

Department of Corrections



“A Balanced Approach”



2008 Appropriations

Act Chapter 879 Item 387-D

“Prison-Bound Violators”

Gene M. Johnson, Director



COMMONWEALTH of VIRGINIA

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August 28, 2008

The Honorable Charles J. Colgan
Chairman, Senate Finance Committee
910 Capitol Square
Richmond, VA 23219

The Honorable Lacey E. Putney
Chairman, House Appropriations Committee
910 Capitol Square
Richmond, VA 23219

Gentlemen,

In accordance with the 2008 Appropriations Act, Chapter 879, Section 387-D, the Department of Corrections (DOC) is reporting on the potential costs and benefits of steps required to divert up to 50 percent (50%) of prison-bound nonviolent offenders who have scored no more than 38 points on the risk assessment instrument of the Virginia Criminal Sentencing Commission. In FY 2007, DOC received 1,035 such offenders. We were to confer with the Commission on ways to secure input from the judicial branch.

On July 21, 2008, our staff met with Commission Members, Commission staff, Deputy Secretary of Public Safety, staff from the Senate Finance and House Appropriations Committees, staff from the Department of Planning and Budget, and a Judge from the Chief Justice's Drug Treatment Court Advisory Committee to discuss the above styled charge.

One of the primary suggestions was to have our Chief Probation and Parole Officers and Facility Superintendents confer with their respective Circuit Court judges and advise of their suggestions. This action was initially proposed at our statewide Senior Management meeting in June 2008 and was specifically followed up on July 22, 2008 by Mr. James Camache, Deputy Director, Division of Community Corrections. An additional suggestion was to improve the availability of and access to substance abuse treatment services.

There is general consensus that the matter of criminal sentencing which provides equal justice, procedural fairness, appropriate sanctions, and services which reduce the likelihood of criminal behavior is complex. A variety of responses which serve to reduce victimization, lower crime rates, and reserve costly incarceration space for the most serious offenders are needed.

Our discussions with these above named stakeholders yielded a number of steps which can be carefully considered by the Commonwealth's policy makers. The following steps while not exhaustive included:

POLICY AND PRACTICES

- Frame public policy issues around achieving lower victimization and recidivism rates at the lowest possible criminal justice cost.

- Review all proposed legislation which adds new crimes or increased penalties for effectiveness and workload impact on both Facilities and Community Corrections.
- Amend [COV 19.2-316.2](#) and [COV 19.2-316.3](#) to add “... *or deemed non-violent*” to eligibility criteria for Diversion and Detention Incarceration programs and to extend the “voluntary evaluation” option available to technical violators to defendants awaiting initial sentencing.
- Consider revising [COV 19.2-306](#) to allow Judges to reduce ‘technical violation’ sentences for good cause, e.g., program completion and/or limit the terms of active incarceration and supervised probation.
- Support early termination of ‘active probation or parole supervision’ for stable offenders.
- Support use of “unsupervised probation” for low risk cases.
- Request the Sentencing Commission to continue reviewing sentencing and violation guidelines to determine if incarceration scores can be raised safely.

Note: Clarify the scoring so that the distinction between Local responsible (LR) – 12 months or less Incarceration and State Responsible (SR) Incarceration – greater than 12 months is clearer.

- Support reviews of “mandatory sentences” with a view toward eliminating them so as to allow sentencing flexibility based on guidelines.
- Expand risk and need assessments in sentencing guidelines to include additional non-violent offenses.

* Risk and needs assessments are essential. We wholeheartedly support the concept of identifying risks, criminogenic needs and responding with sentences tailored to the offender, not the offense.

* We share the Commission’s concern that the current “non-violent risk assessment” recommendations are inconsistently followed. Education of stakeholders is vital. We will work closely with the Commission and the Supreme Court of Virginia to encourage the use of alternative sanctions by the judiciary.

- Given the number of “plea bargained” cases, it will be essential that we discuss ways and means to engage the Commonwealth Attorneys, the Indigent Defense Commission, and the defense bar.
- Nomenclature may be important. It has been suggested that we change the names of the Diversion and Detention Centers. I would note that our current names, Diversion and Detention Center Incarceration Programs, were taken from [COV 19.2-316.2](#) and [19.2-316.3](#).

The term “technical violator” has been used for years to distinguish them from “new crime” violators. Many are “habitual” non-compliant persons. Other terms have been suggested and we continue to consider other terms such as “habitual technical violators,” “conditional release violators,” etc.

- Facility Programs are an effective alternative. As you recall, there was a State revenue shortfall under Governor Warner's administration. One impact was the reduction in Diversion Center operating budgets which required an assessment for room, board, and transportation to be used for daily operations rather than supplemental program activities. Currently, we may be faced with closing one or more of these Facilities.
- Amend [COV 19.2-303](#) to limit the terms of active probation supervision.

PRIORITY PROGRAMS AND SERVICES

- Support caseload control to manage **4%** annual growth by providing adequate positions.
- Fund additional Day Reporting Programs in high sentencing jurisdictions, e.g., Virginia Beach, Chesapeake and provide substance abuse treatment funds.
- Increase Sex Offender Containment supervision capacity/sites.
- Provide Intensive Treatment and Supervision Officers for "special needs" offenders, e.g., mental health, chronic substance abusers, geriatric and violent offenders.
- Study the costs, benefits and feasibility of "Transition" and "Return-to-Custody" facility(s) for male and female violators including more violent, physically or mentally ill as well as offenders with new non-violent offenses. See Report on Item 387-E.
- Review Diversion/Detention Center mission to accommodate this class of incoming offenders and violators and strengthen substance abuse services.

ADDITIONAL CONSIDERATIONS

- Support VirginiaCORIS funding to enable information sharing, continuity of care, and outcome evaluations.
- Support therapeutic incarceration sentencing option for offenders receiving three or more years of incarceration. This program would target offenders needing substance abuse treatment but whose offenses are too serious for community placement. These offenders would be directly received into the DOC Therapeutic Community (TC) program.
- Support expanded substance abuse and co-occurring disorder service capacity **(JLARC)**.
- Support Drug Treatment Courts for substance abusers who violate regular supervision or who are "prison bound."
- Study the feasibility costs and benefits of technological monitoring for newly sentenced offenders and inmates nearing release who have stable homes and may not be eligible for local work release participation and allowing 'jail credit' for time served under monitoring.

- Study the costs, benefits and feasibility of shifting inmates nearing release to pre-release or transitional housing with appropriate Community Corrections' aftercare. See Report on Item 387-E.
- Fund evidence-based training requirements including FTE and/or private vendors, evaluation, technological, quality control infrastructure (**JLARC**). See Report on 387-C.
- Support jail-based mental health and drug treatment programs with Community Corrections' aftercare (**JLARC**).
- Support additional Community Residential Programs for initially sentenced as well as reentering offenders.
- Empower DOC to place inmates in electronic or other equivalent technological monitoring programs.
- Review and re-submit the reentry program proposals from the 2008 General Assembly session (**JLARC**).
- Emphasize outcome evaluations (**JLARC**).
- Support prevention and early intervention strategies (**JLARC**).

Note: The JLARC references are to the Joint Legislative and Review Commission's report on ***"Mitigating the Costs of Substance Abuse in Virginia."*** The recommendations therein will be reviewed and followed up by the ***Joint Subcommittee to Study Substance Abuse Treatment and Prevention in the Commonwealth (Senate Joint Resolution 77)*** chaired by Senator Emmett Hanger, Jr. of Augusta County.



Submitted by: _____
Director

Date: September 1, 2008

cc: The Honorable John Marshall, Secretary of Public Safety
The Honorable Leroy R. Hassell Sr., Chief Justice, Supreme Court of Virginia
The Honorable F. Bruce Bach, Chairman, Virginia Criminal Sentencing Commission

§ 1-111. DEPARTMENT OF CORRECTIONS (799)

Item 387.

	Item Details (\$)		Appropriations (\$)	
	First Year FY2009	Second Year FY2010	First Year FY2009	Second Year FY2010
Supervision of Offender and Re-Entry Services (35100)			\$ 86,981,259	\$ 86,981,259
Probation and Parole Services (35106).....	\$ 78,825,738	\$ 78,825,738		
Day Reporting Centers (35107).....	\$ 4,679,052	\$ 4,679,052		
Community Residential Programs (35108).....	\$ 1,115,107	\$ 1,115,107		
Administrative Services (35109).....	\$ 2,361,362	\$ 2,361,362		
Fund Sources: General.....	\$ 85,538,779	\$ 85,538,779		
Special.....	\$ 115,000	\$ 115,000		
Dedicated Special Revenue	\$ 1,327,480	\$ 1,327,480		

Authority: §§ 53.167.2 through 53.167.6 and 12 §§ 53.1140 through 53.1176.3, Code of Virginia.

- A. By September 1 of each year, the Department of Corrections shall provide a status report on the Statewide Community Based Corrections System for State Responsible Offenders to the Chairmen of the House Courts of Justice; Health, Welfare and Institutions; and Appropriations Committees and the Senate Courts of Justice; Rehabilitation and Social Services; and Finance Committees.
- B. The Department of Corrections and the Virginia Parole Board shall analyze the comparative costs and benefits of state operation compared to contracting for privately operated minimum security assisted living or nursing facilities, or other appropriate facilities or programs for lower risk geriatric offenders. Copies of the analysis shall be provided to the Chairmen of the Senate Finance & House Appropriations Committees by September 1, 2008.
- C. The Department of Corrections shall report on its progress in implementing evidence based practices in selected probation and parole districts, and recommend steps to expand this initiative into additional districts. The report shall place particular emphasis on measuring the effectiveness of these practices in reducing recidivism. Copies of the report shall be provided to the Chairmen of the Senate Finance & House Appropriations Com. by September 1, 2008.
- D. The Department of Corrections shall report on the potential costs and benefits of steps which would be required to divert up to 50 percent of prison bound, nonviolent offenders who have scored no more than 38 points on the risk assessment instrument of the Virginia Criminal Sentencing Commission. The department shall consult with the commission on developing appropriate steps to secure the input of the Judicial Department in conducting this report. Copies of the report shall be provided to the Chairmen of the Senate Finance and House Appropriations Committees by September 1, 2008.
- E. The Department of Corrections shall report on the comparative costs and benefits of state operation compared to contracting for privately operated minimum security prerelease or transitional facilities for offenders who are leaving prison, and Return to custody facilities for habitual technical probation violators. Copies of the report shall be provided to the Chairmen of the Senate Finance and House Appropriations Committees by September 1, 2008.