipt of the final order of sentencing. This provision is phased in to keep a dual definition for those who committed crimes prior to January 1, 1995, and keeps them at the two-year reimbursement definition until July 1, 1996, at

which time a single standard will apply.

### New Corrections Programs

Current sentencing practices rely on incarceration and probation. Intermediate sanctions are needed by and are already available for those individuals who may not need incarceration in the traditional sense but who need more than traditional probation. HB 5001/SB 3001 expand current programs and create new programs to provide relief to prison and jail overcrowding.

Where employed, intermediate sanctions have demonstrated that they can protect the public safety in a cost-effective manner while reducing the incidence of repeat offenders. The goal is to create an organized, structured system with clear goals, standards, and funding streams to address the entire range of offenders identified in the legislation. Guaranteed availability of a basic core of services to every judicial circuit would eliminate the geographical disparity currently experienced in many programs, but would provide flexibility to encourage local development of programs to address unique problems or types of offenders.

### Community Programs

The community programs component will have statewide as well as a local application. The **Statewide Community-Based Corrections System for State-Responsible Offenders** will address the nonviolent felons who would be incarcerated in state or local facilities or who may be subject to return for probation violation. Organized under the Department of Corrections, programs will

include traditional forms of testing, supervision, and treatment, but will also create two additional types of residential confinement. The **Detention Center Incarceration Program** will provide an alternative to "boot camp" for those who do not meet the age or physical requirements of regular "boot camp." A highly regimented and structured program, it will add increased time and intensity of supervision under probation at the end, and add requirements such as job search, restitution or community service, drug treatment, and payment of fines and court costs. The **Diversion Center Incarceration Program** is a residential program where offenders will participate in training, education, work release, and other programs during the day but will return to confinement at night. As with the Detention Center, additional probation and program requirements will be added. Both of these programs are modeled after similar programs in Georgia, which have been highly successful, operating with low recidivism rates.

### Local Jails

The **Comprehensive Community Corrections Act for Local-Responsible Offenders** establishes a statutory framework for the local component. It will allow localities, or require those who currently request reimbursement for jail construction, to establish a system of incarceration alternatives for misdemeanants or nonviolent offenders for whom the court may impose a jail sentence and who are considered good candidates for diversion. The Department of Criminal Justice Services will set standards, approve local plans, and periodically review the programs. Mandated

services will include such programs as community service, public inebriate diversion, home incarceration, electronic monitoring, probation supervision, and substance abuse assessment, testing, and treatment. A local community criminal justice board will provide program guidance and direction as well as serving as the fiscal agent. The programs will be provided to the extent that the General Assembly funds them through the general appropriation act.

### Additional Programs

Additional enhancements are added to provide better information for the court to use in bail decisions and when imposing fines. The **Pre-trial Services Act** will require development of a risk-assessment instrument, as well as other services, to assist judicial officials in determining the risk to public safety and the risk of flight. Law-enforcement officials have indicated that such programs could help in relieving the serious crowding in the jails without compromising safety. These programs will be state funded.

"**Day fines**" incorporate a concept of the punishment fitting the crime. The Department of Criminal Justice Services will develop a program for voluntary use by the courts in which the fines for offenses would be truly tailored to the defendant's ability to pay. The range would have to remain within the current statutory guidelines. The Supreme Court, with assistance from the Department of Criminal Justice Services, will develop a schedule of day fines to be available to the courts. The schedule shall include determination of a person's eligibility for day fines, administrative procedures for establishing the amount of punishment to be imposed in

units that can be translated into dollar amounts, administrative procedures for determining the offender's ability to pay, development of standardized forms, and the development and implementation of an information management system for the program. Additionally, the department must review the program annually and recommend appropriate adjustments as necessary.

In all, the goal of this comprehensive plan is to provide better information for decision-making purposes and to provide a consistent array of alternative sanctions for offenders who need intermediate programs that provide greater structure than probation but not the extreme alternative of incarceration in jail or prison. The goal is to provide additional room in facilities for the more serious offender and, for suitable candidates, provide effective programs that may deter them from returning to the correctional system.

### Reducing Jail Populations

The Secretary of Public Safety, in consultation with the Joint Legislative Audit and Review Commission, is required to prepare a plan to implement the programs established by HB 5001/SB 3001. The plan must detail the feasibility and appropriateness of the programs, facilities, services, and costs necessary to divert in a manner consistent with public safety, as many as 50 percent of *minimum security nonviolent offenders* from state and local correctional facilities by fiscal year 2005. In addition, the plan must detail the feasibility and appropriateness of programs, services, and costs necessary to reduce the *unsentenced pretrial population of minimum security nonviolent*

offenders in local jails by as much as 50 percent by fiscal year 2005. "Minimum security nonviolent offenders" (i) have received a sentence of three years or less, (ii) have been incarcerated for a nonviolent offense, (iii) have no prior violent offense convictions, and (iv) have passed a review under a Department of Corrections risk-assessment procedure (factors used by corrections professionals to determine whether an offender poses a risk of flight or harm to the public or other inmates). The legislation requires that the plan be submitted to the Governor, the Chairmen of the Senate Finance and House Appropriations Committees, and the Clerks of the House of Delegates and the Senate for distribution to the members of the General Assembly no later than January 11, 1995.

The final enactment clauses of this legislation include a statement that it is not the intent of this act to mandate local funding of any programs created under this act.

**Part II:  
Financing Parole Reform**

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STAFF ATTORNEY

**Funding Sources**

The General Assembly enacted House Bill 5002 to fund costs associated with constructing and renovating adult and juvenile correctional facilities and to establish a special fund for the increased operating costs associated with the passage of SB 3001 and HB 5001. HB 5002 creates the Virginia Public Safety Fund on the books of the State Comptroller and transfers into this fund an amount estimated at \$56.5 million.

Money is transferred to the fund from the following seven sources (see Figure 1):

1. \$12.0 million from savings in Average Daily Membership

payments to public school systems in the current biennium resulting from lower-than-anticipated public school enrollments:

2. \$16.6 million from savings resulting from downsizing actions in state agencies, as reported by the Director of the Department of Planning and Budget on August 22, 1994:

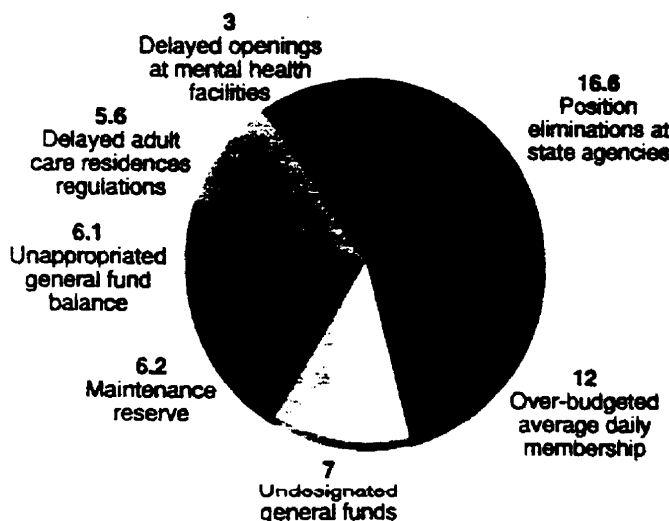
3. \$5.6 million from savings attributed to delays in Adult Care payments as a result of delayed promulgation of regulations for levels of care in Adult Care Residences:

4. \$3.0 million in operating cost savings resulting from delays in the construction of bed expansions at the Central State Hospital Forensic Unit and the Northern Virginia Mental Health Institute;

5. \$6.2 million in fiscal year 1995-96 from Maintenance Reserve payments to state agencies;

6. \$6.1 million from the unappropriated balance for the 1994-96 biennium; and

7. \$7.0 million from the remaining undesignated balance available for appropriation, as noted on the Comptroller's report of June 30, 1994.



Total transferred to Virginia Public Safety Fund: \$56.5 million

Figure 1. Sources of funds (in millions of dollars).  
Source: House Bill 5002.

**Allocation of Funds**

From the moneys transferred to the fund, \$21,378,220 is appropriated for payment to the Correction Special Reserve Fund. This reserve fund is established and funded pursuant to §30-19.1:4, which requires that a one-year appropriation, equal to the estimated increase in operating costs in the highest of the 10 years

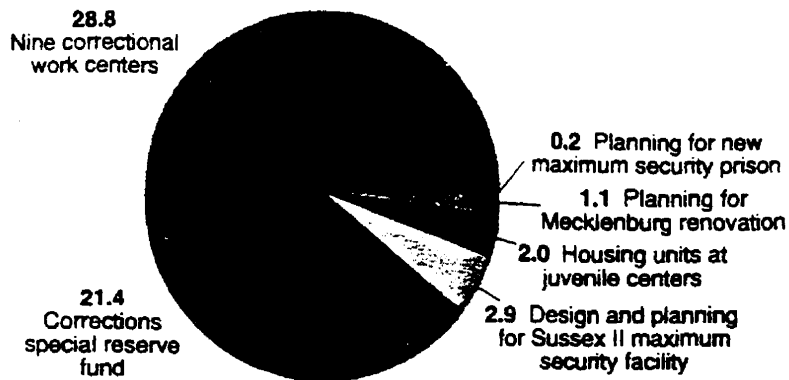


Figure 2. Uses of funds (in millions of dollars).  
Source: House Bill 5002.

following the enactment of any law increasing periods of imprisonment in the state system, placed in a special fund. The amount appropriated for the reserve fund reflects the estimated fiscal impact of SB 3001 and HB 5001.

The balance of the money transferred to the fund is earmarked for the following correctional facility projects (see Figure 2):

1. \$28.8 million for constructing and furnishing nine correctional work centers for state inmates. The program will provide 1,500 beds by July 1, 1995, at the centers, which will be located at existing facilities at Bland, Brunswick, Greenville, Lunenburg, Nottoway, Powhatan, St. Brides, and the Virginia Correctional Center for Women:

\$2.9 million for architectural design and related planning activities for a Sussex II maximum correctional security facility;

3. \$0.2 million for planning for construction for a new maximum security prison;

4. \$1.1 million for planning for the renovation of Mecklenburg correctional facility;

5. \$950,000 for renovating, reopening and operating housing units at Bon Air Juvenile Center; and

6. \$1,050,000 for constructing and installing pre-engineered housing units at an existing juvenile center.

The legislation authorizes the Department of Corrections and the Department of Youth and Family Services to initiate architectural design and planning activities for Keen Mountain Prototype Facility #2 in Wise County, Keen Mountain Prototype Facility #3 in Sussex County, the women's multi-custody prison in Fluvanna County, and an additional 50 beds at a new maximum security institution to be constructed at the Beaumont Learning Center.

The moneys in the fund are made available for these activities, provided that their cost does not exceed the limit of funds currently authorized for the particular project by the Virginia Public Building Authority.

Finally, the bill provides that the fund be reimbursed from the proceeds of the sale of tax-exempt bonds that the General Assembly authorizes for these projects and from such other moneys as the General Assembly appropriates for these projects.

### Funding the Virginia Criminal Sentencing Commission

House Bill 5007 amends the 1994 Budget Bill to fund the Virginia Criminal Sentencing Commission, created by HB 5001/SB 3001 as an agency of the Supreme Court.

In its first year, the commission will receive an appropriation of \$334,615, which will rise to \$619,231 in its second year. The funds are provided by transferring a portion of the appropriations earmarked for work on the existing voluntary sentencing guidelines at the Supreme Court and the Department of Criminal Justice Services to the commission.

The commission is provided with funding for 10 positions. Concurrently, the number of positions at the Supreme Court is cut by six, and the number of positions at the Department of Criminal Justice Services is cut by four.



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**Special Session II Actions  
Summary of HB 5001/SB 3001  
as enacted**

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**Abolition of parole.** Establishes a new sentencing policy for noncapital felony sentencing in the Commonwealth and abolishes parole and good conduct allowance for any person convicted of a crime committed on or after January 1, 1995. This new sentencing policy allows the court to impose an additional term of between six months and three years, over and above the sentence of active incarceration, and requires the court to suspend such term and put the person on post-release supervision for the length of the suspended term. Post-release supervision is to be conducted in the same manner as supervised probation, including any terms and conditions as the court may require. Failure to successfully complete post-release supervision or failure to comply with ordered terms and conditions are grounds for termination of the post-release period for which the releasee may be recommitted to the correctional facility from which he was released. Procedures for termination and recommitment are the same as for revocation of probation. The bill also allows for the granting of a maximum of four and one-half sentence credits (days) for every thirty days served in a state correctional facility. Sentence credits are deductions from a person's term of confinement which may be earned by adhering to the rules and requirements, including program participation, as may be established by law or regulation.

The bill creates the Virginia Criminal Sentencing Commission. The Commission, an agency of the Supreme Court, is composed of 17 members: six judges or justices appointed by the Chief Justice; one person who is not an active member of the judiciary appointed by the Chief Justice as Chairman of the Commission; three persons appointed by the Speaker of the House; two persons appointed by Senate Privileges and Elections Committee; four persons appointed by the Governor; and the Attorney General of Virginia. The Chairman of the Commission is subject to legislative confirmation. Members serve three-year terms and may serve two consecutive full terms. The Commission will develop, maintain, and modify, as necessary, discretionary sentencing guidelines for use in all felony cases and report its work annually to the Governor, the General Assembly and the Chief Justice.

These guidelines will be based on percentage increases of actual time served historical data from the time period 1988 through 1992. After the initial adoption of the sentencing guidelines, the Commission will recommend in its report any necessary modifications. The Commission is given the duty, in addition to the establishment of discretionary guidelines, to (i) develop an offender risk assessment instrument that will be predictive of the relative risk of a felon becoming a threat to public safety, (ii) apply such instrument in determining the feasibility of achieving a goal of placing 25 percent of nonviolent offenders in alternative sanctions, (iii) incorporate such goal, if feasible, into the sentencing guidelines, (iv) monitor sentencing practices and the use of the guidelines and maintain a

database concerning same, (v) monitor felony sentence lengths, crime trends, correctional facility population trends and correctional resources and make recommendations on projected correctional facilities capacity requirements and related correctional resource needs, and (vi) study felony statutes in the context of judge and jury sentencing patterns and make recommendations for the revision of general criminal offense statutes. The Commission is given its own appropriation and empowered to hire a director and such other necessary personnel including contractual personnel.

The initial discretionary sentencing guideline midpoints are to be established by first computing the actual time-served distribution for similarly situated offenders (in terms of their conviction offense and prior criminal history) who were released from incarceration during calendar years 1988 through 1992, second, by increasing this distribution by 13.4 percent, and third by eliminating from this distribution range the upper and lower quartiles (highest and lowest 25 percent). The midpoint is the median time served for the two middle quartiles. The midpoint for certain crimes will be increased, as follows:

1. For first degree murder, second degree murder, rape in violation of § 18.2-61, forcible sodomy, object sexual penetration, and aggravated sexual battery by (i) 125 percent in cases in which the defendant has no previous conviction of a violent felony offense, (ii) 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than forty years, or (iii) 500 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of forty years or more, except that the recommended sentence for a defendant convicted of first degree murder who has previously been convicted of a violent felony offense punishable by a maximum punishment of forty years or more shall be imprisonment for life;

2. For voluntary manslaughter, robbery, aggravated malicious wounding, malicious wounding, and any burglary of a dwelling house or statutory burglary of a dwelling house or any burglary committed while armed with a deadly weapon or any statutory burglary committed while armed with a deadly weapon by (i) 100 percent in cases in which the defendant has no previous conviction of a violent felony offense, (ii) 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of less than forty years, or (iii) 500 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of forty years or more;

3. For manufacturing, selling, giving or distributing, or possessing with the intent to manufacture, sell, give or distribute a Schedule I or II controlled substance by (i) 200 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than forty years or (ii) 400 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of forty years or more; and

4. For felony offenses not specified in subdivision 1, 2 or 3 (i) by 100 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than forty years, and (ii) by 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of forty years or more.

Previous convictions include both adult and juvenile convictions. However, nonviolent felonies will only be enhanced if the previous conviction occurred within sixteen years before the instant nonviolent felony.

Previous violent felony convictions include:

- § 18.2-31 Capital murder
- § 18.2-32 First and second degree murder
- § 18.2-33 Felony homicide
- § 18.2-35 Voluntary manslaughter
- § 18.2-40 Lynching
- § 18.2-41 Malicious wounding by mob (Class 3 felony)
- § 18.2-47 Abduction (Class 5 felony only)
- § 18.2-48 Abduction w/intent to extort or for immoral purposes  
(Class 2 felony)
- § 18.2-48.1 Abduction by prisoners (Class 3 felony)
- § 18.2-49 Attempted abduction (Class 5 felony)
- § 18.2-51 Malicious wounding (Class 3 felony)  
Unlawful wounding (Class 6 felony)
- § 18.2-51.1 Malicious wounding of law-enforcement officer (Class 3  
felony)
- § 18.2-51.2 Aggravated malicious wounding (Class 2 felony)
- § 18.2-52 Malicious wounding by caustic substance (five to 30 years)  
Unlawful wounding (Class 6 felony)
- § 18.2-53 Malicious wounding during commission of felony (Class 6  
felony)
- § 18.2-53.1 Use of firearm in commission of a felony
- § 18.2-54.1 Attempts to poison (Class 3 felony)
- § 18.2-54.2 Adulteration of food, medicine, etc. (Class 3 felony)
- § 18.2-55 Bodily injury by prisoner, etc. (Class 5 felony)

- § 18.2-57.2 Assault and battery of family member (felony only, 3d offense Class 6 felony)
- § 18.2-58 Robbery
- § 18.2-58.1 Carjacking
- § 18.2-60.1 Threats against Governor
- § 18.2-60.3 Stalking (felony only, Class 6 felony)
- § 18.2-61 Rape
- § 18.2-63 Carnal knowledge (Class 4 felony)
- § 18.2-64.1 Carnal Knowledge of delinquent (Class 6 felony)
- § 18.2-67.1 Forcible sodomy
- § 18.2-67.2 Object sexual penetration
- § 18.2-67.2:1 Marital sexual assault
- § 18.2-67.3 Aggravated sexual battery
- § 18.2-67.5 Attempted rape/sodomy/object penetration (Class 4 felony)  
Attempted aggravated sexual battery (Class 6 felony)
- § 18.2-77(A) Arson of occupied dwelling
- § 18.2-79 Arson of occupied meeting house (Class 3 felony)
- § 18.2-80 Arson of occupied building (Class 3 felony)
- § 18.2-89 Burglary
- § 18.2-90 Statutory burglary w/intent to murder, etc.
- § 18.2-91 Statutory burglary w/intent to commit larceny, etc.
- § 18.2-92 Breaking and entering w/intent to commit misdemeanor
- § 18.2-93 Entering bank, armed, with intent to commit larceny
- § 18.2-152.7 Personal trespass by computer
- § 18.2-153 Injuring power line, etc.
- § 18.2-154 Throwing missile at train (Class 4 felony)
- § 18.2-155 Damage to RR signal (Class 4 felony or murder)
- § 18.2-162 Damage to utility (felonies only)
- § 18.2-279 Discharging firearm at occupied building (Class 4 felony)
- § 18.2-280B Discharge of firearm in school zone (Class 4 felony)
- § 18.2-281 Setting a spring gun (Class 6 felony)
- § 18.2-282A Brandishing firearm on school property (Class 6 felony)
- § 18.2-286.1 Drive by shooting (Class 5 felony)
- § 18.2-289 Use of machine gun in crime of violence (Class 2 felony)
- § 18.290 Aggressive use of a machine gun (Class 2 felony)
- § 18.2-300(A) Use of sawed-off shotgun in crime of violence (Class 2 felony)
- § 18.2-308.1 Possession of firearm on school property (Class 6 felony)
- § 18.2-308.2 Possession of firearm by felon (Class 6 felony)
- § 18.2-308.2:1 Illegal sale of firearms (Class 6 felony)
- § 18.2-308.2:2M Purchase of firearm w/ intent to illegally transfer (Class 5 felony)
- § 18.2-308.2:2N Illegal purchase of firearm (Class 5 felony)
- § 18.2-308.3 Use of armor piercing bullets (Class 5 felony)
- § 18.2-312 Malicious use of tear gas (Class 3 felony)

- § 18.2-355 Pandering (person; Class 4 felony)
- § 18.2-358 Detaining person in house of prostitution (Class 4 felony)
- § 18.2-361 B Crimes against nature (Class 3 or 5 felony)
- § 18.2-366 B Incest (Class 3 or 5 felony)
- § 18.2-368 Forcing wife into prostitution (Class 4 felony)
- § 18.2-369 Abuse of elderly (felony resulting in serious bodily injury or disease)
- § 18.2-370.1 Indecent liberty in custodial relationship (Class 6 felony)
- § 18.2-371.1 A Abuse and neglect (Class 5 felony)
- § 18.2-374.1 Pornography involving children (Class 5 felony)
- § 18.2-374.1:1 Possession of child pornography (felony only)
- § 18.2-374.3 Electronic facilitation of pornography (Class 6 felony)
- § 18.2-379 Employing person to commit obscenity violation (Class 6 felony 2d offense)
- § 18.2-381 Subsequent pornography offenses (Class 6 felony)
- § 18.2-405 Carrying firearm during riot (Class 5 felony)
- § 18.2-406 Carrying firearm during unlawful assembly (Class 5 felony)
- § 18.2-408 Inciting a riot (Class 5 felony)
- § 18.2-413 Insurrection (Class 5 felony)
- § 18.2-414 Injury caused by riot (Class 6 felony)
- § 18.2-433.2 Paramilitary activities (Class 5 felony)
- § 18.2-460 Obstruction of justice (threat or force; Class 5 felony)
- § 18.2-474.1 Delivery of drugs to prisoners (Class 3 or 5 felony)
- § 18.2-477 Escape from jail (Class 6 felony)
- § 18.2-477.1 Escape from juvenile facility (Class 6 felony)
- § 18.2-478 Escape of detainee by force (Class 6 felony)
- § 18.2-480 Escape by fire (Class 4 felony)
- § 18.2-485 Inciting a race riot (Class 4 felony)
- § 53.1-203 Prisoners crimes (Class 5 or 6 felony)

Including any conspiracy or attempt to commit any offense specified.

The sentencing guidelines are used by the court in all felony cases except Class 1 felony cases. The discretionary sentencing guidelines worksheets, prepared in most cases by the probation officer, are to be considered by the court, not the jury, and, if not followed, the court is required to explain its departure. The worksheets and any departure explanations are forwarded to the Sentencing Commission for research purposes. Failure of the court to comply with these procedures or the fact that the court's sentence is outside of the recommended guidelines shall not be subject to appellate review.

The bill allows for the conditional release of geriatric prisoners serving sentences for felonies committed on or after January 1, 1995, who are at least sixty-five years old and have served a minimum of five years of their sentence or who are at least sixty years old and have served a minimum of

ten years of their sentence. Conditional release may be granted by the Parole Board according to their regulations. Corresponding and conforming amendment is made to the so-called three-time loser statute which included its own geriatric provision.

The entire restructuring of sentencing, parole and good time applies to persons who commit crimes on and after January 1, 1995. The former procedures will stay in place for those persons already in the system.

The community alternative sentencing system creates a system of options to be used for misdemeanants and nonviolent felons to avoid incarceration in a state or local facility or to avoid return to a state or local facility because of parole revocation. It is a system of building blocks which capitalizes on programs currently available in many localities, but it creates a systematic organization of such programs and availability to the courts.

The Pretrial Services Act allows localities or combinations to establish programs to better assess the risk to society and determine the assurance of appearance of persons charged with an offense and held in jail pending trial or hearing. Those persons charged with an offense punishable by death are not eligible. The Department of Criminal Justice Services sets standards, reviews biennial plans, and may withhold funds pending compliance with the submitted plan or operating standards. The Department will also develop a standardized risk assessment instrument which will be utilized by the programs. Any participating locality may withdraw from the program upon proper notice. Participating localities must be members of a community criminal justice board (§ 53.1-183).

The bill also establishes a new program of "day fines" which are fines determined by the defendant's ability to pay according to a standardized instrument and is based on units which match current statutory penalties and translate into dollar amounts. Use is permissive by the courts. The Department of Criminal Justice Services is directed to develop a schedule of day fines which can be used by the courts. The program does not become effective until July 1, 1996, is expected to be a pilot, and will expire on July 1, 2001.

The bill also creates the Detention Center Incarceration Program which is comparable to Boot Camp and is intended to provide similarly structured services to those offenders who are too old for Boot Camp or do not meet the physical requirements. It is intended for those offenders who would have been sentenced to incarceration for a nonviolent felony (any felony other than murder, manslaughter, kidnapping, sexual assault, malicious wounding, robbery, or any attempt to commit any of these) or who was previously incarcerated for such and whose probation is being revoked.

Upon successful completion of the program, the court orders that the defendant be placed under intensive probation supervision for an undefined period of time which is followed by regular probation for not less than one year. Following release, the defendant must: make reasonable efforts to secure and maintain employment, comply with a plan of restitution or community service, comply with a payment plan for fines, if any, and costs of court, and undergo appropriate substance abuse treatment, if necessary. Defendants are confined to the premises of the program facility.

The Diversion Center Incarceration is a step below the Detention Center Incarceration Program and is intended for those defendants who would have been sentenced to incarceration for a nonviolent felony and need more supervision than provided by intensive probation but do not need the structure of the Detention Center. The process is virtually the same as for the Detention Center. However, defendants must perform the job search, restitution or community service, payment of fines and court costs, and substance abuse treatment prior to release from confinement. Defendants are allowed to leave the premises of the facility for purposes of work release, treatment, community service and other purposes allowed by this article, but they return to confinement for all other times.

In addition, the bill establishes a statutory framework for a Statewide Community-based Corrections System consisting of program, services, and residential and nonresidential facilities for those offenders convicted of felonies and sentenced to alternative forms of punishment or those who have been incarcerated but are determined to need less supervision or level of confinement than a state or local correctional facility. The Board and Department of Corrections has responsibility for setting standards and establishing and contracting for such programs, services, and facilities. Minimum programs include: regular and intensive probation; regular and intensive parole supervision for those offenders sentenced for an offense committed prior to January 1, 1995; home/electronic incarceration; diversion center incarceration; detention center incarceration; work release; pre-release; probation- and parole-violator centers; halfway houses; and drug testing and treatment. All services are to be available to each judicial circuit but are not required to be located in each one.

As is now required for CDI participants, the bill requires the \$50 payment (for misdemeanants) or \$200 payment (for felons) by defendants in community corrections programs. Payment for costs of keep in those programs where work release or programs are part of the curricula.

The Community Corrections Incentive Program allows any city, county or combination thereof to establish a system of incarceration alternatives for misdemeanants or nonviolent offenders for whom the court may impose a



jail sentence and who are considered suitable candidates for programs which require less than incarceration in a local correctional facility. Those localities which are currently required to submit a community corrections plan are required to establish such a program. The Department of Criminal Justice Services sets standards for the development, implementation, operation and evaluation of programs. The Department may withhold all or part of funds to the program until compliance occurs. Funds may not be used for capital expenditures. Mandated services to be offered include: community service; public inebriate diversion; home incarceration; electronic monitoring; probation supervision; and substance abuse assessment, testing, and treatment. Additional programs are permissive. Participating localities must form a community criminal justice board which serves as the policy and program development body, and one participating locality serves as administrator and fiscal agent. The board consists of representatives of the participating: local governing boards, judiciary, law enforcement, jail administration, attorneys experienced in matters of defense, and attorneys for the Commonwealth. Localities may withdraw from the program upon proper notice.

The bill provides a new definition of "state-responsible" prisoner for purposes of intake into the Department of Corrections. Current statute has a gradual assimilation of state responsible prisoners which must be taken into state facilities within sixty days of receipt of the final order from the clerk of the committing court. Beginning July 1, 1996, persons convicted of felonies committed prior to January 1, 1995, who received a sentence of more than two years must be placed in the custody of the Department. For those who were convicted of crimes committed January 1, 1995, or later, intake shall be for those who received sentences of more than one year in the Department or more than six months in jail, and receipt shall be within the same sixty-day period. Intake under this system is also phased in by providing that this new intake definition will apply to those with sentences of one year or more from January 1, 1995, through July 1, 1996, and thereafter to all persons sentenced for a total period of more than six months.

The reimbursement requirement is adjusted to track § 53.1-20 so that the Department of Corrections, beginning July 1, 1996, will have to pay local jails for the keep of offenders convicted for felonies committed on or after January 1, 1995, who are required to serve more than six months in a state correctional facility or for whom the Department does not have space to take into the system within the sixty days after the Director's receipt of the final order of sentencing. This provision is phased in to keep a dual definition for those who committed crimes prior to January 1, 1995, and keeps them at the two-year reimbursement definition until July 1, 1996, at which time a single standard will apply.

The bill also requires the Supreme Court, with assistance from the Department of Criminal Justice Services, to develop a schedule of day fines to be available to the courts. The schedule shall include determination of a person's eligibility for day fines, administrative procedures for establishing the amount of punishment to be imposed in units which can be translated into dollar amounts, administrative procedures for determining the offender's ability to pay, development of standardized forms, and the development and implementation of an information management system for the program. Additionally, the Department must review the program annually and recommend appropriate adjustments as necessary.

The Secretary of Public Safety, in consultation with the Joint Legislative Audit and Review Commission, is required to prepare a plan to implement the programs established under this bill. The plan shall detail the feasibility and appropriateness of the programs, facilities, services and costs necessary to divert in a manner consistent with public safety, as much as fifty percent of minimum security nonviolent offenders from state and local correctional facilities by fiscal year 2005. In addition, the plan shall detail the feasibility and appropriateness of programs, services, and costs necessary to reduce the unsentenced pretrial population of minimum security nonviolent offenders in local jails by as much as fifty percent by fiscal year 2005. "Minimum security nonviolent offenders" means offenders who (i) have received a sentence of three years or less, (ii) have been incarcerated for a nonviolent offense, (iii) have no prior violent offense convictions, and (iv) have passed a review under a Department of Corrections risk assessment procedure (factors used by corrections professionals to determine whether an offender poses a risk of flight or harm to the public or other inmates). The plan shall be submitted to the Governor, the Chairmen of the Senate Finance and House Appropriations Committees, the Clerks of the House of Delegates and the Senate for distribution to the members of the General Assembly no later than January 11, 1995.

The final enactment clauses of this bill include a statement that it is not the intent of this act to mandate local funding of any programs created under this act.

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**Appendix  
Appointments to the  
Virginia Criminal Sentencing Commission**

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## Virginia Criminal Sentencing Commission

### Appointments by the Chief Justice

Honorable Ernest P. Gates  
(Chairman)  
Retired Judge  
Twelfth Judicial Circuit  
Chesterfield Circuit Court

Honorable Robert W. Stewart  
Fourth Judicial Circuit  
Norfolk Circuit Court

Honorable E. Bruce Bach  
Nineteenth Judicial Circuit  
Fairfax Circuit Court

Honorable William T. Newman,  
Jr.  
Seventeenth Judicial Circuit  
Arlington Circuit Court

Honorable J. Samuel Johnston, Jr.  
Twenty-Fourth Judicial Circuit  
Campbell Circuit Court

Honorable George E. Honts, III  
Twenty-Fifth Judicial Circuit  
Botetourt Circuit Court

Honorable Donald A. McGlothlin,  
Jr.  
Twenty-Ninth Judicial Circuit  
Russell Circuit Court

### Appointments by the Speaker of the House of Delegates

Peter G. Decker, Esquire  
Norfolk

H. Lane Kneedler, Esquire  
Charlottesville

Bobby Norris Vassar, Esquire  
Richmond

### Appointments by the Senate Committee on Privileges and Elections

Vivian E. Watts  
Vienna

Reverend George F. Ricketts, Jr.  
Richmond

### Appointments by the Governor

Robert C. Bobb  
City Manager  
Richmond

Jo Ann Bruce  
Ashland

Richard Cullen, Esquire  
Richmond

William H. Fuller, III  
Commonwealth's Attorney  
Danville

Office of Attorney General  
Honorable James S. Gilmore, III  
Attorney General of Virginia  
Richmond

# 1994 SESSION

LD2769112

## HOUSE JOINT RESOLUTION NO. 249

Offered January 25, 1994

*Requesting the continuation of the Commission on Sentencing and Parole Reform.*

Patrons—Almand, Davies, DeBoer, Forbes and Melvin; Senators: Earley, Gartlan and Lambert

Referred to Committee on Rules

WHEREAS, in 1993 the General Assembly formally acknowledged that the public has a legitimate expectation that persons convicted of serious or violent offenses will serve a substantial portion of the court-imposed sentences before being released back into the community; and

WHEREAS, public sentiment on a national scale encourages longer periods of incarceration for those convicted of violent or serious offenses, wants a guarantee that the sentences for similar crimes will be consistent and encourages that the offender will serve a maximum period of incarceration; and

WHEREAS, the public also expects that programs will be available to offenders which will ease their transition back into society and decrease recidivism; and

WHEREAS, the General Assembly, pursuant to House Joint Resolution No. 454 in 1993, authorized the Commission on Sentencing and Parole Reform to study (i) modifications in the Commonwealth's parole policy, (ii) modifications in the "good time" policy, (iii) the effects of the elimination or modification of parole policies on state prisons; (iv) the feasibility and advisability of informing juries about all policies which could affect how long a convicted offender is incarcerated, and (v) any other issues pertinent to sentencing and parole; and

WHEREAS, the Commission has met actively and has accomplished many of its goals, but still has much work to do and many complicated policy issues to resolve; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Commission on Sentencing and Parole Reform be continued. The membership of the Commission shall be continued as provided in House Joint Resolution 464 of 1993, with vacancies to be filled in the same manner. The direct costs of this study shall not exceed \$ 21,440.

The Department of Criminal Justice Services, the Department of Corrections, the Virginia Parole Board, and the Division of Legislative Services shall provide staff support for the study. All agencies of the Commonwealth shall provide assistance to the Commission upon request.

The Commission shall complete its work in time to submit its findings and recommendations to the Governor and the 1995 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for processing legislative documents.

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 the study.

