REPORT OF THE
JOINT LEGISLATIVE AUDIT
AND REVIEW COMMISSION

FUNDING INCENTIVES FOR REDUCING JAIL POPULATIONS

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

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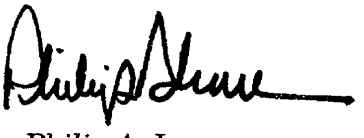
Preface

Item 15G of the 1995 Appropriation Act directed the Joint Legislative Audit and Review Commission (JLARC) to study alternatives to incarceration and other incentives that could be used to reduce the number of sentenced misdemeanants and inmates awaiting trial in local jails. This report presents the JLARC staff findings and recommendations regarding funding incentives that could be used to reduce specific segments of the State's jail population.

This study found that some jail funding methodologies act as a disincentive to reducing local jail populations. For example, the current block grant funding methodology used to reimburse local jails for holding sentenced misdemeanants and inmates awaiting trial is so complex that incentives in the formula are not well understood. Moreover, State funding for jail staff is based in part on the jails' inmate populations, which creates an obstacle to the more widespread use of alternative programs. Finally, the State subsidizes some of the staffing and operating costs associated with local and regional jails housing federal inmates.

Discontinuing the use of the complex block grant formula while continuing to use a modified basic per diem for State and local prisoner days should enable the State to create more effective incentives to reduce selected classifications of jail inmates. In addition, per diem funding reductions could be used to limit State-supported subsidies realized by local and regional jails housing federal inmates. Finally, the study concluded that some of the savings resulting from reductions in jail populations associated with these incentives should accrue to localities for use by sheriffs and regional jail boards operating alternative programs.

On behalf of JLARC staff, I would like to thank the Compensation Board, the Department of Corrections, the Department of Criminal Justice Services, sheriffs and jail administrators, and the Virginia Sheriffs' Association for their assistance in the preparation of this report.



Philip A. Leone
Director

November 13, 1995

JLARC Report Summary

FUNDING INCENTIVES FOR REDUCING JAIL POPULATIONS

November 1995

Joint Legislative Audit and Review Commission

Item 15G of the 1995 Appropriation Act directs the Joint Legislative Audit and Review Commission (JLARC) to conduct a study of incentives that could be used to aid in reducing the number of prisoners awaiting trial and the number of misdemeanants held in local and regional jails. The study was to specifically include an assessment of alternative reimbursement strategies for prisoners held for 24 hours or less.

Jails and alternatives to incarceration have been the focus of several recent reports. These studies have shown that alternatives to incarceration can be used to reduce jail populations and costs. In this study, rather than focusing on alternative programs and their usefulness in redirecting individuals from local jails, JLARC staff focused on financial incentives for reducing jail populations.

The study identifies a number of potential incentives that may be useful to localities in reducing jail populations, and discusses how funds can be directed to selected alternative programs. Funding from State and federal sources were both accounted for in this assessment.

Local and Regional Jails in Virginia

Local and regional jails in Virginia are an important part of the State's criminal justice system. These facilities, which house both local and State-responsible inmates, receive significant support from the State in the form of funding for jail security and other staff positions, per diem payments for inmates, and funding for construction and renovation projects. On August 15, 1995, these facilities held 14,285 inmates; they had an operational capacity of 10,163. About 12 percent of the individuals in local jails are sentenced misdemeanants and 40 percent are unsentenced inmates awaiting trial.

The growth in both State and local responsibility inmates has added to steady increases in the levels of overcrowding in jail facilities. Although the State and local governments have attempted to increase the capacities of local jails through construction and renovation projects, these attempts have not been able to accommodate increasing inmate populations. Consequently, jail overcrowding has been a problem for sheriffs and jail administrators, and incentives for

local officials to redirect inmates into alternative programs have been inadequate.

Current Compensation Board Funding

The Compensation Board currently provides funding for the operation of local and regional jails through payments to localities for jail staff, and per diem reimbursement for inmates held in local jails on State warrants. In FY 1996, about $109 million has been appropriated for jail staff and operational funding. Jail per diem reimbursements, which now include a complicated block grant, are estimated to be $47.3 million in FY 1996. Of the total per diem payment in FY 1996, $17.8 million is estimated to be for the basic reimbursement for prisoner days, $15.6 million is for State-responsible felons, and $13.9 million is for the block grants.

Incentive Structure of Current Funding

The current methods for funding local and regional jails include several provisions intended to be incentives to reduce jail populations. It appears, however, that none of these funding provisions provide any direct incentive to reduce jail populations. While the new block grant was intended to be an incentive, its complex formula obscures the nature of any such incentive. Few of the sheriffs and jail administrators interviewed by JLARC staff understood fully how the block grant is calculated, and many were not aware of any incentives in Compensation Board funding. Due to operational problems, the Department of Criminal Justice Services has suggested that the block grant be discontinued in favor of a more direct approach.

Recommendation (1). *The General Assembly may wish to discontinue the block grant funding method for sentenced misdemeanants and unsentenced persons awaiting trial.*

The current per diems for local jails are based on the number of prisoner days, creating a potential financial disincentive for reducing jail populations. However, the basic $8 per diem has the advantage of being easy to administer, and if set at the average of costs, can help to hold down jail costs. For this reason, it may be appropriate to retain the basic per diem payment for local and regional jails. The $6 supplemental per diem for State felons appears unrelated to any greater costs for housing those inmates, however, so it unnecessarily increases State costs for jail reimbursements.

Recommendation (2). *The General Assembly may wish to retain the basic per diem used to reimburse local and regional jails for prisoners held on State warrants.*

Recommendation (3). *The General Assembly may wish to discontinue the $6 supplemental per diem used to reimburse local and regional jails for State-responsible felons.*

Funding incentives of almost any design are unlikely to be successful in reducing jail populations if sheriffs are concerned about the reductions in staffing which could result from reductions in jail populations. In interviews with JLARC staff, several sheriffs mentioned this concern as a potential obstacle to the use of alternative programs. To address this concern, the General Assembly could include in any incentives, limits on the reduction of jail staff which would result from the use of alternatives to incarceration.

Recommendation (4). *The General Assembly may wish to consider phased reductions in jail staffing which result from the use of alternatives to incarceration.*

The Appropriation Act permits the Compensation Board to fund alternative program staff positions in local and regional jails at a ratio of one position for every 16 offenders in the programs. This is intended to offset any reduction in staffing the jails would experi-

ence if inmates are shifted to alternative programs. Currently, however, no funding is available to staff the alternative positions, so the one-to-16 ratio provides no incentive to reduce jail populations.

Recommendation (5). *The General Assembly may wish to fund the positions necessary for the Compensation Board to staff the one-to-16 ratio for alternative programs operated by local and regional jails.*

Incentives Created by Federal Reimbursements

In addition to State and local inmates, some jails house prisoners for the federal government. In return for housing federal inmates, localities receive federal reimbursements, which in FY 1995 totaled more than $12 million. On August 15,1995, Virginia jails housed more than 700 federal inmates.

Although the State does not reimburse localities for housing federal inmates, State funding for jail staff is based on operating capacity. If a significant part of the jail population consists of federal inmates, this process results in the State subsidizing the incarceration of federal inmates in local and regional jails. In addition, federal inmates can potentially add to overcrowding problems in local and regional jails.

Recommendation (6). *To limit subsidies of federal inmate costs in local and regional jails, the General Assembly may wish to consider reductions in per diem payments to localities for local and regional jails housing federal prisoners as offsets for federal prisoner days reimbursed for those jails.*

Proposed Jail Funding Incentives

To promote the use of alternatives to incarceration as a way to reduce jail populations, changes to State funding for local and regional jails will be necessary. The necessary changes relate to Compensation Board funding for per diems paid for prisoner days. Incentives in per diems should be direct and simple, and should focus on reductions for very short-term nonviolent misdemeanants and inmates awaiting trial.

Given the nature of the alternative programs in Virginia localities, it is important for funding incentives to focus on reductions in certain parts of the jail population. Alternatives to incarceration are designed to serve nonviolent misdemeanants and unsentenced prisoners awaiting trial. Accordingly, jails should associate the funding incentives with this target population.

Recommendation (7). *In order to promote a reduction in short-term nonviolent offenders, the General Assembly may wish to revise the per diem funding formula for local and regional jails to include reductions for nonviolent prisoners held less than 24 hours, for nonviolent prisoners held less than 48 hours, and for some portion of the general population of nonviolent misdemeanants and unsentenced inmates awaiting trial.*

Under current law, sheriffs have authority to place certain eligible inmates in home confinement programs operated by the sheriff or the Department of Corrections. Prior approval of a court is not required. This flexibility in managing the jail population does not extend to other alternative programs. Thus, localities may have little ability to respond directly to funding incentives by moving inmates to alternative programs.

Recommendation (8). *The General Assembly may wish to expand the authority of sheriffs and regional jail boards to place nonviolent misdemeanants held in local and regional jails in a wider array of locally established alternative programs operated by the sheriff or regional jail boards. Sheriffs and jail administrators should be required to notify in writing the Commonwealth's attorney and the sentencing court of any transfer of an offender sentenced to jail but diverted to an alternative program. Prior approval of the court should not be required.*

A direct positive incentive for the jail would help to ensure that localities recognize the importance of alternative programs. To this end, the localities should share in any savings associated with reduced jail populations. Some portion of the reduction in per diem payments could be returned to the localities in the form of operational funding for locally established alternative programs operated by the sheriffs and jail boards. Such funding would make clear the State's commitment to move nonviolent offenders from the jails to alternative programs.

Recommendation (9). *The General Assembly may wish to include as a part of incentives to reduce jail populations positive incentives, such as financial support of locally established alternative programs operated by the sheriffs or regional jail boards, funded from reductions in per diem payments.*

To the extent the General Assembly wishes to fund alternative programs from reductions in jail per diems, operational support should be provided to those programs that remove inmates from jail facilities entirely. Programs such as home confinement, electronic monitoring, day reporting centers, and public inebriate centers are most useful in reducing the jails' populations.

Recommendation (10). *The General Assembly may wish to consider providing operational funding for locally established alternative programs which reduce jail populations. Among the programs that should be considered for funding are home confinement, electronic monitoring, day reporting centers, and public inebriate centers.*

Illustrative Examples of Funding Incentives

In order to illustrate the impact of various funding incentives, JLARC staff developed several computer models based on the Compensation Board's data on staffing levels, inmate populations, and 1996 per diem estimates. The models were used to calculate revised per diem amounts for Virginia's local and regional jails. However, JLARC's four illustrative examples are not recommendations for funding; rather, they represent a number of possible ways in which the per diem payments can be used to promote the use of alternatives to incarceration. These examples are discussed in Chapter III of the report.

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I. Introduction

Item 15G of the 1995 Appropriation Act directed the Joint Legislative Audit and Review Commission (JLARC) to conduct a study of alternatives and other incentives that could be adopted to aid in reducing the number of prisoners awaiting trial and the number of misdemeanants held in local and regional jails (Appendix A). The study was also to include an assessment of alternative reimbursement strategies for prisoners held for 24 hours or less.

Numerous studies dealing with jail overcrowding and alternatives to incarceration have been initiated in Virginia. Some of these studies have identified the negative effects of overcrowding on jail facilities, staff, and inmates. Additional studies have determined that much of the jail population in Virginia could be effectively managed through alternative programs, such as home confinement and day reporting centers. These studies have shown that the use of alternatives to incarceration can assist localities in reducing jail overcrowding and detention costs.

This study focuses on an analysis of jail funding incentives for reducing local and regional jail populations. The study identifies several potential incentives that may be useful to localities in reducing jail populations, and discusses how funds can be directed to selected alternative programs.

Overview of Local and Regional Jails Virginia

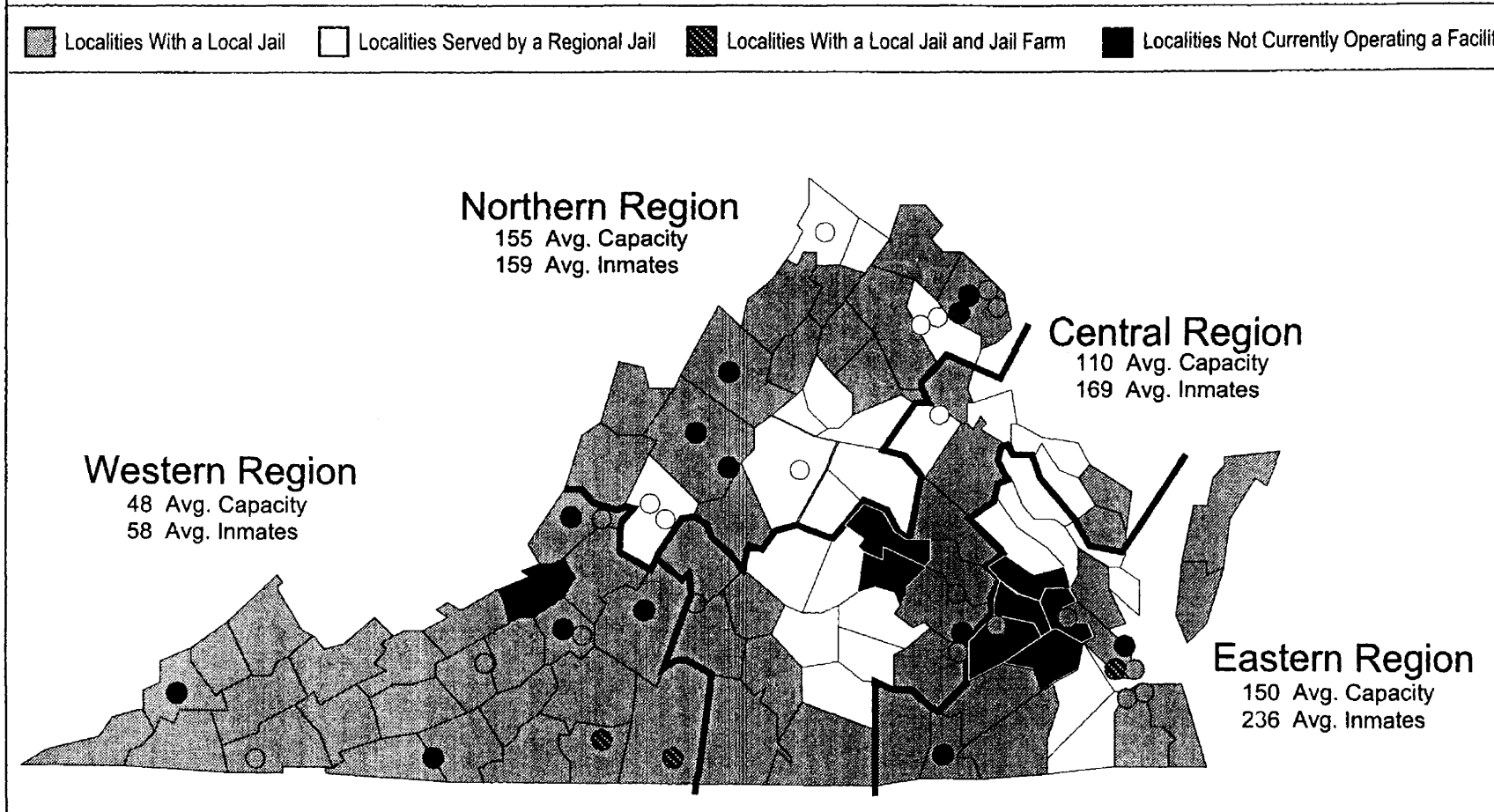
For funding purposes, there are 89 local and regional jails and three jail farms in Virginia (Figure 1). As of August 15, 1995, these facilities, which had an operational capacity of 10,163, held 14,285 inmates. The State compensates localities for the cost of maintaining all prisoners arrested on State warrants. In addition, the State provides funding for local and regional jail construction and maintenance projects.

Jails in Virginia. Virginia jails are essential to the State's criminal justice system. Based on August 1995 data, about 12 percent of the individuals in local jails are sentenced misdemeanants and 40 percent are unsentenced awaiting trial. These inmates are considered locally responsible. In addition to confining locally-responsible inmates, jails hold a substantial number of State-responsible inmates. For instance, of the more than 14,000 inmates in local jails in August 1995, 2,854 inmates were State-responsible. However, the majority of these inmates were not required by the *Code of Virginia* to be transferred to State facilities based on the lengths of their sentences. In addition, the ability of the State to house convicted felons in local jails enables DOC to systematically control the intake of prisoners into adult State institutions.

However, the growth in both State and local responsibility inmates has added to steady increases in the levels of overcrowding in jail facilities. Since 1985, the number of inmates in local jails has outpaced jail capacity. Although the State and local

Figure 1

Local Jails in Virginia, August 1995



Note: Data do not include federal inmates or DOC facilities used by Powhatan and Goochland Counties.

Source: JLARC staff analysis of Department of Corrections data from the August 1, 1995 "Tuesday Report."

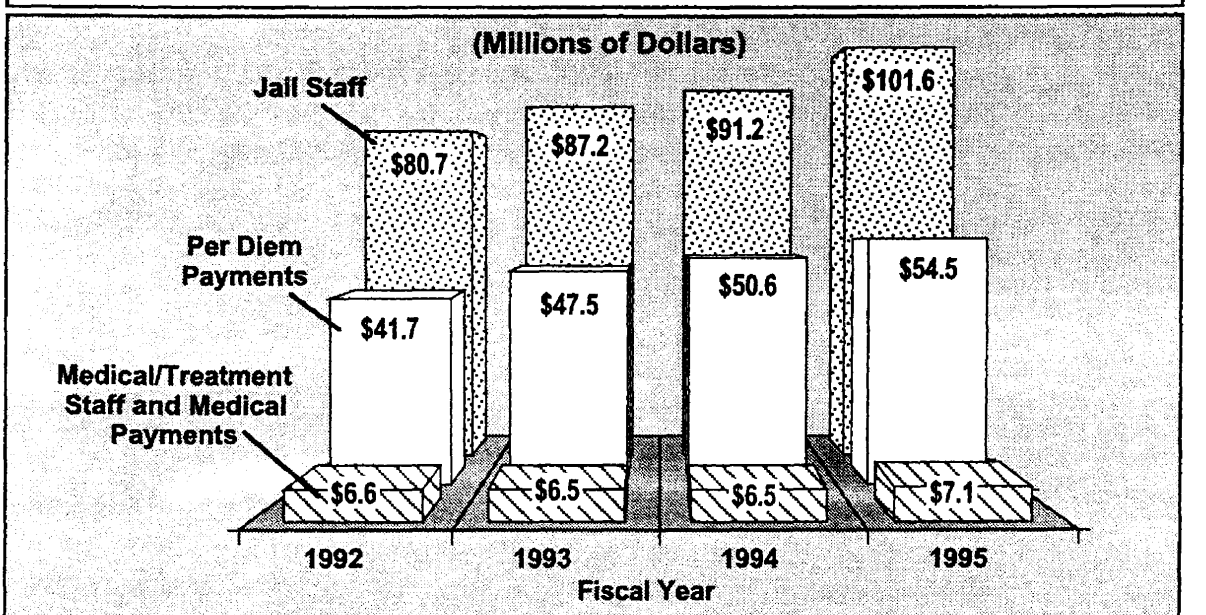
governments have attempted to increase the capacities of local jails through construction and renovation projects, these attempts have not yet matched the existing inmate population levels on a systemwide basis. Consequently, on August 15, 1995, jails were at 139 percent of their rated capacities. Although sheriffs, jail administrators, and DOC have made attempts to relieve jail overcrowding, additional measures appear necessary. Potential incentives for sheriffs and jail administrators to make additional reductions in jail populations by using alternatives to incarceration are examined in this study.

The State Provides Significant Funding for Local Jails. The Compensation Board provides the majority of State funding for local jail operations. Financial support for jail operations includes funding for jail staff, medical and other treatment staff, medical payments, and jail per diem payments. From FY 1992 through FY 1995, the Compensation Board has provided almost $582 million in funds to localities for jail operations (Figure 2). Moreover, the Compensation Board is authorized to allocate State-funded positions to local jails for inmates in alternative incarceration programs.

In addition, the Board of Corrections and the Treasury Board approve State funding for jail construction and renovation projects. Through these allocations, localities are eligible for State reimbursement for 25 percent of approved costs for construction projects for single-jurisdiction jails, and up to 50 percent of approved costs for construction projects for multi-jurisdiction jails. From FY 1992 through FY 1995, the State reimbursed localities almost $40 million for construction and renovation projects. Although State support for local and regional jails is extensive, current State incentives

Figure 2

Compensation Board Funding for Jail Operations FY 1992 - FY 1995



Source: JLARC staff analysis of Compensation Board data.

for reducing inmate populations appear not to have had the intended effect. The current funding structure and its intended incentives for localilties to reduce the population of misdemeanants and inmates awaiting trial is discussed in Chapter II.

JLARC Study Approach

This study assesses various funding incentives that could be adopted to aid in reducing jail populations. Several research activities were undertaken to develop the incentives proposed in this report. These activities included development of the target population data to be used in estimating revised per diem payments, interviews, document reviews, and analysis of DOC and Compensation Board data. The purpose of these activities was to develop information on:

- the current program and funding structure for local jails and for the various alternatives for incarceration used in Virginia,
- the incentive structure created by current funding for jails, and
- alternative incentive structures that could be used to reduce the populations in local jails.

Development of Target Population for Revised Per Diem Estimates. In order to identify a target population for the alternative funding incentives, JLARC staff analyzed DOC's database of the Record of Prisoners Confined in Jail, or the DC-J7 report, for calendar year 1994. The DC-J7 report is prepared by jails for DOC on a monthly basis and includes numerous characteristics of inmates in local jails. In addition, the DC-J7 database contains offense codes for prisoners confined in jails. For example, misdemeanants, felons, and individuals awaiting trial are identified on the DC-J7 report.

Through an analysis of the DC-J7 for calendar year 1994, JLARC staff identified more than 441,000 records of individuals confined in local jails. (It should be noted, however, that the number of records does not represent that many individuals because some individuals were confined in jail more than once during the year.) This represents the total of all inmates confined as well as all new admissions, and includes felons, misdemeanants, inmates awaiting trial, transfers from other facilities, local ordinance offenders, and prisoners held on federal or military charges. In order to form a target population which would be more appropriate for alternative programs discussed in this study, JLARC staff eliminated a number of offense codes and the accompanying inmate data records.

For instance, offense codes identifying violent felonies such as murder, manslaughter, kidnapping, sexual assault, malicious wounding, robbery, or any attempt to commit any of these crimes were excluded from the target population. In addition, some offense codes which identified nonviolent crimes were not included in the target population. For example, arson, immigration, extortion, and flight offenses were also

excluded from the target population. The end result was a target population consisting of more than 341,700 instances of individuals confined in local or regional jails.

In order to address the study mandate, JLARC staff further developed the target population to include only misdemeanants and unsentenced prisoners awaiting trial. JLARC staff identified more than 731,000 inmate days for convicted misdemeanants, and more than 1.3 million inmate days for offenders awaiting trial. In addition, several subgroups of inmates such as those held for 24 hours or less were identified.

Although information pertaining to misdemeanants and prisoners awaiting trial was readily available in the DC-J7 database, additional JLARC analysis was needed in order to identify the subgroup of prisoners held for 24 hours or less. Based on DC-J7 data, more than 104,000 inmate days (or about 285 inmates of average daily population) were the result of confinements of 24 hours or less. In addition, 42,398 inmate days (116 average daily population) were the result of confinements of more than 24 hours and less than 48 hours.

Prisoner days for the target population, and the various subgroups were used to calculate revised estimates of the per diems for FY 1996. The target population data were also used to estimate the potential reduction in average daily jail populations which could result from the incentives proposed in this report.

Interviews. JLARC staff conducted a number of structured interviews during the course of this study. Structured interviews were conducted with staff of the Department of Criminal Justice Services, the Compensation Board, the Department of Corrections, and the Virginia State Crime Commission.

JLARC staff also conducted telephone interviews with staff in selected local jails in Virginia. Jails with extensive alternative programs were selected, and jails with few or no alternative programs were also contacted. The interviews requested responses from local sheriffs and jail administrators concerning their familiarity with current incentives for alternatives to incarceration and feasible future incentives.

Document Reviews. A number of documents were examined which address alternatives to incarceration. JLARC staff reviewed documents related to alternative punishment programs, pre- and post-incarceration service delivery, and jail financing mechanisms. In addition, staff reviewed pertinent sections of the *Code of Virginia* and the Appropriation Act related to local jails and jail funding.

Analysis of DOC and Compensation Board Data. Much of the analysis of inmates in local jails and their types of offenses was completed by using the DOC report, Record of Prisoners Confined in Jail (DC-J7 report). The DC-J7 report reflects statistical information on prisoners confined in local jails as well as prisoners in alternative programs operated by, or under the authority of, the local sheriff or jail board. Through the DC-J7, JLARC staff were able to analyze data at both the statewide and local government levels.

The Compensation Board provided JLARC staff with data on 1996 estimated per diem payments, 1995 payment days, and funding for jail staff. JLARC staff used this data to estimate revised per diem payments for options that assessed various funding incentives to aid in jail population reductions.

Report Organization

The two remaining chapters in this report provide an assessment of financial incentives to reduce local jail populations. Chapter II describes funding mechanisms for local jails and proposes a number of incentives to reduce local jail populations. Chapter III presents a number of examples for using the incentives to reduce inmate populations in local and regional jails.

II. Funding Incentives for Local Jails

Funding for local jail operations in Virginia comes from both the State and the local governments. In addition, some jails receive federal reimbursement for prisoners held for the federal government. State funding for jail operations is provided to localities by the Compensation Board through reimbursement programs for local constitutional officers and through the per diem reimbursement for prisoners held on State warrants. In assessing any incentives to reduce jail populations, it is necessary to account for funding from both State and federal sources.

While the current funding formulas include several intended incentives to reduce jail populations, these incentives have little or no effect on the use of alternatives to incarceration. State funding for jail staff encourages sheriffs to maintain existing jail populations. The housing of federal prisoners in local and regional jails adds to inequities in the funding of jails and is inefficient from the State's perspective. In order for any funding-based incentives to be effective, several significant changes in the reimbursement of jails, and in the use of alternative programs, will be necessary. This chapter discusses the current methods for reimbursing localities for jail operations and outlines some potential changes to improve the incentive structure of the State funding for jails and selected alternative programs.

Compensation Board Funding for Local Jails

The Compensation Board currently provides funding for the operation of local and regional jails through two primary programs. The first is the Financial Assistance to Local Law Enforcement Officials program, which is the Compensation Board's constitutional officer funding for sheriffs' offices. The second form of funding for the jails is Financial Assistance for Confinement in Local Facilities, which is the per diem reimbursement for jails holding inmates on State warrants.

Funding for Jail Staff. In FY 1995, appropriated funding to localities for sheriffs' offices totaled $188.4 million. Of this amount, about $101.6 million was for salaries and fringe benefits of deputies and other personnel in local and regional jails. In FY 1996, the appropriation for sheriff's offices is $194.8 million, of which about $109.3 million is for jail staffing and operations. These amounts provide most of the funding for security staff in the State's 89 local and regional jails. The three localities operating jail farms do not receive any direct reimbursement for staff, but instead receive higher per diem rates. Jail farms are operated by local governments, not sheriffs, and house inmates who are assigned to work on various local projects. Danville, Martinsville, and Newport News currently operate jail farms.

The Compensation Board provides funding for jail security staff based on the lowest amount derived from the staffing request from the sheriffs and jail administrators, the recommendation of staffing studies completed by the Department of Corrections

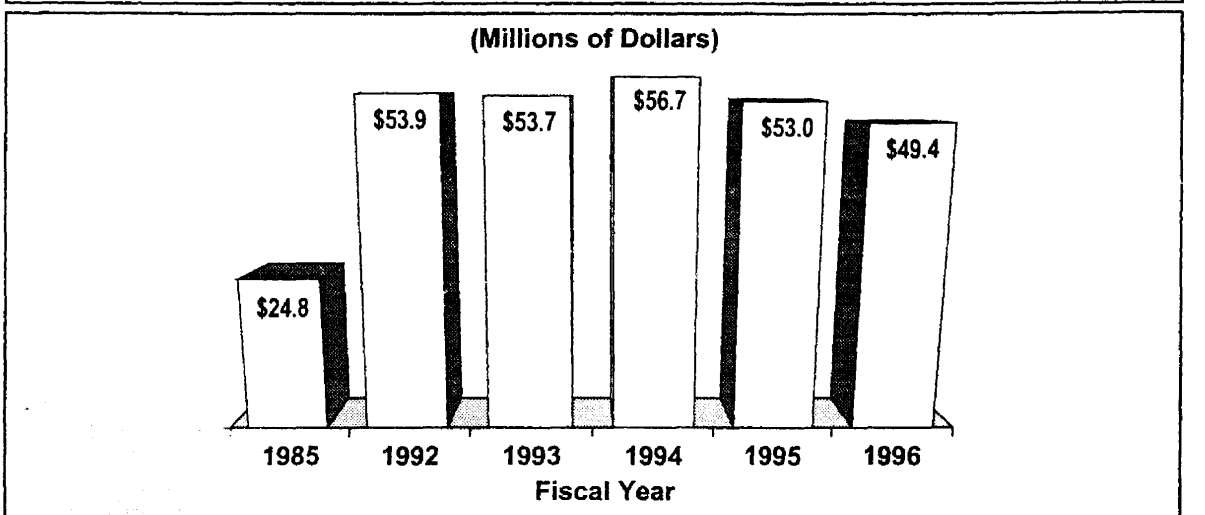
(DOC), or ratios of inmates to staff specified in the Appropriation Act. Since jail staffing studies have not been completed for most jails, the Board typically bases its funding decisions on sheriffs' and jail administrators' requests or the Appropriation Act standards. The Act calls for one security position for every three beds of operational capacity, and an additional security position for every five prisoners of average daily population in excess of the jail's operational capacity. Operational capacity is defined and determined by DOC.

Based on the current statewide operational capacity of the jails, and the average daily population in excess of capacity, the Appropriation Act standards call for a total of 4,179 security positions. Actual staffing approved for the jails now stands at 4,394, or 215 positions more than required by the standards. The positions in excess of the standards are the result of declining average daily populations in the jails as DOC moves State-responsible inmates to State facilities, and staffing of certain older facilities in excess of the three-to-one ratio for new jails. The statewide average daily population has declined from 16,534 in November 1994, to 14,120 as of August 15, 1995. The Compensation Board will likely reduce staffing provided on the basis of the five-to-one standard in some jails during its next consideration of jail budgets as a result of declining jail populations.

Per Diem Funding. The appropriated State per diem reimbursement for prisoners held in local jails is $49.4 million in FY 1996, of which about $47.3 million has been allocated by the Compensation Board (Figure 3). Prior to FY 1996, localities were reimbursed $8 per prisoner day for inmates held on State warrants. In addition, for jails holding sentenced State-responsible felons, the localities were entitled to an a $6 supplemental per diem per inmate day. Jail farms received $22 per inmate day plus the $6 per day for State-responsible felons. The $22 per inmate day reimbursement consists

Figure 3

State-Appropriated Funding for Jail Per Diems



Source: JLARC staff analysis of Compensation Board data.

of the $8 per day rate plus $14 per inmate day in lieu of Compensation Board funding for jail staffing.

Now, however, the funding is more complex, with localities receiving a quarterly block grant for convicted misdemeanants and unsentenced inmates awaiting trial, in addition to the $8 per-day reimbursement for prisoners not included in the block grant payment and the $6 per day for sentenced felons. For FY 1996, the $47.3 million total in estimated per diem payments includes $17.8 million in $8 per day reimbursements, $15.6 million in $6 per day reimbursements, and $13.9 million in block grant payments.

As an incentive to reduce jail populations, localities can continue to receive the $8 reimbursement for prisoners diverted to alternative programs (such as electronic monitoring) under the direction of the sheriff or jail board. In FY 1995, the Compensation Board funding for jails included $412,208 for reimbursement for prisoners in alternative programs.

The new block grant funding is a complicated, six-step formula, as set out in the Appropriation Act:

(1) calculate the average daily population of unsentenced persons awaiting trial and sentenced misdemeanants for the period of July 1, 1994 through June 30, 1995 using the Tuesday Report;

(2) calculate the percent change between the average daily local responsible offender population projected by the 1994 official forecast for the period of July 1, 1995 through June 30, 1996 and the actual average daily local responsible offender population for the period of July 1, 1994 through June 30, 1995, as reported on the Tuesday Report;

(3) multiply the figure derived in step (1) by the percentage derived in step (2);

(4) multiply the resulting figure by $8.00;

(5) multiply the resulting figure by the number of days in the period of July 1, 1995 through February 29, 1996; and,

(6) multiply the resulting dollar amount by 92.6 percent.

According to Compensation Board staff, the formula cannot be administered exactly as stated in the Act. The formula as set out in the Act funds only the growth in the jail population, without any funding for the base on which the growth is determined. On instructions from DPB, the Compensation Board calculates the block grant on both the base and the growth in the jails' populations, as was the intent of the Act.

Incentive Structure of Current State Funding

The current method of funding localities for local and regional jail operations includes several provisions intended to be incentives to reduce jail populations through the use of alternatives to incarceration. However, it appears that none of these funding provisions provides any direct incentive to reduce jail populations. While the block grant was intended to be an incentive, the formula's complexity has obscured the nature of any such incentive.

Other incentives, such as permitting localities to receive the $8 per diem for offenders in alternative programs, have little impact because of the loss of Compensation Board funding for staff when the jail's population is reduced. Because the funding for jail staff is based on the number of prisoners in the jail, the clear financial incentive is for sheriffs and jail administrators to keep as many inmates in the jail as possible. Sheriffs may reduce populations for other reasons such as health and safety concerns.

Block Grant Incentives. The basic concept underlying the new block grant is for the Compensation Board to provide a per diem for a fixed percentage of the next year's projected population of misdemeanants and unsentenced inmates awaiting trial. If a jail reduces its population below the percentage used to calculate the block grant, it still receives the full amount of the block grant, and the difference in per diems is "profit." By funding only 92.6 percent of the full per diem amount, the block grant attempts to force some reduction in jail populations.

For example, a locality with a jail which has a projected average daily population of 100 misdemeanants and unsentenced inmates awaiting trial will receive a block grant as if the average daily population were 92.6 offenders. Any jail population above that amount is essentially held by the jail without reimbursement by the State. On the other hand, if the jail can reduce the average daily population to 80, then the locality receives a bonus of per diem payments for the 12.6 average daily population not actually in the jail.

The block grant is likely to be ineffective in reducing local and regional jail populations for several reasons. First, the block grant cannot be expected to provide any incentive to reduce jail populations because sheriffs and local administrators are unaware of how it is calculated and do not understand its impact on per diem funding. JLARC staff interviewed 10 sheriffs and two regional jail administrators to determine their level of understanding of the block grant, and found that only two of the individuals interviewed were aware of how the block grant was calculated. Further, only three of the sheriffs and jail administrators interviewed said they were aware of any incentives in State funding designed to reduce jail populations. Compensation Board staff also reported that local officials do not seem to understand how block grant funding is determined.

In a review of jail alternative day funding, the Department of Criminal Justice Services (DCJS) found numerous operational problems with the current incentives in the reimbursement methods, including the new block grant. These problems included

localities receiving reimbursement for offenders who had been placed on probation or on supervised work programs and overpayments due to errors in data reported by the jails. Further, DCJS noted that because the payments go to the local governments, jails are not typically aware of the funding received.

Item 87.I.1.C of the 1995 Appropriation Act permits block grant funds for sentenced misdemeanants and persons awaiting trial to be used to operate alternatives to incarceration. According to DCJS, however:

> For FY 1996, localities will continue to receive payments for alternative days and block grant reimbursements . . . . Localities have the option of continuing payments for the jail admissions or establishing alternative programs for these offenders. DCJS has $600,000 in Item 534 E of its budget to supplement these program funds in addition to other new funds to assist localities to implement PSA [Pretrial Services Act] and local CCCA [Comprehensive Community Corrections Act] programs, but it can neither require localities to use, nor determine which localities might use, the Item 87 block grant funds to establish programs.

As a result, DCJS has suggested that the block grant reimbursement and the use of the per diem for alternative days be terminated as soon as possible. DCJS has concluded that:

> The state needs to adopt a more direct approach to reducing payments for prisoners held in local jails who are unsentenced awaiting trial or sentenced misdemeanants.

Recommendation (1). **The General Assembly may wish to discontinue the block grant funding method for sentenced misdemeanants and unsentenced persons awaiting trial.**

Per Diem Incentives. The per diems paid to localities for prisoner days are directly dependent on the number of inmates held in the jails. This can create an incentive to keep the jail population at least as high as the operational capacity of the facility, or even higher if additional jail staff have been approved by the Compensation Board due to overcrowding. With regard to the basic $8 per prisoner-day reimbursement, this may be unavoidable without the use of a block grant which is not based on prisoner-day measures. Such a block grant would be complex, and would likely mask the intended effect of any incentives.

A per diem payment has the advantage of being simple to administer, and can be used as an effective incentive to reduce jail populations, as shown in the illustrative examples in Chapter III of this report. In addition, a per diem, if set at or below the average of daily costs for the jails, is effective in holding down the operational costs of jails, in contrast to a cost reimbursement method of funding. Therefore, the General Assembly may want to retain the basic per diem reimbursement for prisoners held in

local and regional jails, currently set at $8 per prisoner day. The per diem is the basis for the illustrative reimbursement examples in Chapter III.

The $6 supplemental per diem for State-responsible felons is more problematic, however. This per diem, which is paid in addition to the $8 per diem was apparently designed in the mid-1980s as an incentive for jails to hold State-responsible felons. An analysis of jail costs in the early 1980s which established this per diem (at $5 per prisoner day for State felons at that time) does not appear to have been based on an accurate estimate of jail operating costs, or the shares of costs borne by the State and local governments. According to Compensation Board staff, the current $6 supplemental per diem for State felons does not appear to be based on any recognized increase in costs associated with housing State-responsible felons.

In fact, to the extent the additional State-responsible inmates have contributed to overcrowding, additional State-funded jail staff have likely been allocated to address some level of the overcrowding. Once staff have been allocated by the Compensation Board, the additional State-responsible inmates create only a marginal increase in operating costs for such items as food, health care, and clothing. This additional marginal cost should be covered by the $8 per diem payment.

As a result, this payment may unnecessarily increase the State's costs and encourage the jails to hold more State-responsible felons than would otherwise be the case. Since these prisoners have longer sentences, this can contribute to the long-term problems of crowding in some jails. Therefore, the General Assembly may want to eliminate the $6 suppelmental per diem for State-responsible felons in any future reimbursement to localities for local and regional jails. The illustrative examples in Chapter III do not include any $6 supplemental per diem payments.

Recommendation (2). **The General Assembly may wish to retain the basic per diem used to reimburse localities for local and regional jails holding prisoners on State warrants.**

Recommendation (3). **The General Assembly may wish to discontinue the $6 supplemental per diem used to reimburse localities for local and regional jails holding State-responsible felons.**

Staffing Incentives. The Appropriation Act also includes staffing-related incentives to move prisoners from jails to alternatives to incarceration. Item 82J permits the Compensation Board to fund alternative program staff positions in local and regional jails at a ratio of one position for every 16 inmates in the programs. This is intended to offset any reduction in staffing the jails would experience if inmates are shifted to alternative programs. Currently, however, no funding is available to staff the alternative positions, so the one-to-16 ratio provides no incentive to reduce jail populations.

In general, the current method required by the Appropriation Act and used by the Compensation Board to provide funding for jail staff works as a disincentive to reduce

jail populations. As a jail's inmate population is reduced, the Compensation Board reduces the approved staffing for the jail, consistent with requirements in the Appropriation Act. In interviews with JLARC staff, several sheriffs mentioned this as an obstacle to the use of alternatives to incarceration. A case example illustrates how concerns about staffing can impact jail populations:

> *One jail recently requested that the Department of Corrections not transfer to a State facility the State-responsible inmates held in the jail. The sheriff made the request in order to avoid a reduction in the jail's population which would result in a loss of positions funded by the Compensation Board.*

One sheriff told JLARC staff that several sheriffs and jail administrators had entered into agreements with DOC to permit the jails to keep State-responsible inmates that normally would have been transferred to DOC facilities. According to the sheriff, the threat of reductions in staffing due to declining jail populations was the impetus for the sheriffs to seek and enter into these agreements. The agreements may be useful to the State in handling the backlog of State-responsible inmates, but could retard efforts to reduce local jail populations. Currently, nine jails have such agreements with DOC.

Sheriffs' concerns could be a significant obstacle to the use of funding-based incentives. To mitigate the impacts on staffing of reductions in jail populations as a result of the use of alternative programs, the incentives should avoid an immediate one-to-one loss of jail staff associated with a reduction of inmate populations.

The General Assembly may want to consider phased reductions in staffing, for example, over a two- or three-year period. One option would be for the Compensation Board to recognize only one-fourth of the reduction in prisoner days due to the use of alternative programs in the first year of implementation of the incentives. Then the Board could recognize one-half of the reduction in the second year, and all of the reduction in the third year. This type of phased approach would permit sheriffs and jail administrators to use normal staff attrition to reduce staff in response to reduced jail populations due to the use of alternative programs. The General Assembly may also want to ensure that the Compensation Board's one-to-16 ratio for positions for alternative programs is adequately funded.

Recommendation (4). **The General Assembly may wish to consider phased reductions in jail staffing which result from the use of alternatives to incarceration.**

Recommendation (5). **The General Assembly may wish to fund the positions necessary for the Compensation Board to staff the one-to-16 ratio for alternative programs operated by local and regional jails.**

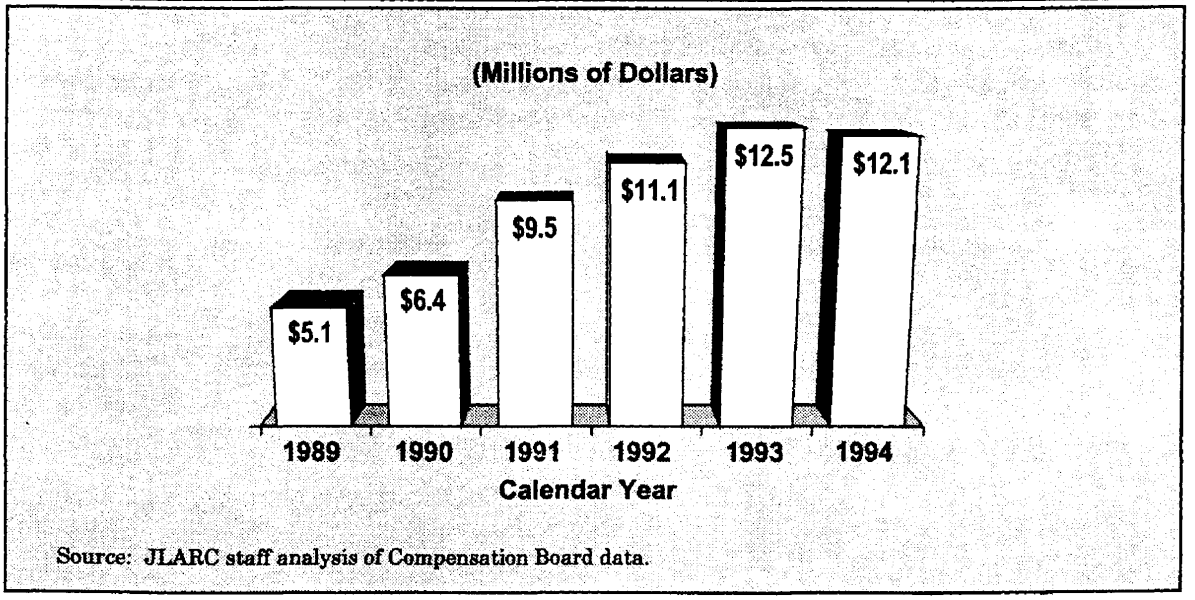
Federal Reimbursement for Local and Regional Jails

As of August 15, 1995, local and regional jails were holding 713 federal prisoners, for which the localities were reimbursed by the federal government. The reimbursement rates paid by the federal government vary by jail. In calendar year 1994, the reimbursement rates ranged from $15 to $80 per prisoner day. In addition, the federal government has provided capital funding for some jails in return for guaranteed placement of prisoners. Arrangements for reimbursement are made by the sheriff, and are not related to any State reimbursements. Localities do not receive per diem reimbursement from the Compensation Board for federal prisoners. In addition, the number of federal prisoner days does not explicitly factor into the Compensation Board's jail staff allocation decisions because staffing is typically based on the operational capacity of the jails. Federal prisoners are not considered by the Compensation Board when determining staff needed to meet the five-to-one standard for prisoners in excess of operating capacity.

Localities receive a significant amount of revenue for housing these inmates from the federal government. In calendar year 1994, local jails reported to the Compensation Board that they received more than $12 million in federal reimbursement (Figure 4). This was a slight decrease from the total federal revenue received by localities in calendar year 1993. This decrease may have been due to the significant overcrowding caused by State-responsible inmates in the last two quarters of calendar year 1994. Nonetheless, three jails still reported receiving more than $1 million each in total revenue for housing federal inmates in calendar year 1994.

Figure 4

Federal Prisoner Day Reimbursements for Virginia Localities



Source: JLARC staff analysis of Compensation Board data.

Incentives in Federal Reimbursement for Virginia Jails. The housing of federal prisoners in large numbers in some jails creates the potential for funding inequities. The Compensation Board provides significant funding for jail security positions as a part of its funding for constitutional offices, as discussed above. If a jail houses a significant number of federal prisoners, the State effectively subsidizes the cost of housing those prisoners. The jails do not receive any State per diem payment for federal prisoners, but because the State funds most of the costs for jail security positions and operating costs based on operational capacity, localities receive State funding that is used to provide security and administrative services for a significant federal jail population.

Federal funding can be an incentive for local jails to increase populations at a time when the State as a whole needs to reduce jail populations. Two examples of jails accepting federal inmates illustrate this problem:

> *One regional jail has an operational capacity of 90 beds, and has been staffed by the Compensation Board with 29 correctional officers. This level of staffing is approximately equivalent to the staffing standard set out in the Appropriation Act (one security position per three beds of operational capacity). However, on August 15, 1995, the jail held 121 inmates, of which 64 were federal, and 57 were State and local responsibility. This means that about a third of the staff provided by the Compensation Board provided security and administrative services for federal inmates. This constitutes a State subsidy for the housing of federal inmates at a cost of $240,000 in FY 1996. Currently, the jail receives $50 per federal inmate day, and could receive reimbursements in excess of $900,000 in FY 1996.*
>
> * * *
>
> *Another jail, with an operational capacity of 42, held 32 federal inmates on August 15, 1995. With a total jail population of 66 inmates, the jail was operating at 157 percent of its rated capacity, and the overcrowding was attributable in part to the number of federal inmates held in the facility. During calendar year 1994, the jail reported holding an average of 23 federal inmates each day and received $336,640 in federal prisoner reimbursements.*

In 11 of the 92 jails in Virginia, federal prisoners make up more than ten percent of the total inmate population. In five of those jails, federal prisoners are more than 30 percent of the total inmate population.

In addition, of course, housing federal inmates in large numbers adds to the problem of crowding in Virginia's jails. For example, four jails are currently operating with inmate populations in excess of operational capacity as a result of the federal prisoners housed in these facilities. Statewide, 18 percent of the jail population in excess

of the jails' operational capacity is due to the housing of federal inmates. This limits the ability of other jails to transfer State and local inmates to reduce crowding. It has also resulted in some jails demanding reimbursement equal to the federal reimbursement rate in order to accept inmates from other Virginia jails. In 1994, for example, one jail was charging as much as $35 per day to accept locally-responsible inmates from other jails. This increases the costs of jails already experiencing problems due to overcrowding.

In order to address the problems associated with the housing of federal inmates in local jails, the State may want to consider reductions in State funding as offsets to federal reimbursement. This would help to limit the State's subsidy of federal inmate costs. Offsets to federal funding could be accomplished either through reductions in funding for staffing or as a part of the State per diem payments. To some extent, the State could most easily account for the opportunity costs associated with federal inmates in local jails with reductions in State per diems. The magnatude of the reduction is a policy choice to be made by the General Assembly should it decide to adopt an offset for federal prisoner days. In Chapter III of this report, several of the funding examples include a reduction of the State per diem as an offset for each federal prisoner day in local and regional jails.

Recommendation (6). **To limit subsidies of federal inmate costs in local and regional jails, the General Assembly may wish to consider reductions in per diem payments to localities for local and regional jails housing federal prisoners as offsets for federal prisoner days reimbursed for those jails.**

Proposed Incentives to Reduce Jail Populations

If the State wants to promote the use of alternatives to incarceration in order to reduce local and regional jail populations, changes to the current funding structure for jails will be necessary. These changes relate to both the formulas for staffing the jails, as well as the per diems paid for prisoner days. However, changes in the funding methods for jails may not by themselves result in increased use of alternatives to incarceration. Changes in the authority of sheriffs and regional jail boards with regard to the use of alternatives could also be useful. Of course, it is also essential that alternative programs be funded as necessary in order for localities to reduce jail populations.

Funding Incentives Should Apply to Short-Term Misdemeanant and Awaiting Trial Populations. Given the nature of the alternatives to incarceration in Virginia, it is important for the funding incentives to focus on reductions in certain parts of the total jail population. For this report the target population was designed to include only nonviolent misdemeanants and unsentenced inmates awaiting trial. Alternative programs in Virginia are designed to serve these populations. Jails should clearly associate the funding incentives with this target population.

Within the target population, the subgroup consisting of very short-term prisoners was identified as the population on which the reimbursement incentives should primarily focus. This subgroup includes prisoners held less than 24 hours, prisoners held

less than 48 hours, and misdemeanants serving week-end sentences. The funding examples in Chapter III are based on reductions in per diem payments for these short-term prisoners; however, two examples include partial reductions for the total misdemeanant and awaiting trial populations.

Recommendation (7). **In order to promote a reduction in short-term nonviolent offenders, the General Assembly may wish to revise the per diem funding formula for local and regional jails to include reductions for nonviolent prisoners held less than 24 hours, for nonviolent prisoners held less than 48 hours, and for some portion of the general population of nonviolent misdemeanants and unsentenced inmates awaiting trial.**

Funding Formulas Need to be Simple. In order for the funding formulas for the per diems to create incentives to reduce jail populations, they need to be simple. There should be a clear relationship between jail funding and the targeted population to be reduced. Several things can be done to simplify the current per diem funding formula. First, a single per diem rate could be used for all prisoner days to be reimbursed. The average of total per diems ($8 basic, $6 supplemental for State felons, and block grant) estimated by the Compensation Board to be paid to local and regional jails in FY 1996 is $8.14 per prisoner day. This single per diem rate has been used in the illustrative examples in Chapter III. The average per diem for jail farms is $22.93 per prisoner day.

The funding for per diems can also be simplified by discontinuing the use of the block grant formula, as recommended earlier in this report. As noted, DCJS has already suggested that block grant funding be terminated. Instead, reductions in per diem payments could be based on a single, more direct formula, which accounts for reductions in the prisoner days for the targeted jail population. No block grant funding is included in the examples in Chapter III.

Sheriffs Need Flexibility to Respond to Funding Incentives. Section 53.1-131.2 of the *Code of Virginia* gives sheriffs and jail administrators authority to place prisoners sentenced to jail in home electronic monitoring programs which are operated by the jail or the Department of Corrections. In order to make such a placement, the sheriff need only notify in writing the Commonwealth's attorney and the sentencing court. Prior approval of the court is not required. Such authority can be useful in reducing jail populations, and has been used by some sheriffs.

However, this flexibility in managing the jail population does not extend to other alternatives to incarceration. As a result, sheriffs or jail administrators who do not have home electronic monitoring programs cannot respond directly to funding-based incentives to reduce jail populations. Alternatives such as day reporting programs, which can be useful in reducing inmate populations, could not be used by the sheriff to reduce the jail population unless so ordered by the sentencing court.

Without an order from or agreement with the courts, local officials, including sheriffs, have little flexibility to reduce jail populations. To enhance the ability of localities to respond to funding incentives, the General Assembly may want to consider

giving sheriffs and jail boards clear statutory authority to place nonviolent misdemeanants held in local and regional jails in a wider array of locally established alternative programs operated by the sheriff or regional jail board. This would provide sheriffs and jail administrators with the flexibiltiy to respond to funding-based incentives.

Recommendation (8). **The General Assembly may wish to expand the authority of sheriffs and regional jail boards to place nonviolent misdemeanants held in local and regional jails in a wider array of locally established alternative programs operated by the sheriffs or regional jail boards. Sheriffs and jail administrators should be required to notify in writing the Commonwealth's attorney and the sentencing court of any transfer of an offender sentenced to jail but diverted to an alternative program. Prior approval of the court should not be required.**

Direct Positive Incentives Are Needed. Currently, funding for the jails is provided to the local government, not directly to the local or regional jails. As a result, the sheriffs and jail administrators may not be aware of the incentives in funding formulas. As noted earlier in this chapter, few of the sheriffs interviewed by JLARC staff seemed to fully understand the intended incentives in Compensation Board funding. Thus, reductions in per diem payments by themselves may have little impact on jail populations.

A positive incentive for the jail may help to address this problem. To this end, the localities should share in any savings associated with reduced jail populations when inmates are moved to alternative programs. Some portion of the reduction in per diem payments could be returned to the localities in the form of operational funding for alternative programs operated by the sheriffs or jail boards. This would make clear the State's commitment to move nonviolent misdemeanants from the jails to alternative programs. This alternative is shown in three of the illustrative examples in Chapter III.

Recommendation (9). **The General Assembly may wish to include as a part of incentives to reduce jail populations positive incentives, such as financial support of locally established alternative programs operated by the sheriffs or regional jail boards, funded from reductions in per diem payments.**

Alternatives to Incarceration

Currently, a wide variety of alternatives to incarceration are in use in Virginia localities, although few if any are available comprehensively in all jurisdictions. Many of these programs are locally established but receive State funding. These alternative programs can be used for both the convicted population and for those awaiting trial. Moreover, they vary in terms of restrictiveness — from relatively restrictive programs such as halfway houses to relatively non-restrictive programs such as community service.

During its September 1994 Special Session, the General Assembly passed legislation that established new programs and initiatives addressing crime in Virginia and inmates incarcerated in local jails. The legislation (Senate Bill 3001 and House Bill 5001) included two programs which provide assistance to localities in reducing jail populations. These programs, the Pretrial Services Act (PSA) and the Comprehensive Community Corrections Act (CCCA), are locally established and provide a wide range of alternatives to incarceration.

Pretrial Services Act. Section 19.2-152.2 of the *Code of Virginia* established the Pretrial Services Act. The purpose of this act, which became effective July 1, 1995, is to establish programs which assist judicial officers in fixing terms of bail. Pretrial services are designed to allow jail staff, or agencies charged with conducting pretrial assessments, to evaluate and make recommendations to local judicial officers concerning an individual's potential for release. Currently, 13 pretrial programs are in operation statewide, and ten additional programs have been approved by DCJS. Pretrial services programs are locally established and operate with State funds made available through the Department of Criminal Justice Services (DCJS).

Comprehensive Community Corrections Act. Section 53.1-180 of the *Code of Virginia* details the purpose of the Comprehensive Community Corrections Act (CCCA). CCCA provides "the judicial system with sentencing alternatives for certain misdemeanants or nonviolent offenders . . . who may require less than institutional custody." These post-conviction programs are locally established and operate with State funding made available through DCJS. Alternatives such as community service, home confinement, and home electronic monitoring are provided through locally established CCCA programs. Thirty-four programs created under the CCCA are currently operating across the State.

The primary jail alternative programs which directly result in reduced inmate populations are pretrial services, community service, electronic monitoring, home incarceration, probation supervision, and public inebriate centers. These programs, however, are used by localities to varying degrees. None of these programs is available on a statewide basis.

The State Should Fund Alternatives That Reduce Jail Populations. To the extent the General Assembly wishes to fund alternative programs from reductions in per diem payments, only certain types of alternative programs should be considered for State funding as a part of an incentive program. For example, work release programs, while useful in some situations, do not actually reduce the population of the jail because inmates are required to return to the jail at night. Consequently, jails receive no relief from overcrowding through work release programs.

Additionally, "weekender programs," which normally require offenders to remain in jail over weekend periods, assist sheriffs and jail administrators in reducing jail populations only during the week. These programs can drive up jail populations during periods when sheriffs and jail administrators generally witness increases in

inmate counts. Therefore, this alternative, as it typically exists, may not be useful in reducing jail populations.

Operational support for alternative programs funded from reductions in jail per diems should be provided only for those programs that remove inmates from jail facilities entirely. Programs such as home confinement, electronic monitoring, day reporting centers, and public inebriate centers assist localities in providing alternatives to incarceration and reducing jail populations. The programs for which the State may want to provide funding are discussed below.

Home Confinement. Home confinement programs can function with varying degrees of restrictiveness. While a curfew program may require that offenders return to their residences at certain times, usually at night, a home detention program may require participants to be at home whenever they are not at work. The most restrictive form of home confinement is home incarceration. In this program, the offender's home actually serves as a place of confinement -- the offender cannot leave his home even to go to work.

Home confinement programs are useful because they help reduce jail populations and reduce the costs of confinement. Costs are significantly lower because the jail is not housing, feeding, and providing medical care for the offender. Currently, it is not known how many jails utilize or participate in home confinement programs. In Virginia, home confinement always involves electronic monitoring.

Electronic Monitoring. Electronic monitoring programs are used in combination with home confinement or intensive supervision probation. In this program, the offender's location is monitored via an electronic bracelet which communicates with a computer over standard telephone lines. In Virginia, 11 jurisdictions are using electronic monitoring in formal programs, although other localities may use electronic monitoring on an informal basis. Funding is provided by DCJS in the form of grants for the initial equipment purchase. Operating funding is not provided by the State.

Day Reporting Centers. Day reporting centers require that program participants physically report to the center daily and provide a schedule of activities for the day. Typically, offenders must report to the center by phone periodically throughout the day. The offenders may also be required to participate in treatment programs or community service and to submit to random drug testing.

As with home confinement, day reporting programs are cost effective because offenders are not housed in a jail. Although treatment programs may incur some additional costs, the participants are not incarcerated, so the program is useful in reducing jail populations.

Currently only four jurisdictions are operating day reporting programs. Funding is provided by DOC. In addition to centers previously established, the General Assembly appropriated $400,000 in FY 1995 and $750,00 in FY 1996 for the establishment of pilot day reporting centers in the cities of Richmond and Norfolk.

Public Inebriate Centers. Public inebriate centers are a pre-trial alternative for persons held for public intoxication. The centers are used to detoxify and provide initial treatment by mental health and substance abuse staff. Since there were 24,517 prisoner days reimbursed for public intoxication in calendar year 1994, the use of public inebriate centers could potentially result in a substantial reduction in jail populations. Currently, however, only three centers are funded by the State. Total State funding for the centers is $373,000 in FY 1996.

Some Alternatives May Not Be Appropriate for All Localities. The alternatives most useful in reducing jail populations may not be applicable across all localities. For instance, DOC recorded 24,517 prisoner days for public intoxication during 1994. If all prisoners with public inebriation charges were diverted from local jails into alternatives, such as public inebriate centers, the State would have saved more than $196,000 in inmate per diem payments alone.

However, many localities would have a difficult time justifying the establishment of a public inebriate center only on the basis of inmate days charged to public inebriation. On the other hand, localities such as Roanoke City and Richmond City, that averaged 11 and six inmates per day respectively on public inebriation charges for calendar year 1994, could justify the establishment of public inebriate centers as a way to reduce their jail populations.

Recommendation (10). **The General Assembly may wish to consider providing operational funding for locally established alternative programs which reduce jail populations. Among the programs that should be considered for funding are home confinement, electronic monitoring, day reporting centers, and public inebriate centers.**

III. Illustrative Examples of Funding Incentives to Reduce Jail Populations

To evaluate the potential impact of the recommended funding incentives in Chapter II of this report, JLARC staff developed several computer models to calculate revised per diems for each of Virginia's local and regional jails. These illustrative examples of funding incentives to reduce jail populations are not recommendations for funding; rather, they are a few of the many possible ways in which the per diem payments can be used to promote the use of alternatives to incarceration. To fund the per diem payments based on the recommended incentives in this report, the General Assembly would need to make specific choices about each of the individual incentives.

The illustrative examples in this chapter are designed to be consistent with the general concepts described in Chapter II. These include:

- *The per diem formula should be simple to calculate.* The examples use a single per diem rate and use data from existing, readily available sources. The complicated block grant funding formula is eliminated.

- *The incentives should be direct and easily identified.* Jail populations targeted for reduction include short-term, nonviolent misdemeanants and unsentenced persons awaiting trial. Therefore, the per diem reductions are for those prisoners.

- *Direct positive incentives are needed.* Three of the examples include a positive incentive to share potential savings from reduced per diems with the localities. These examples include funding for alternative programs, by directing 25 percent of the savings from reduced per diem payments to locally established alternative programs operated by the sheriffs or jail boards.

In addition, all of the examples assume that sheriffs will have flexibility to place prisoners in alternative programs as needed and that alternative programs will be adequately funded. The examples are summarized in Table 1, and discussed below in detail. Funding amounts are based on estimated FY 1996 per diems provided by the Compensation Board, and revised estimates are based on the proposed incentives.

Example 1

Example 1 represents the use of a minimal incentive to reduce the very short-term prisoner population. The incentive is a reduction of the total prisoner days for the jail by the number of prisoner days for nonviolent misdemeanants and unsentenced inmates awaiting trial held for less than 24 hours. The formula for calculating the per diem is:

$$\left(\begin{array}{c}\textbf{Total Prisoner Days}\\ \textbf{Reimbursable}\end{array} - \begin{array}{c}\textbf{Prisoner Days for Offenders}\\ \textbf{Held Less Than 24 Hours}\end{array}\right) \times \begin{array}{c}\textbf{Per Diem}\\ \textbf{Reimbursement Rate}\end{array}$$

Based on FY 1996 estimated per diem payments, this example would reduce the per diems approximately $855,000 statewide, for a reduction in average daily population of 286 prisoners.

Table 1

Summary of Illustrative Examples of Funding Incentives

	Example 1	Example 2	Example 3	Example 4
Incentive Choices				
Per Diem Rate for Jails	$8.14	$8.14	$8.14	$8.14
Per Diem Rate for Jail Farms	$22.93	$22.93	$22.93	$22.93
Reduction for Misdemeanants and Awaiting Trial Held Less Than 24 Hours	100%	100%	100%	100%
Reduction for Misdemeanants and Awaiting Trial Held Less Than 48 Hours	None	None	100%	100%
Reduction for All Misdemeanants	None	None	None	5%
Reduction for All Awaiting Trial	None	None	5%	5%
Reduction for Federal Prisoner Days as Offset	None	100%	100%	100%
Percentage of Savings Directed to Alternative Programs	None	25%	25%	25%
Estimated Outcomes				
Statewide Reduction in Average Daily Population	286.1	286.1	589.0	689.2
Net Savings to the State	$854,953	$2,087,748	$2,818,532	$3,069,755
Additional Funds Available for Alternative Programs	$0	$816,961	$990,381	$1,054,626

Source: JLARC analysis of Compensation Board per diem funding and Department of Corrections DC-J7 jail data.

Example 2

Example 2 employs a minimal incentive to reduce the very short-term prisoner population as in Example 1, but includes a reduction of one State reimbursable day for each federal prisoner day the jail has been reimbursed. This is an offset of federal prisoner days which recognizes the opportunity cost associated with the housing of federal prisoners. The incentive structure for this example is a reduction of the total prisoner days by the number of prisoner days for nonviolent offenders held for less than 24 hours and the number of federal prisoner days reimbursed by the federal government. In contrast to Example 1, 25 percent of the reduction in per diems in this example is directed back to the jails for use in alternative programs. The formula for calculating the per diem is:

$$\left(\begin{array}{c}\textbf{Total Prisoner Days}\\ \textbf{Reimbursable}\end{array} - \begin{array}{c}\textbf{Prisoner Days for Offenders}\\ \textbf{Held Less Than 24 Hours}\end{array} - \begin{array}{c}\textbf{Federal Prisoner Days}\\ \textbf{Reimbursed by U.S.}\end{array}\right) \times \begin{array}{c}\textbf{Per Diem}\\ \textbf{Reimbursement Rate}\end{array}$$

Based on FY 1996 estimated per diem payments, the second example would reduce the per diems approximately $2.9 million statewide, for a reduction in average daily population of 286 State and local prisoners. Because most jails hold federal prisoners under contractual relationships with the U.S. Marshals Service, immediate reductions of federal prisoners should not be expected. With the cost associated with additional funding for alternative programs, the net savings for the State is $2.0 million. Approximately $817,000 in new funds would be available for alternative programs operated by the local and regional jails.

Example 3

Example 3 is a more extensive set of incentives to reduce jail populations. The incentive to reduce the very short-term prisoner population is expanded to discontinue per diem payments for nonviolent offenders held 48 hours or less. The set of incentives includes a reduction of one State reimbursable day for each federal prisoner day the jail has been reimbursed. This is an offset of federal prisoner days which recognizes the opportunity cost associated with the housing of federal prisoners.

The incentive structure for this example also includes a reduction of prisoner days reimbursed equal to five percent of the total days for unsentenced inmates awaiting trial. This expands the incentives beyond the very short-term target population. The amount on the reduction at five percent is arbitrary, and is intended only to show the impact of such an incentive. The actual amount of the reduction would be a policy choice for the General Assembly should it adopt this type of incentive.

As in Example 2, this example also includes funding for selected alternative programs funded from 25 percent of the reduction in per diem payments. The formula for calculating the per diem is:

(Total Prisoner Days Reimbursable − Prisoner Days for Offenders Held Less Than 48 Hours − Federal Prisoner Days Reimbursed by U.S. − (Prisoner Days for Unsentenced Awaiting Trial X .05)) X Per Diem Reimbursement Rate

Based on FY 1996 estimated per diem payments, Example 3 would reduce the per diems approximately $3.8 million statewide, for a reduction in average daily population of 589 State and local prisoners. As with Example 2, immediate reductions of federal prisoners should not be expected. With the increased funding for alternative programs, the net savings for the State is $2.8 million. Almost $1.0 million in new funds would be available for alternative programs operated by the sheriffs and regional jail boards.

Example 4

The final example employs a broad range of incentives to reduce jail populations. As with Example 3, the incentives include a reduction of per diem payments for nonviolent offenders held 48 hours or less and a reduction of one State reimbursable day for each federal prisoner day the jail has been reimbursed by the U.S. government. The incentive structure for this example also includes a reduction of prisoner days reimbursed equal to five percent of the total days for unsentenced inmates awaiting trial and five percent for all misdemeanants in the target population. This expands the incentives to include the general population of inmates considered a local responsibility, and is shown here to demonstrate the impact of such an incentive. The actual amount of the reduction would have to be established by the General Assembly.

This example also includes the funding for alternative programs, amounting to 25 percent of the savings from the reduced per diems. The formula for calculating the per diem is:

(Total Prisoner Days Reimbursable − Prisoner Days for Offenders Held Less Than 48 Hours − Federal Prisoner Days Reimbursed by U.S. − (Prisoner Days for Unsentenced Awaiting Trial X .05) − (Prisoner Days for Misdemeanants X .05)) X Per Diem Reimbursement Rate

Based on FY 1996 estimated per diem payments, this final example would reduce the per diems approximately $4.1 million statewide, for a reduction in average daily population of 689 State and local prisoners. As in the prior examples subtracting federal prisoner days, immediate reductions of federal prisoners should not be expected. Funding for alternative programs amounts to almost $1.1 million, leaving net savings for the State of $3.1 million.

Appendixes

Appendix A

Item 15G - 1995 Appropriation Act

The Joint Legislative Audit and Review Commission shall conduct a study of alternatives to incarceration and other incentives that could be adopted to aid in reducing the number of prisoners awaiting trial and the number of misdemeanants held in local and regional jails. This study shall include an assessment of alternative reimbursement strategies for prisoners held for twenty-four hours or less. The Commission shall report its findings no later than November 1, 1995.

Appendix B

Agency Responses

As part of an extensive data validation process, State agencies involved in a JLARC assessment effort are given an opportunity to comment on an exposure draft of the report. Appropriate technical corrections resulting from the written comments have been made in this final version of the report.

This appendix contains the responses of the Department of Corrections, the Compensation Board, and the Virginia Sheriffs' Association.

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BRUCE W. HAYNES
EXECUTIVE SECRETARY

JAMES W. MATTHEWS
ASSISTANT EXECUTIVE SECRETARY

COMMONWEALTH of VIRGINIA

COMPENSATION BOARD
P. O. BOX 710
RICHMOND, VIRGINIA 23206-0710

October 27, 1995

Mr. Philip A. Leone
Director
Joint Legislative Audit and Review Commission
General Assembly Building, Suite 1100
Capitol Square
Richmond, Virginia 23219

Dear Mr. Leone:

Thank you for the opportunity to review the Joint Legislative Audit Review Commission (JLARC) draft report of Funding Incentives for Reducing Jail Populations.

The Compensation Board concurs with the basic premise of your report: present funding and staffing methodologies specified in the Appropriation Act and Code of Virginia often serve as a disincentive to reducing overcrowding in local jails. The Compensation Board believes that the recommendations made in your report are reasonable and should serve as the basis for future discussion between all interested parties. The Compensation Board concurs with your recommendations to discontinue the block grant funding method for sentenced misdemeanants and unsentenced persons awaiting trial, and to fund the positions necessary for alternative incarceration programs. The Compensation Board also shares your concerns regarding the costs of housing federal inmates in local jails.

The Compensation Board believes that a phased reduction in jail staffing resulting from the use of alternatives to incarceration would be exceptionally difficult to administer. As an alternative, the Compensation Board believes that reallocating such positions to other staffing needs in sheriffs' offices, based upon Compensation Board staffing standards, would be more equitable and far easier to administer.

The Compensation Board concurs with the premise that positive incentives to sheriffs should be employed to reduce particular jail populations. However, the Compensation Board cannot concur with any incentive that provides funding directly to sheriffs or regional jails, as this would violate long-standing internal controls requiring payments to be made to local treasurers. Further, local governments and regional jail boards must appropriate all funds for expenditure by the sheriff/superintendent, per §15.1-162, Code of Virginia.

Please let us know if we may be of further assistance.

Sincerely,

June R. Funkhouser, Chairman

Bruce W. Haynes
Executive Secretary

BWH/kml

Copy to: Walter J. Kucharski, Compensation Board Member
Danny M. Payne, Compensation Board Member
James W. Matthews, Assistant Executive Secretary

c:\wpdocs\jlarc
kml\October 30, 1995

100695

COMMONWEALTH of VIRGINIA

Department of Corrections

RON ANGELONE
DIRECTOR

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October 4, 1995

Mr. Philip A. Leone
Director
Joint Legislative Audit and Review Commission
General Assembly Building, Suite 1100
Richmond, Virginia 23219

Dear Mr. Leone:

Thank you for the opportunity to review the Joint Legislative Audit and Review Commission (JLARC) exposure draft of Funding Incentives for Reducing Jail Populations. Recommendations advanced in the study suggest incentives to reduce select jail populations could be realized through revision of the current per diem reimbursement process and establishing a wider array of alternatives to incarceration available to Sheriffs or jail administrators. In addition, specific recommendations address funding received for housing federal prisoners, jail staffing and revisions to the current block grant method of reimbursement.

The Department concurs with recommendations for revision of the current block grant reimbursement process as it is complex and does not provide population reduction incentive. Further, the Department agrees that state funding should be adjusted in some manner if a local jail receives per diem payments for housing federal prisoners. Such adjustment could take the form of reduced state per diem payments; limitations on staffing; or amendment of state jail construction funding reimbursement statutes or regulations.

Although the State Compensation Board would assume leadership in the implementation of these recommendations, past Departmental experience with jail operational funding would lead me to believe that study recommendations will reduce the targeted jail populations of misdemeanants, awaiting trial and short term holds. As the study notes, positive incentives such as alterna-

tive program staffing and broader Code defined authority for Sheriffs or jail administrators will prove key in successful achievement of this goal.

Sincerely,

Ron Angelone

RA/JMH/jp

cc: Mr. Gene M. Johnson
Mr. James R. Camache
Mr. J. Michael Howerton

100695

Virginia Sheriffs' Association

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October 4, 1995

FAXED 10-4-95

Mr. Philip E. Leone
Director
Joint Legislative Audit & Review Commission
General Assembly Building
901 Capitol Street, Suite 1100
Richmond, VA 23219

Dear Phil:

Thank you for the opportunity to review the exposure draft of the JLARC report summary for "Funding Incentives for Reducing Jail Populations". I am concerned with the recommendations contained in the report that will result in reduction in state aid to localities in the form of block grants to local jails. Somehow the report seems to advance the theory that reduced funding will reduce jail populations. It should be pointed out that the sheriffs have no control over the jail population. They must incarcerate those sentenced by the court.

I hope the Commission will not endorse the recommendation to release state aid to localities in the form of block grants to local jails.

Sincerely,

John W. Jones
Executive Director

JWJ/slg

pl1004.ltr

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