Governor's Commission on

Parole Abolition & Sentencing Reform

Final Report

August 1994

George Allen, Governor
Commonwealth of Virginia

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Memorandum for the Governor
August 23, 1994

From: **William P. Barr**
Richard Cullen
Co-Chairmen,
Commission on Parole Abolition and Sentencing Reform

We are pleased to present to you the Report of the Commission on Parole Abolition and Sentencing Reform.

Virginians' Demand for Change

Last year, when you and Attorney General Gilmore advocated the abolition of parole and the adoption of a truth-in-sentencing system to address the rapid rise in violent crime in Virginia, Virginians responded with strong support. In a variety of forums since then, the Commonwealth's citizens have made known their desire for the fundamental criminal justice reforms you have proposed.

Virginians clearly agree that freedom from violence and fear of crime is the most basic right of every citizen, and that protecting the safety of citizens is the foremost responsibility of government.

They understand that the vast majority of violent crime is committed by a relatively small number of repeat criminals — criminals who routinely move in and out of the criminal justice system, creating havoc and ruining lives with each succesive foray into the community.

In Virginia, three out of four violent crimes are committed by persons with prior criminal records.

Virginians' frustration and anger at this senseless and preventable crime is cresting and can no longer be ignored by responsible leaders.

Today, there is an emerging bipartisan consensus that further tinkering with the existing parole system will neither drive crime from Virginia's communities nor meet the people's legitimate expectations for decisive change.

Only truly fundamental reform, including the abolition of parole and the adoption of a truth-in-sentencing system, will empower the people of Virginia — juries and judges — to impose and enforce community judgments about punishment tailored to fit the crime committed. Only such a system will prevent the systematic undermining of that community judgment through bureaucratic decisions to grant early release.

Your Charge to the Commission

At the start of the Commission's work, you made clear your determination to keep faith with Virginians who signalled their support for parole abolition last fall. You also challenged us to make Virginia's criminal justice reform plan a model for the nation.

At the first Commission meeting on February 7, 1994, you charged us to keep in mind these guiding principles:

> First, that parole must be replaced by a system that deters crime by making punishment certain and predictable.
>
> Second, that the truth-in-sentencing system we adopt must be worthy of the name. We want sentencing juries to know that when they render a community judgment about the prison time that should be served, their judgment will be honored and enforced.
>
> Third, that violent criminals must be incarcerated for significantly longer periods than they now serve, and that *repeat* violent offenders must be taken out of action until they are well on in years.
>
> Fourth, that non-violent offenders must be diverted to alternative forms of punishment wherever possible in order to free up prison space and hold down the cost of incarcerating violent criminals longer.
>
> Fifth, that all offenders, violent and non-violent, must repay their debt to society by working while they are being punished. Meaningful work will also provide a solid base for these people to re-enter society as productive individuals with something to contribute.
>
> And, finally, that we must make the capital investment in increased prison capacity necessary to make the promise of sentencing reform a reality. We must heed the unfortunate lesson from those states that have been forced to release criminals early because they increased sentences without making adequate provision for additional prison space.

The Commission has been faithful to your instructions, and the recommendations contained in this Report will achieve the objectives you outlined. We believe that, if properly and expeditiously implemented, these recommended actions will

significantly enhance the safety of Virginians while ensuring that the increased incarceration of violent and repeat criminals is accompanied by the necessary public investment in expanded prison capacity.

The Commission's Work

Because the Commission you established is comprised of crime victims, law enforcement professionals, judges and prosecutors, business and civic leaders, respected state and local government officials of both parties, and other concerned Virginians of diverse backgrounds, we began our work with the advantage of a broad and informed perspective.

Since February, members of the Commission have held a series of well-attended public hearings around the state and have communicated in person and by mail with hundreds of citizens. One meeting was broadcast live to a statewide television audience that was invited to phone in with their comments and concerns regarding the struggle against crime. Individuals as diverse as victims and inmates, professors and probation officers — concerned Virginians from all walks of life — have shared their views with the Commission.

The stories told by the victims of crime have provided the most poignant and profound testimony about the need for fundamental reform. Many of these Virginians have been victimized not only by the criminals who assaulted them, but by a criminal justice system that leaves them in constant fear and forces them to re-live their nightmares many times over.

In Richmond, for example, Newport News police officer Carol Schindler explained how the brutal slaying of Officer Larry Bland by a paroled killer has devastated her: "Because of the failure of the parole system, I've not only lost my best friend and my partner - but I've lost my fiancee, who was the rest of my life." In Roanoke, the Commission heard from Connie Siegal, who described how the man who raped her escaped serious punishment: "I wanted to make sure he hurt no one else like he hurt me. Unfortunately, he was only incarcerated for eight months, and turned free to rape again, and rape again is exactly what he did. Now I ask you to do your part to see that people who are dangerous will be punished."

That same night Marilyn Crist, raped by the same man who had previously raped Ms. Siegal, stated the stark reality: "Something must be done! Again and again our criminal justice system has proven to be unjust!" Her words still ring powerfully in the ears of all who were present that night.

And in Portsmouth, Dorothy Soule, whose teenage son was killed in a senseless attack, addressed the Commission: "Our parole system has failed. The practice of good time credit serves the inmate who changes his behavior long enough to be paroled back to the street to continue his life of crime." Throughout Virginia, person after person described the trauma of having to tell their painful stories again and again in testimony before the Parole Board — just to prevent the early release of their attackers.

Added to this persuasive personal testimony was a vast amount of valuable statistical data, technical information and expert analysis provided to the Commission.

Meeting frequently in subcommittees, Commission members conducted on-site inspections at correctional facilities and programs around the state. They received in-depth briefings on key policy, fiscal and technical issues from the staff of the Criminal Justice Research Center, the Office of the Attorney General, the Senate Finance Committee, the Department of Corrections, and the Virginia State Police.

The work of the Commission was aided by an extended dialogue with, and valuable suggestions from, members of the Judicial Sentencing Guidelines Oversight Committee and representatives of the Virginia Association of Commonwealth's Attorneys. The Chief Justice of the Supreme Court of Virginia appointed a group of distinguished judges to work directly with the Commission, and these judges offered keen insights gained through years of service. Commission members and staff met frequently with other Virginia trial and appellate judges, prosecutors, law enforcement officers, and community leaders during the course of the Commission's work.

The Commission also considered detailed information regarding sentencing reform initiatives and criminal justice programs in other states and at the federal level, where parole was abolished nearly a decade ago.

The direct participation in the Commission's work by you, Attorney General Gilmore, and prominent members of the General Assembly in both political parties has been extremely helpful to the Commission throughout its deliberations.

With your permission and encouragement, we have worked closely with the Legislative Commission on Sentencing and Parole Reform, which has been examining the Commonwealth's sentencing practices for the last two years. Information has been freely shared between the two panels, and we have recently

briefed the legislative commission on our recommendations to you.

Since you established this Commission in January, we have received and assimilated a large amount of information in a relatively short time. This effort could not have succeeded without the benefit of prompt access to expert technical assistance and data previously gathered by the various state agencies, offices and officials identified above as well as by the legislative commission.

In short, there is ample credit to be shared by all for the plan that follows.

On behalf of your Commission and all Virginians whose safety will be enhanced by this far-reaching initiative, we wish to express our gratitude to those in and out of state government who assisted in this effort.

The Commission's Conclusions and Recommendations

The Commission and its subcommittees have reached conclusions regarding the recent surge in violent crime in Virginia, the impact of recidivism by violent offenders, the human and material costs of Virginia's existing parole system, the need for longer incarceration of dangerous criminals, more effective and economical ways of incapacitating criminals, and the likelihood of a tidal wave of increased crime and violence in Virginia if decisive action is not taken immediately.

These alarming conclusions are set forth in the following Final Report of the Commission.

The Commission's Report also provides specific recommendations for reform measures — including abolishing parole, adopting truth-in-sentencing, dramatically increasing the prison time served by violent and repeat offenders, and providing more cost-effective and productive settings for non-violent offenders.

In order to assist the Governor and General Assembly in crafting a financing package adequate to meet the increased capital and operating costs associated with the Commission's proposal, the Report contains specific bed space projections for the next 10 years.

Stop the Bleeding

In presenting this Report, we do not suggest that the plan proposed by the Commission will be a panacea for a society wracked by violent behavior.

The underlying causes of crime are numerous and complex, and we have not attempted to catalogue them or to offer comprehensive solutions. We wholeheartedly support the efforts of the persons and panels developing strategies for restoring high academic standards and accountability to education, ending the cycle of welfare dependency, stemming the destructive influences that undermine cohesive families and communities, and creating new jobs and expanding economic opportunity for the people of Virginia. These separate initiatives appear to address the issues most often considered as contributors to crime.

Our Commission's mission was to present an effective sentencing reform plan that will stop the bleeding in Virginia's besieged communities. While policies must be developed that treat the whole patient — the so-called "root causes" of crime in our society — such policies will not succeed and Virginians' full potential will not be unlocked unless we first restore peace to our communities and protect Virginians from attacks and threats by the violent few in our midst. The most effective form of crime prevention remains the incapacitation of violent and repeat offenders. The best way to prevent rape, for example, is to keep known rapists behind bars longer.

We must, as you have said, stop the bleeding before we can treat the whole patient.

In Virginia, the cradle of American liberty, our citizens are being denied the most basic of rights — the right to live in peace without fear of violence. We have heard Virginians' demand for fundamental change, and we respectfully encourage the Commonwealth's policy-makers to heed it.

As the special session of the General Assembly approaches, all eyes are looking to Virginia for leadership in the war on violent crime. The time for decisive action is now.

It is with a fervent belief that *crime can be overcome* and that *safety can be restored* to Virginia's communities that we commend the Commission's plan to you and to all the citizens of the Commonwealth.

William P. Barr

Richard Cullen

Table of Contents

Page

Executive Summary 1

Findings and Conclusions 10

Recommendations 30

Appendices 60

Executive Summary

The Looming Crisis

In a nation wracked by violent crime, Virginia once might have been considered relatively safe. But during the last five years, the violent crime rate in the Commonwealth has surged by 28%.

Every 23 minutes, another Virginian is raped, murdered, robbed or maimed.

The future looks even bleaker. The recent rise in crime has occurred despite demographic conditions that pointed to a *decrease* in criminal activity. Most "criminal careers" begin around age 14 and peak by age 21, with "retirement" occurring by the late twenties or early thirties. Virginia's recent violent crime surge developed even as the size of this crime-prone age group was *shrinking* over the last decade.

Now the Commonwealth faces a ten-year period — 1996-2005 — when the crime-prone age group will *rise*. The well-established correlation between the size of this age group and the incidence of violent crime suggests that the recent surge in crime will accelerate in the years ahead.

The prospect of increasing victimization adds even greater urgency to the task of criminal justice reform. Virginians already do not feel safe, and they have demanded that government act decisively to quell the violence in their communities. In the state that gave birth to freedom, citizens are demanding that government fulfill its primary obligation — to preserve the peace.

Protecting Virginians from Violent Criminals

While there are many causes of crime, the most direct and immediate cause is the presence of violent career criminals in our communities.

Three out of every four violent crimes in Virginia is committed by a repeat offender. If more of these career predators were behind bars, fewer Virginians would become victims of their violence.

For that reason, Governor George Allen in January 1994 created the Commission on Parole Abolition and Sentencing Reform. He charged the Commission with developing a plan to abolish parole, establish truth-in-sentencing, and ensure that violent and repeat criminals stay in prison for much longer periods of time.

The Commission has completed its work and has recommended a plan that will achieve the objectives defined by the Governor.

The plan proposed by the Commission will impose the toughest penalties in the country on the worst violent criminals. And it will sharply increase the punishment for all repeat offenders who have violent convictions in their criminal records.

While the Commission recommends getting tougher with violent criminals, it proposes getting smarter in the way Virginia handles non-violent offenders. The Commission's plan neither increases nor decreases the time served by non-violent criminals who have no prior violent crime convictions. But the Commission recommends the use of more economical and productive facilities, such as work centers, for the incapacitation of these low-risk offenders.

By targeting violent and repeat offenders for the stiffer penalties, the Commission's plan will result in an increasing percentage of prison beds in Virginia occupied by violent criminals. This approach is far more cost-effective than merely increasing the length of confinement for all criminals without regard to the nature of their activities or the magnitude of the threat they pose.

Of the projected $800-850 million in increased capital construction costs required to implement the Commission's plan over the next ten years, at least $600 million will have to be spent even without the proposed reforms. The lion's share of the increased cost is the result of the underlying demographic conditions and crime trends projected for the next ten years.

Replacing Parole With Truth-in-Sentencing

Under Virginia's current sentencing system, criminals typically serve only a small fraction of their sentences. Juries and judges impose the punishment they deem appropriate to the crime, only to have their judgments routinely countermanded by a hodge-podge of early release rules.

With the combined effects of discretionary parole, mandatory parole, and generous "good-time" credits, the average criminal in Virginia serves only a third of his sentence. Many inmates are eligible for parole after serving as little as 17% of the time they were given by the judge or jury.

For example, the typical first-degree murderer in Virginia is sentenced to approximately 35 years and serves only ten. The average sentence for a rapist is 9.2 years; the average time actually served is 4.4 years. Robbers typically are sentenced to 13.8 years but serve only 4.4 years.

This misleading system has a negative impact on all concerned. Early release rules prevent judges and juries from pronouncing a community judgment about the proper punishment for illegal conduct. The result is unwarranted disparities in the length of incarceration and a loss of public confidence in the administration of justice. The deterrent value of incarceration is diminished as criminals perceive they can "beat the system." Worst of all, victims of crime are deprived of the finality and peace of mind that comes with a determinate sentence. To keep their assailants behind bars, victims must re-live the pain of their attacks year after year in appearances before the Parole Board.

To right these wrongs and bring truth-in-sentencing to Virginia, the Commission proposes the abolition of discretionary and mandatory parole effective January 1, 1995. All offenses committed after that date will be punishable under a new system in which every inmate will serve at least 85% of his or her sentence.

The existing "good-time" credit provisions — which now give the average inmate 300 days off his sentence for every 365 days served — will also be eliminated under the Commission's plan. In their place will be a system of *earned* sentence credits capped at 15% of sentence. To receive the credits, inmates will be required not only to practice good conduct and obey all prison rules, but also to engage in work, drug treatment, education, and other beneficial activities.

To facilitate the transition to a truth-in-sentencing system in which criminals actually serve their sentences, the Commission proposes expanded use of voluntary sentencing guidelines. The guideline sentences will reflect the actual time to be served, and will be based on the average time actually served for each offense during the five-year period 1988-1992. Unlike in mandatory guideline systems that have been criticized around the country, judges under the Commission's plan will be permitted to depart from the guideline sentence when the circumstances of the case warrant. However, judges must ensure the completion of guideline worksheets and must state in writing the reasons for any departures.

The Commission's plan calls for creation of a new sentencing commission to promulgate the voluntary sentencing guidelines

subject to legislative approval. The sentencing commission also will monitor sentencing practices, crime trends and correctional resources, and make recommendations to the Governor and the General Assembly regarding prison capacity and related resource needs. Based on an appraisal of sentencing practices under the new truth-in-sentencing system, the sentencing commission may subsequently recommend statutory changes to define offenses more specifically and to narrow authorized ranges of punishment. The commission will report annually to the General Assembly, the Governor, and the Chief Justice of the Supreme Court of Virginia.

Under the Commission's proposal, jury sentencing will be retained. Juries will be able to impose punishment that reflects the sense of the community, and their judgments will not subsequently be erased by early release rules and parole decisions.

To facilitate their transition to society, all criminals released from prison will be subject to a period of probationary supervision of between six months and three years, the precise time to be determined by the sentencing judge. This probationary period will be *added* to the sentence imposed by the judge or jury.

Incarcerating Violent Criminals Longer

The Commission proposes steep increases in the time served by all violent offenders, and several-fold increases in the time served by offenders who have prior convictions for violent crimes.

These increases will be achieved through the sentencing guidelines, though statutory changes will remain an available option if sentencing practices fall short of the time-served guidelines.

Once the guideline sentences for all offenses have been converted to actual time served using the 1988-1992 average for each offense, the Commission proposes the following increases in the guideline sentences:

- For violent first-time offenders, a 100% increase.

- For violent offenders with a prior conviction for violent crime, increases of 300-700% (depending upon the seriousness of the prior violent offense).

- For non-violent offenders with a prior conviction for violent crime, increases of 300-500% (depending upon the seriousness of the prior violent offense).

Actual experience proves that these increases in prison time for violent offenders will *prevent crime*.

A conservative analysis by the state's Criminal Justice Research Center demonstrates that, if the Commission's proposals had been implemented eight years ago, the increased prison time *would have prevented more than 4,300 identifiable crimes* for which repeat offenders were convicted during 1986-1993.

This represents only the tip of the iceberg. When preventable crime is computed based on all *reported* offenses, and then is projected out over the next ten years, the impact of this reform is stunning. *More than 26,000 violent crimes — approximately 120,000 crimes in all — will be prevented during the next ten years if the Commission's plan is adopted.*

This prevented crime will represent a cumulative cost savings to victims and society of *$2.7 billion* during the next decade.

Punishing Non-Violent Offenders More Economically

The Commission found that in the correctional system today many low-risk inmates incarcerated for non-violent crimes are occupying expensive beds in medium and even maximum security prisons. Since non-violent offenders are the ones for whom intervention and rehabilitation hold some promise, the present arrangement is doubly wasteful. Inmates who pose little threat to the public are incarcerated in costly facilities where security considerations deprive them of opportunities to engage in activities that will assist their return to society as productive and law-abiding citizens.

While the Commission does not recommend any decrease in the time served by non-violent offenders, it does recommend use of low-cost work centers to house these low-risk inmates. To qualify for such a placement, the offender must have received a sentence of three years or less for a non-violent offense, have no prior convictions for violent offenses, and pass review under a risk-assessment procedure administered by the Department of Corrections.

Inmates in work centers will engage in farming and light industry, and will be available to assist inprison construction and to work in the community under carefully controlled conditions. The Department of Corrections will work with local officials to identify the types of projects that are deemed suitable for inmate labor.

The Commission also recommends the designation of certain prison facilities for intensive drug treatment programs, to be provided through private service organizations and public-private partnerships. The Commission offers further recommendations for enhancing community-based alternatives to incarceration and for assisting inmates in the transition to life in the community after release from prison.

Expanding Prison Capacity

Governor Allen has emphasized that Virginia must avoid the mistakes made by other states which abolished parole and increased sentence length but failed to expand prison capacity sufficiently to house the enlarged inmate population.

By shifting to sentencing based on actual time served and creating a new sentencing commission to monitor sentencing practices, crime trends, and correctional needs, the Commission believes that Virginia can stay a step ahead in anticipating and providing for the necessary prison space.

The Commission recommends reducing the cost of new prison construction and operations through privatization, use of inmate labor, construction of work centers for non-violent criminals, double-celling and double-bunking of existing and planned facilities, and other innovations.

Most important, by targeting violent and repeat criminals for longer incarceration, the Commission's proposals will ensure that Virginia's prison beds are occupied by a larger percentage of dangerous criminals, thereby giving Virginians a greater measure of safety in return for their increased investment in correctional facilities.

The Commission's proposed increases in sentence length will not result in significant new demands for prison bed space for several years. Far from exacerbating the current pressures on the capacity of the state corrections system and local jails, the Commission's recommendations provide ways to achieve prompt relief from crowded conditions.

Work centers can be constructed relatively quickly with pre-fabricated materials on existing prison sites. Double-celling and double-bunking also require little preparation time.

Most important, the $800-850 million projected cost for additional prison construction under the Commission's plan over the next ten years *includes* the cost of facilities necessary to house all state-responsible inmates. It is time for the Commonwealth

to meet its responsibility to provide space to incarcerate all state prisoners.

Conclusion

Longer incarceration of those who commit violent acts against their fellow citizens is the most immediate and the most effective means of preventing crime.

It is the only way to provide protection now to citizens who face the frightful prospect of a mounting wave of violent crime in the years just ahead.

The Commission recommends that the Commonwealth move decisively to meet that threat by adopting this comprehensive plan to abolish parole, establish truth-in-sentencing, incarcerate violent and repeat criminals significantly longer, institute more productive and economical methods to punish non-violent criminals, and expand prison capacity now to ensure that criminals are securely incarcerated in the years ahead.

Overview of Findings and Conclusions

Crime in Virginia: The Crisis Looming

- Virginia historically has enjoyed low crime rates compared to the rest of the nation.
- Virginia's violent crime rate has increased suddenly and sharply in recent years.
- Virginia's violent crime surge has occurred despite favorable demographic factors.
- Demographic trends indicate that violent crime will soar in Virginia in the years ahead.

Violent Criminals Do Not Serve Enough Time In Virginia

- Criminals in Virginia serve a small fraction of their sentences.
- Most violent crime is committed by repeat offenders.
- Longer incarceration will prevent crime.
- Recidivism rates decrease as length of incarceration increases.
- Longer incarceration of criminals reduces human suffering.
- Longer incarceration of criminals reduces the economic cost of crime to citizens and society.
- Minorities would benefit most from reduced victimization.

Early Release of Criminals Increases Victimization

- Parole has contributed to the crime surge in Virginia.
- Parole contributes to the perception by criminals that they can "beat the system."
- The parole system prolongs and compounds the agony of crime victims.

Parole Deceives Citizens and Denies Justice

- There is no truth in sentencing in Virginia; sentencing juries and judges are in the dark.
- Parole undermines confidence in the criminal justice system.
- Parole leads to wide disparities in sentencing.

Overview of Recommendations

Replace the Misleading Parole System With Truth-In-Sentencing

1. Abolish Discretionary and Mandatory Parole Effective January 1, 1995
2. Expand Existing Sentencing Guidelines System and Revise Guidelines to Reflect Actual Time Served
3. Establis a Sentencing Commission to Recommend Guidelines and Statutory Revisions
4. Retain Jury Sentencing
5. Replace "Good-Time" With Limited Earned Sentence Credits
6. Assure Post-Release Supervision

Prevent Violent Crime by Dramatically Increasing Time Served by Violent and Repeat Offenders

7. Double the Average Time Served by Violent First-Time Offenders
8. Increase Average Time Served by 300-700% for Violent Offenders With Prior Violent Convictions
9. Increase Average Time Served by 300-500% for Non-Violent Offenders With Prior Violent Convictions

Punish Non-Violent Offenders in More Economical and Productive Ways

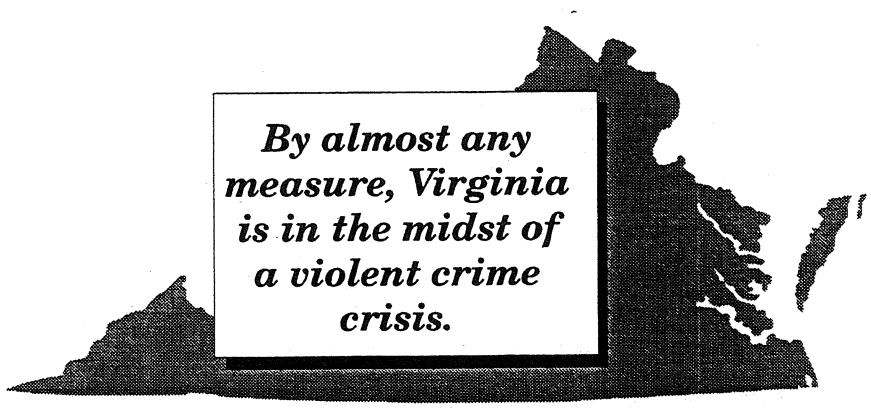
10. Apply Truth-In-Sentencing to Non-Violent Offenders
11. Use Work Camps to Save Money and Prevent Future Crime
12. Provide Substance Abuse Services in Appropriate Designated Facilities
13. Provide an Expanded Array of Alternatives to Incarceration
14. Develop Transitional Policies for Inmates Approaching Release

Expand Prison Capacity to Ensure Secure Incarceration

15. Ensure That Prison Needs Are Anticipated and Addressed Based on Sentencing Practices
16. Increase Double-Celling in Existing and Planned Facilities
17. Pursue Privatization and Inmate Labor to Reduce Costs
18. Construct Additional Prisons to Meet Anticipated Needs

Section I

Findings and Conclusions



By almost any measure, Virginia is in the midst of a violent crime crisis.

CRIME IN VIRGINIA: THE CRISIS LOOMING

Virginia Historically Has Enjoyed Low Crime Rates Compared to the Rest of the Nation

Compared to many places around the country, Virginia historically has been a relatively safe place to live and work. Even in the 1980s Virginia never ranked higher than 34th among the states in the overall violent crime rate.

In Virginia this fact is often cited by opponents of sentencing reform and longer incarceration as justification for inaction. Yet, state-by-state comparisons are of little value when one considers that the country as a whole is confronted with violent crime rates far in excess of those in the other Western democracies.

Such statewide rankings ignore socio-economic and other relevant differences among states, and also fail to provide a true picture of the fear and violence that often pervade areas *within* a state, such as Virginia's violence-plagued urban centers.

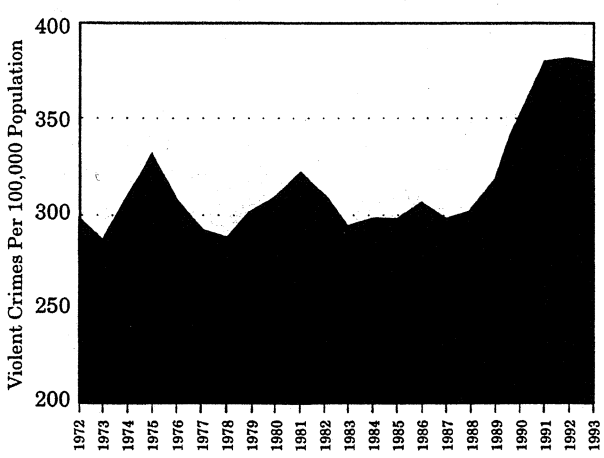
Most important, modest differences in crime rates from state to state provide scant comfort to the victims of crime and their families.

Every 23 minutes, another Virginian is raped, murdered, robbed or maimed. That appalling fact ought to shake every Virginian from any lingering illusion about the relative safety of life in our Commonwealth.

Virginia's Crime Rate Has Increased Suddenly and Sharply in Recent Years

Display 1

Violent Crime Rate in Virginia (1972 - 1992)



In recent years, the situation in our communities has deteriorated markedly. Violent crime has soared in Virginia — *up 28% in the last five years alone.* (See Display 1).

As Governor Wilder's Commission on Violent Crime candidly observed in its December 1992 report:

"The total level of violent crime — murder, rape, robbery and aggravated assault — is in the midst of a surge in Virginia. The overall violent crime rate ... was relatively steady from 1972 to 1987. However, since 1987 the overall violent crime rate has increased by 28%. The 1991 overall violent crime rate in Virginia was ... by far our highest rate in the past twenty years."

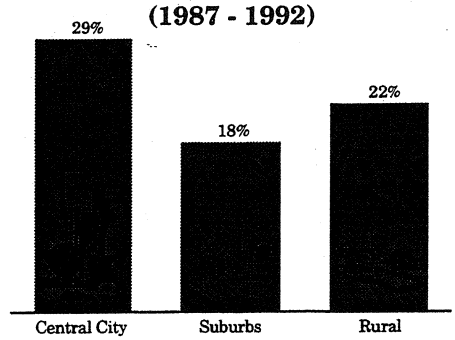
While the increase in crime during the past five years has been greatest in Virginia's inner cities (29%), neither Virginia's rural communities (22%) nor our suburbs (18%) have been immune from the trend. (See Display 2).

And while there are theories about why certain types of crime increase in certain areas at certain times, the reality is the sharp crime rises in Virginia have been registered across-the-board — in all major categories of violent crime and all areas of the state.

This data strongly suggests the need for fundamental, systemic change in Virginia's criminal justice policies.

Display 2

Growth of Violent Crime By Location (1987 - 1992)



Virginia's Violent Crime Surge Has Occurred Despite Favorable Demographic Factors

The Commission finds most disturbing the demographic conditions in which this recent, sudden and sharp increase in violent crime has occurred in Virginia.

According to studies provided by the Department of Criminal Justice Services, most "criminal careers" begin around age 14 and peak by age 21, with "retirement" by the late twenties or early thirties. By monitoring the growth of the population of this "crime-prone age group," criminologists have generally been able to forecast overall crime trends. (See Display 3).

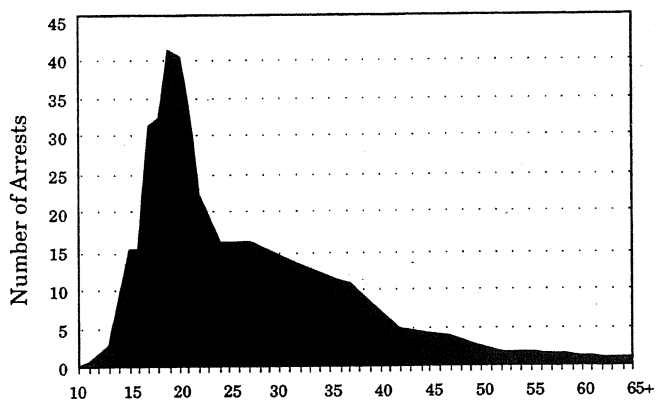
What is troubling to criminologists — and to this Commission — is the fact that Virginia's recent sharp increase in violent crime has occurred during a period in which the size of the crime prone age group has been in a decade-long decline.

Since the crime rate has been rising this fast under favorable demographic conditions, we must ask: *What will happen when the demographic pattern changes and the size of the crime-prone age group begins to grow again?*

We will soon find out.

Display 3

Age Distribution for Murder/Non-Negligent Manslaughter Arrests in Virginia (1993)



CRIME IN VIRGINIA - THE CRISIS LOOMING *Continued*

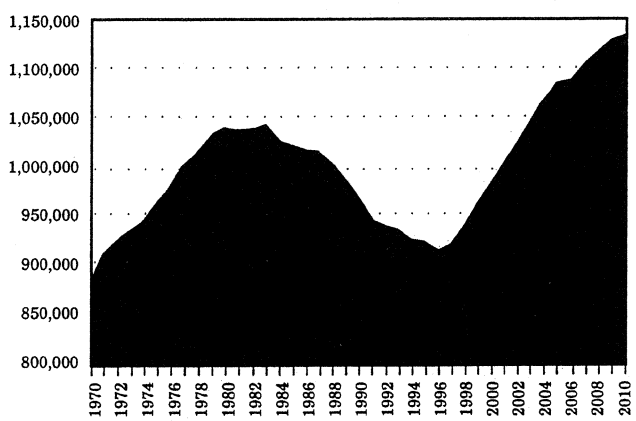
Demographic Trends Indicate Violent Crime Will Soar in Virginia in the Years Ahead

Beginning in 1996, the population of young people between the ages of 15 and 24 in Virginia is projected to rise, and rise continuously until approximately 2010. (See Display 4).

The clear historical correlation between levels of crime and the size of this crime-prone age group strongly suggests that Virginia's current violent crime crisis will become markedly more acute in the latter half of this decade and beyond.

Display 4

Virginia Population Estimates For Ages 15 to 24 Years (1970 - 2010)



This expected rise in crime will create significant additional demand for prison bed space even without reforms to increase the length of time violent criminals stay behind bars.

Curiously, some opponents of sentencing reform and longer incarceration point to this anticipated prison bed space shortfall as a reason not to abolish parole and not to increase the time violent criminals are incarcerated. Even without such reforms, they say, our prison population will skyrocket. Such arguments are like saying more resources should not be committed to fighting a raging forest fire because increasing wind gusts are forecast.

The worse things look in terms of projected increases in crime, the more evident is the need for dramatic reform.

The cost of inaction is likely to be a criminal reign of terror that will make our current violent climate seem tame.

Virginians must not stand idly by in the face of this deadly threat to our safety and the well-being of our families.

VIOLENT CRIMINALS DO NOT SERVE ENOUGH TIME IN VIRGINIA

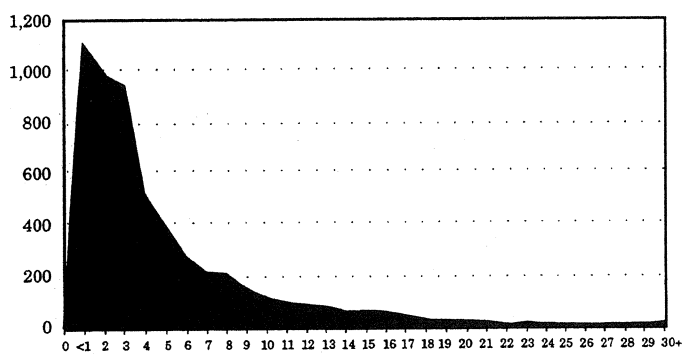
Criminals in Virginia Serve a Small Fraction of Their Sentences

Having heard from the people of Virginia and having reviewed data relative to the net time served by felony offenders in Virginia, the Commission is persuaded that the length of incarceration has been entirely too short.

One who commits a non-violent property crime in the Commonwealth is not usually committed to prison until his or her third or fourth offense. Even when committed to prison, the offender usually serves a very short prison term. Before reaching prison, a large number of these inmates have been given suspended sentences, probation, community-based alternatives, and/or a brief jail sentence. These alternatives to prison, geared to arresting the escalation of a criminal career, yield some successes. However, large numbers of inmates fail to change their pattern of behavior, and reach our prisons as three-time losers.

Display 5

Time Served on Prison Sentences Imposed on Violent Felony Offenders (FY85 - FY91)



A study of the length of sentence served by property offenders released from prison in Virginia between 1985 and 1991 reveals some disturbing truths. Of this subset of the prison population — comprised of burglars, thieves, certain sex offenders, and other non-violent, non-drug offenders — 49% served less than one year behind bars. A full 89% of the entire population of these offenders, including multiple offenders, served less than three years despite considerably longer sentences pronounced by the judge or jury.

A similar study of all those convicted of violent offenses reveals equally alarming information about the length of incarceration historically. From this category, which includes all homicides, robberies, rapes, and aggravated assaults over a seven-year period, 20% were released after serving only one year. A full 56% of these inmates were released after serving less than three years. (See Display 5).

Punishment of criminals is admittedly not a scientific endeavor subject to precise mathematical calculations. But this Commission is convinced that these brief sentences are simply not long enough.

Most Violent Crime is Committed by Repeat Offenders

Study after study has shown that an extraordinary amount of violent crime in America is committed by a relatively small number of people who have dedicated themselves to "careers" of crime and violence. A 1992 survey by the U.S. Bureau of Alcohol, Tobacco, and Firearms found that many of these repeat offenders commit more than 150 serious crimes per year.

Arrest and conviction, alone, do not stop them. According to U.S. Department of Justice figures, more than a third of all violent crime is committed by offenders who are on bail, probation, or parole at the time of arrest. In fact, approximately five out of every eight felons released early from prison were arrested for a new felony or serious misdemeanor within three years of release. One study of 240 criminals found that those criminals were responsible for half a million crimes over an eleven-year period.

In 1989, *The Orlando Sentinel* followed the careers of nearly 4,000 prisoners who were released early from Florida's prisons. More than 30% of the offenders were re-arrested for a new crime during the period of time when they should have been in prison under their original sentences. A group of 950 of these criminals were charged with 2,180 new crimes, including 11 murders or attempted murders, 63 armed robberies, six sexual assaults, seven kidnappings, 104 aggravated assaults, 199 burglaries, and 451 drug offenses.

The Commonwealth has not avoided these tragic patterns. *In Virginia, three out of every four violent crimes are committed by repeat offenders.*

According to the January 1994 report of the Governor's Commission on Violent Crime in Virginia, 68% of all murders, 76% of all aggravated assaults, and 81% of all robberies were the work of repeat offenders. Rapists and other sex offenders were even more likely than other criminals to commit the same sort of crime again.

So long as these chronic offenders are permitted to roam freely on the streets of Virginia, thousands of otherwise preventable crimes will occur. However, if these dangerous predators and repeat offenders are separated from society through prolonged incarceration, lives will be saved and crime-related losses will be prevented.

Longer Incarceration Will Prevent Crime

Longer incarceration of violent criminals is by far the most effective way to combat the current and anticipated increase in violent crime in Virginia.

Opponents of reform predictably offer Virginians a Hobson's choice between punishment and prevention. But this dichotomy is a false one. The most effective crime prevention program — indeed, the only effective crime prevention program in the *short term* — is an increase in the time violent criminals stay behind bars. Longer terms are the best protection.

In the 1992 publication entitled *The Case for More Incarceration*, the U.S. Department of Justice summarized the overwhelming body of historical evidence that establishes a close relationship between incarceration rates and crime rates.

Cutting through the fog that typically surrounds discussion of these issues, the Justice Department reported:

> Prisons work. How do we know prisons work? To begin with, historical figures show that after incarceration rates have increased, crime rates have moderated. In addition, when convicted offenders have been placed on probation or released early from prison, many of them have committed new crimes. One can legitimately debate whether prisons rehabilitate offenders; one can even debate whether, and how much, prisons deter offenders from committing crimes. But there is no debate that prisons incapacitate offenders. Unlike probation and parole, incarceration makes it physically impossible for offenders to victimize the public with new crimes for as long as they are locked up.

The Commission has found no evidence to support the hollow claim that increased incarceration is futile in fighting crime. To the contrary, the evidence is irrefutable that *longer incarceration prevents crime.*

Recidivism Rates Decrease as Length of Incarceration Increases

While the claim that incarceration breeds criminal conduct continues to echo through some of the literature, there remains no persuasive evidence to support such a claim. To the contrary, criminologists at the state and national levels have concluded that lengthening incarceration has a positive impact on recidivism rates and thus the prevention of crime.

VIOLENT CRIMINALS DO NOT SERVE ENOUGH TIME IN VIRGINIA Continued

An extensive study by the U.S. Bureau of Justice Statistics demonstrates that the length of time served in prison before release has an impact on the rate of recidivism. Inmates who had served *more* than five years before release were found to have *lower* recidivism rates than those who had served less than five years in prison.

Virginia's Department of Criminal Justice Services analyzed data regarding all first-time violent offenders released from prison between 1985 and 1991 to determine whether length of prison term affected likelihood of re-commitment within three years. The study concluded that, for offenders between the ages of 18 and 21 at the time of admission, those whose actual time served was *less* than three years were 20-25% *more likely* to be re-committed to prison for a new offense than those whose actual time served was greater than three years.

This study was limited by the fact that the Department was unable to measure the number of total crimes committed, but instead analyzed the number who committed a new crime and were detected, arrested, tried, convicted, and re-committed to prison. It is safe to assume that the higher re-commitment rate represents merely the tip of the iceberg of actual crimes committed. Thus, where longer terms are imposed, a significantly smaller number of offenders return to a life of crime.

The Commission has concluded that prolonged incapacitation of dangerous offenders is essential if Virginia is to protect law-abiding citizens from the expected surge in violent crime.

Longer Incarceration of Criminals Prevents Crime and Victimization

The focus on recidivism rates, demographic factors, and statistical measures tends to obscure the enormous human dimensions of the violent crime tragedy.

The members of the Commission wish that every member of the General Assembly and every policy-making official in the Executive Branch could have heard the testimony of the crime victims who appeared before the Commission to tell their stories. They gave the violent crime crisis in Virginia a tragically human face — a face of immense grief, sadness and torment; of unspeakable heartache and painful memories that do not fade; of frustration and anger, and an acute sense of loss and betrayal. Although they recognized the fundamental reforms recommended by this Report come too late to benefit them directly, many implored the Commission to adopt these changes for the benefit of their friends and family and to spare those who live under the shadow of fear.

Longer incarceration of violent criminals does more than lower crime rates. It saves lives. And, it prevents many more lives from being shattered by vicious acts of violence.

A detailed study conducted by the Criminal Justice Research Center identified more than 4,000 specific crimes that would have been prevented if the Commission's proposed increases in incarceration of violent criminals had been in place the last seven years. (See recommendation 9 and Appendix B for a full discussion of this study.)

These identifiable crimes are not just statistics; they are real people. Each number represents an actual Virginian who would have been spared victimization if Virginia had abolished parole during the last decade. The impact in the years ahead will be even greater if the Commonwealth's leaders fail to adopt this Report's recommendations.

The true human cost of crime can never be fully measured. But when the crime can be prevented — as these crimes can be — that cost is intolerably high.

Our state and national governments have spent billions of dollars in the past twenty years on highway safety, air and water quality, asbestos removal, and many other public health and safety initiatives — all in an effort to reduce the risk of harm.

In the face of a direct and immediate threat to the safety of Virginians, state government must act decisively to protect the Commonwealth's citizens from violent victimization.

Longer Incarceration of Criminals Reduces the Economic Cost of Crime to Citizens and Society

Much is made of the cost of abolishing parole and incarcerating dangerous criminals longer. But, in reality, releasing criminals early is penny-wise and pound-foolish. The cost of incarceration is but a fraction of the cost citizens and society pay as a consequence of letting dangerous criminals return to the community to commit more crime.

While we cannot quantify the *human* toll that violent crime takes, a considerable body of research has established the extremely high *economic* cost associated with violent crime and early release. This evidence leads ineluctably to the conclusion that investment in adequate prison space is not only the right thing morally, but is the wise thing to do on purely economic grounds.

VIOLENT CRIMINALS DO NOT SERVE ENOUGH TIME IN VIRGINIA Continued

In recent years, there have been many studies concerning the high costs of crime. They all confirm this fact: *the costs of crime are many times higher than the cost of incarcerating repeat offenders.*

The economic costs of crime are enormous. *Business Week* has estimated the total direct and indirect cost of crime to be $425 billion per year. *U.S. News and World Report* puts the annual cost at $674 billion.

A landmark 1987 study by the U.S. Department of Justice concluded that putting 1,000 felons behind bars saves society about $405 million per year. This study was based on data showing the average crime cost to be $2,300 in property losses and/or in physical injuries, and establishing that the average felon commits 187 additional crimes when back out on the street.

The 1987 Justice Department study found that, when all transactional, social and economic costs and losses are taken into account, society spends on average 17 times more to release violent criminals early than it does to incarcerate them.

Making the most conservative possible projections, Professor John DiIulio of Princeton University found that for every dollar spent on incarcerating a criminal, society saves two dollars in social costs.

The Department of Criminal Justice Services Research Center studied the 1992 Virginia criminal justice system costs attributable to recidivism alone. Finding that this expense comprises 42% of all system costs, they reported that the cost to police and the courts was $187 million dollars.

The failure to keep repeat offenders behind bars costs government and society in many ways:

- Police and judicial resources must be expended in re-arresting and re-prosecuting habitual criminals.

- Fearful citizens must spend money to put bars on their windows and extra locks on their doors. Others incur relocation costs in an effort to escape crime-plagued neighborhoods.

- All insurance consumers share in the burden of crime-related physical injury and property damage through higher premiums.

- Businesses must hire security guards, obtain extra insurance, and cope with the loss of customers who are too frightened to go shopping. *These costs translate into lost jobs and lost revenues.*

Making matters worse, these cost burdens typically are borne disproportionately by those least able to afford them — the urban poor.

The average cost of incarcerating an inmate in Virginia is approximately $37,000 in capital costs and $18,000 annually in operating costs. These costs are not insignificant. But one must consider the cost of letting career criminals back out on the street.

Those who say that Virginia cannot afford the cost of keeping violent and repeat criminals behind bars longer are wrong. The truth is, Virginia cannot afford *not* to keep them locked up.

Minorities Would Benefit Most From Reduced Victimization

No group of Virginians will benefit more from the incarceration of violent criminals than the minority residents of urban neighborhoods. While the nation's violent crime rate has quadrupled over the past thirty years, inner-city areas have experienced the most devastating consequences.

No statistics are more shocking than those relating to murder. Although African-Americans comprise only about 12% of the American population, 2,000 more blacks were murdered across the nation in 1992 than whites.

Today, black males residing in cities are 2.5 times more likely to be victims of violent crimes than their white counterparts in metropolitan areas. Nationwide in 1992, 113 out of 1,000 black teenage males were victimized by violent crime — six times the victimization rate of white adult males.

With the heightened level of violent crime has also come many other harmful side-effects. The economic vitality of urban neighborhoods is choked off as potential customers avoid these areas, leaving businesses in the red and forcing the loss of jobs and income for residents. The resulting downward spiral causes hopelessness, anger, fear, and resignation from participation in society and conformity to its rules.

The economic revitalization and rebirth of Virginia's urban communities is dependent upon success in the struggle against violent crime. The hope of a generation of promising young minority Virginians depends on removing the violent few from their communities.

Reflecting this undeniable reality, many of the most impassioned pleas for longer incarceration of violent criminals received by the Commission came from African-American parents in the Commonwealth who fear for the future of their children.

EARLY RELEASE OF CRIMINALS INCREASES VICTIMIZATION

Parole Has Contributed to the Crime Surge in Virginia

It is impossible to deny that the recent surge in violent crime in Virginia is in significant part the result of the state's failed, lenient parole and "good-time" policies. These policies increase victimization by putting dangerous predators back on the street after serving a fraction of their sentences.

With a patchwork of statutory provisions, parole practices and "good-time" rules, sentencing policy in Virginia often seems incoherent. To the crime victims, judges, and criminal justice professionals who addressed the Commission, the Commonwealth's policy resembles a runaway freight train: No one is really in control, a lot of people are getting hurt, and the situation is sure to worsen.

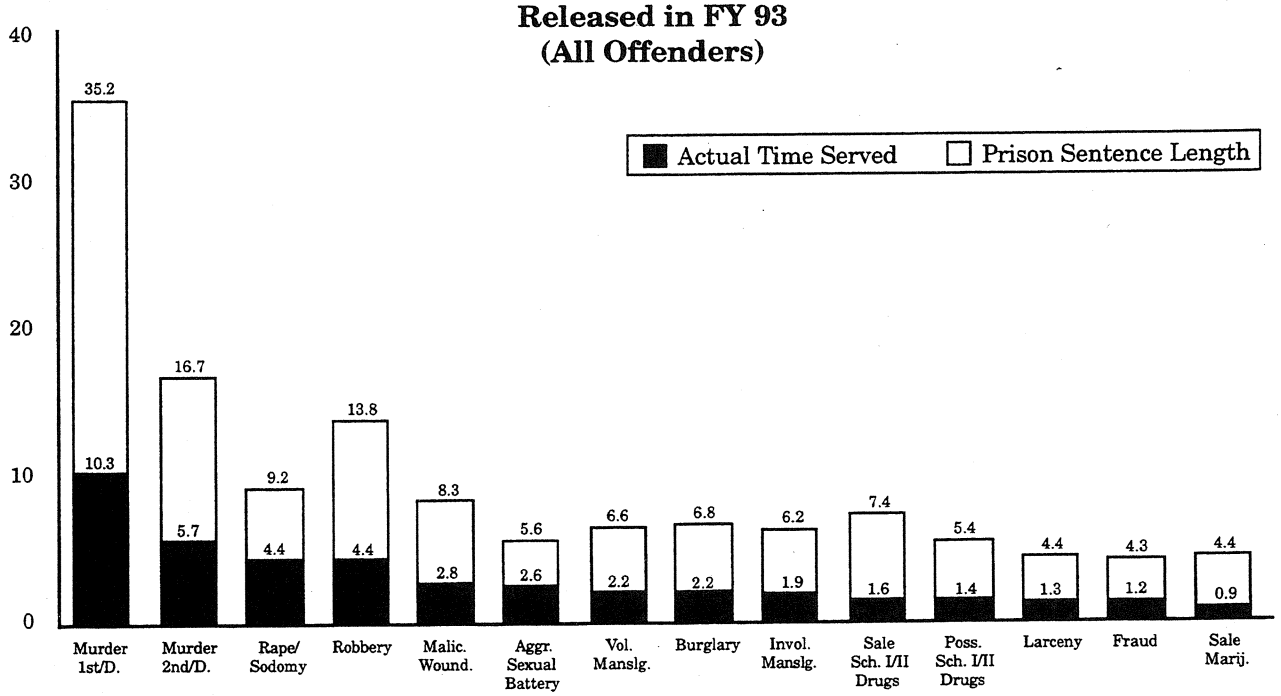
Consider these statistics for 1993, the most recent year for which data is available: (See Display 6).

- Among all felons released from state prisons, those who had been convicted of first degree murder served an average of only 33% of their terms.

- Those convicted of second degree murder actually served slightly more, averaging 35% of their terms.

Display 6

Average Time Served in Prison by Virginia Felons Released in FY 93 (All Offenders)



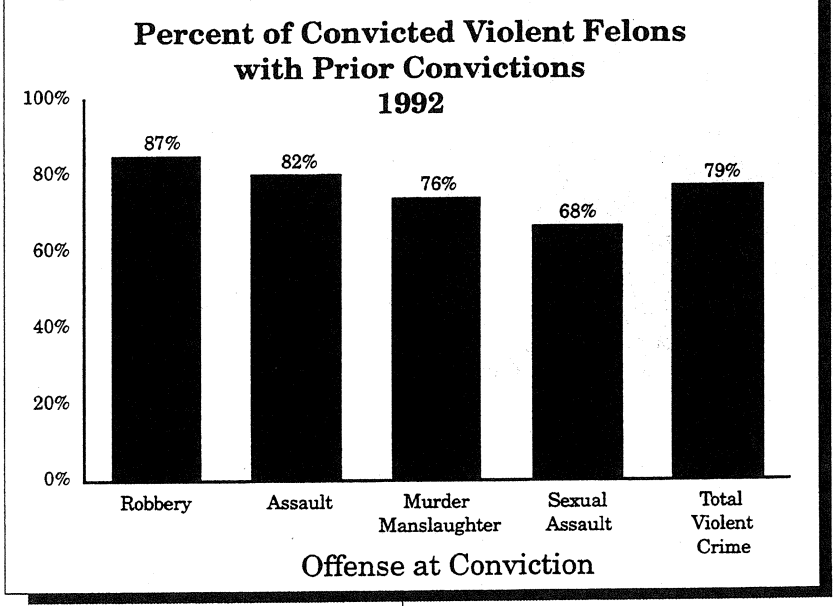
- Those convicted of *possessing* hard drugs served more of their sentence on average than those who had been convicted of *selling* those types of drugs.

- Of all offense categories, no group served, on average, as much as half of the sentence the circuit court judge thought he or she was imposing.

What is apparent is the absence of truth in sentencing in Virginia at any level. Early release is not confined to particular types of crime for which one may suppose offenders to be more amenable to treatment or less prone to recidivate. If anything, the across-the-board leniency indicates a pervasive philosophy favoring rehabilitation of criminals rather than incapacitation. If the operative assumption is that most criminals can be reformed, a closer look is needed.

Statistics supplied by the Department of Criminal Justice Services illustrate the folly in the early release of felony offenders. This data establishes that 79% of all violent offenders convicted in 1992 were previously convicted of at least one other reportable crime. Among this group, 87% of those convicted of robbery had been previously convicted of one or more such crimes. (See Display 7).

Display 7



Parole Contributes to the Perception That Criminals Can "Beat the System"

In 1992, Professor Morgan Reynolds of Texas A&M University published a report showing that the failure of the criminal justice system to punish offenders by imposing longer sentences has led many of them to believe that crime *does* pay. He writes:

> Most crimes are not irrational acts. Instead they are acts freely committed by people who compare the expected benefits with the expected costs. The reason we have so much crime is that, for many people, the benefit outweighs the costs. For some people a criminal career is more attractive than their other career options.

Reynolds reports that when the probabilities of arrest, prosecution, conviction and imprisonment are considered for all of the serious crimes committed in the United States, the perpetrator of a crime can expect to serve an average of eight days in prison per crime. For those who thrive on getting something for nothing, this systemic weakness is an invitation to a life of crime.

Many offenders approach arrest, prosecution and conviction much as a businessman would face a slow sales season. Those who know Virginia's system from the inside — as inmates — often are able to exploit its compromises. They know that busy prosecutors can satisfy victims and courtroom observers by agreeing to seemingly large sentences without trial, while the actual time served as a result of the sentence will be relatively minimal. Such minor periods of incarceration are viewed by career criminals merely as a cost of doing business.

The Parole System Prolongs and Compounds the Agony of Crime Victims

When an individual has been victimized through harm to person, family, friend, or property, government cannot erase the event. The sad truth is that, whatever we do within the criminal justice system, we cannot bring back the dead, remove a scar, or restore a shattered life.

What government *can* do is provide a just, speedy and certain response to the violation of society's rules for civilized behavior. Just as the funeral service brings a sense of closure to a terrible loss, the criminal justice process must provide finality with regard to punishment of the offender.

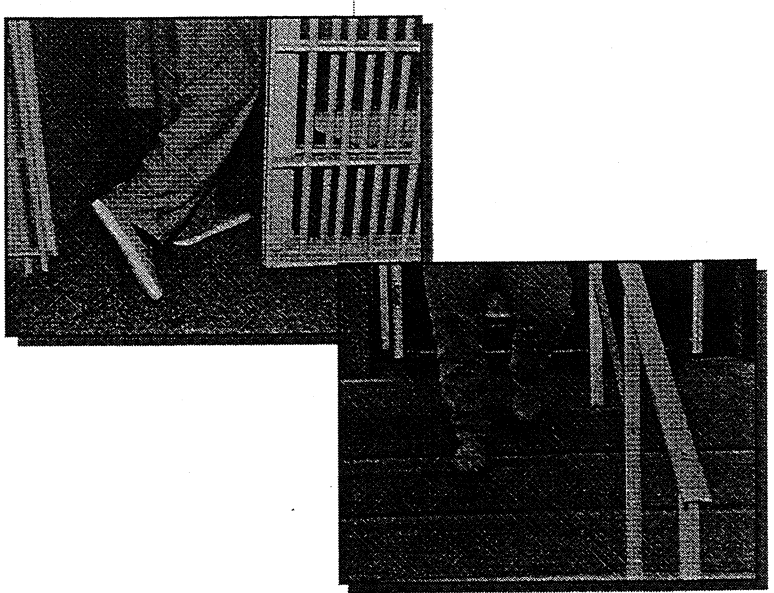
Nowhere is the current system more cruel to victims than at the parole hearing stage. At the time when grieving reaches its last stage, when the passage of time begins to dull the ache, and life's fullness crowds the empty void, victims are notified that the criminal responsible for the agony is standing at prison's door, ready to walk free. Every memory of every painful moment may burst into the heart and mind of the hearer. The crime scene, the preliminary hearing, the sleepless nights, public confrontation in court, and many other disturbing recollections return from their rest.

To make matters worse, this time there will be no police, no prosecutor, and no judge to ensure fairness and protection for the victim. Under Virginia's system, the authority to grant discretionary parole rests with an appointed board whose members are required to consider and re-consider each inmate's parole eligibility again and again over a period of many years. The victim may offer input, written or in person, but must stand alone, aware that her strong opposition may fall on deaf ears, and that the inmate whose release she protested may well soon be free.

The lonely decision whether to take the risk of crossing a violent offender by opposing his release on parole — when that release may be imminent — is faced by victims over and over again.

The burden of this constant reminder of a criminal's violent acts and impending return to society produces a re-victimization that is utterly unjustifiable. The human cost of this misguided and offensive system should no longer be tolerated.

The decision regarding length of stay is properly made by the sitting judge or the jury. The finality of this decision can serve as a solemn but comforting conclusion that marks the beginning of a new chapter for the aggrieved.



PAROLE DECEIVES CITIZENS AND DENIES JUSTICE

There is No Truth In Sentencing in Virginia; Sentencing Juries and Judges Are In the Dark

Without truth, there can be no justice.

Our system of criminal justice is predicated on the notion that a jury of one's peers or a judge should fashion punishment to fit the crime. This foundational principle is relied upon by citizens as they commit themselves to the rules of a society centered around the concept of ordered liberty. It provides the basis for the trust that allows for submission of our affairs to review by our neighbors. *The promise of a community judgment about proper punishment is merely an illusion if those acting on behalf of the community do not know what the sentence they impose actually will mean in terms of time served in prison.*

In Virginia, the sentences prescribed by judges and juries, which represent the community's sense of appropriate sanction, are routinely countermanded by a bizarre and confusing combination of mandatory parole requirements, discretionary parole grants, and "good-time" credits. (See Display 8 and Appendix A).

Most Virginians are totally unaware that, under existing law, mandatory parole provisions essentially require all inmates to be released when the balance of their time remaining reaches six months. More important, all but a few inmates are eligible for, and receive, earlier release through discretionary parole.

An inmate's parole eligibility date (the date the inmate may first be considered for parole) is based on a formula that takes into account the severity of the offense, the length of the total unsuspended sentence, and the number of prior prison commitments.

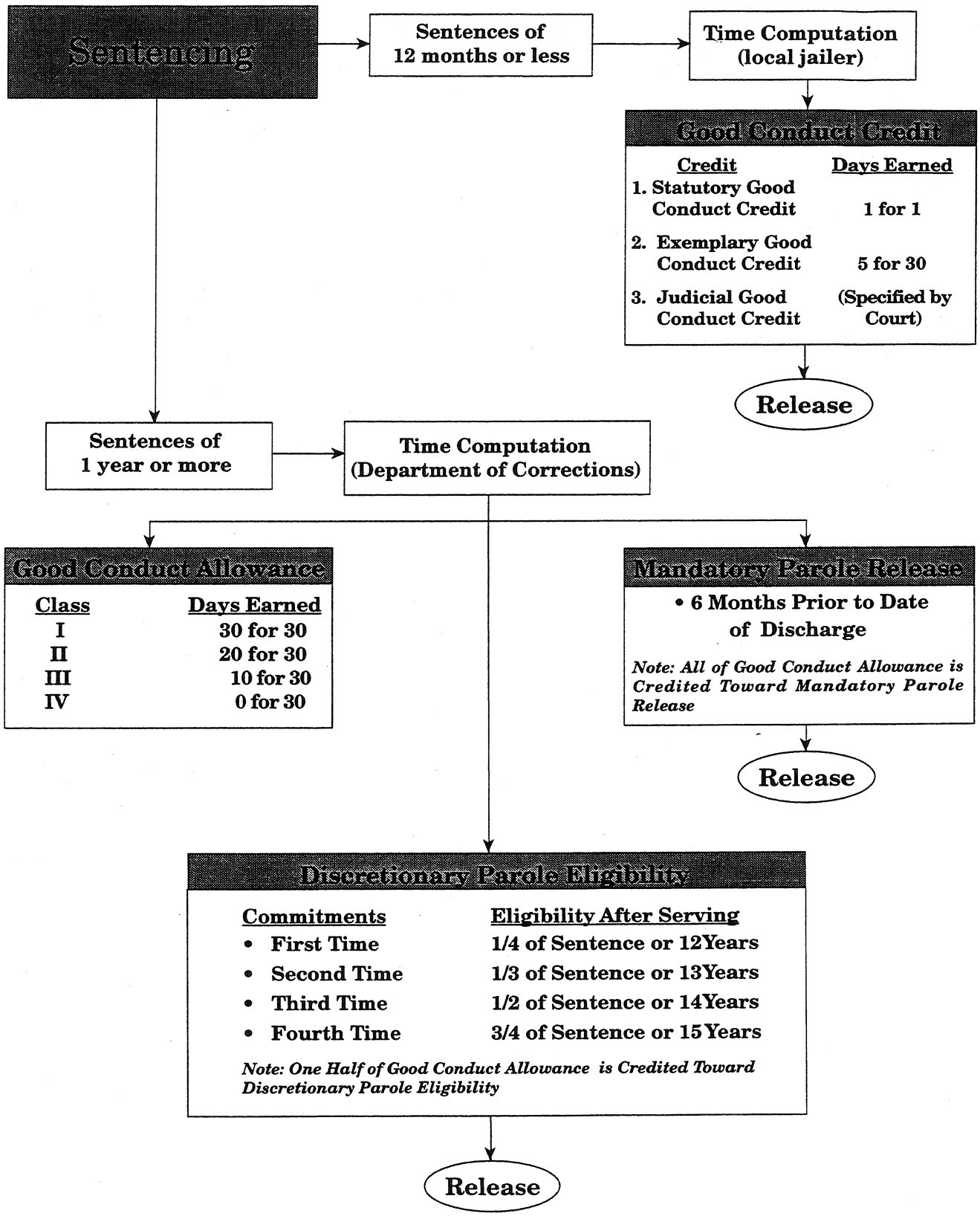
Added to this uncertain mix is a statutory scheme that gives inmates "good-time" credits under a variety of scenarios. The net result of this system is that, with a minimum of effort, the average prisoner can erase 300 days from his sentence for every 365 days he or she serves.

This hodge-podge of early release provisions results in most inmates serving only a fraction of their sentences.

For example, a person convicted of murder who has no prior felony convictions generally receives a judge-imposed sentence ranging from 30 to 68 years, but such persons on average spend only 9-22 years in prison.

Display 8

Description of Virginia Parole and "Good Time" Laws



- While the average sentence given to a first degree murderer is about 35 years, the average time actually served is only about 10 years.

- The average sentence given to persons convicted of rape is 9.2 years, but the average time served by convicted rapists is just 4.4 years.

- Robbers are sentenced on average to 13.8 years, but actually serve only 4.4 years.

One father is painfully aware of what these early release rules really mean. In a letter written to Governor Allen and signed by 17 family members, Ottis Bishop of Virginia Beach spoke for many of the families of crime victims. He wrote that in the early morning hours of January 5, 1985, while she was working as a motel clerk along the beachfront, his daughter, Julie Bishop Crockett, was brutally attacked. Her killer stabbed her several times, severing the artery in her neck and her windpipe. Her lungs filled with her own blood, and she drowned. The killer was sentenced to fifty years in prison. On the eve of her killer's *second* parole hearing, Mr. Bishop wrote:

> We question why this man should serve a portion of his sentence, one that a jury felt was appropriate, and be turned loose... Why do law abiding citizens become the victims who are constantly in danger when these criminals are released to commit more crimes? There is so much wrong with our legal system that you surely will not be able to fix it all in one term. However, [the killer] and every criminal like him needs to serve his time. Release after serving one-sixth of a sentence is a slap in the face of the jury and every other person who has done their civic duty... What outrage we feel knowing that Julie's killer is parole-eligible after eight years of a fifty-year sentence... We need truth in sentencing!

Parole Undermines Confidence in the Criminal Justice System

As the news media has focused on the rise in crime rates and the inadequacy of the current system to cope with it, public awareness of the softness of our punishment scheme has increased. So, too, has a feeling of betrayal and alienation among many citizens.

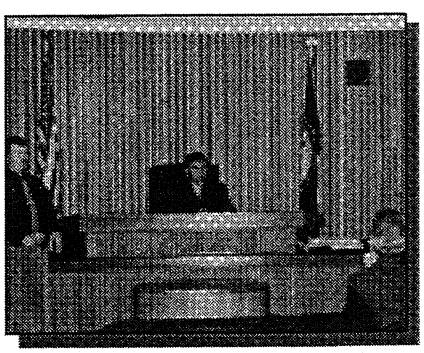
Virginians have a generalized feeling that something is fundamentally wrong with the way punishment is meted out to criminals, and they have a strong and abiding conviction that dangerous offenders do not serve enough time in prison.

Perhaps nowhere is the erosion of public confidence more apparent than among those whose flesh and blood stand as a buffer between citizens and crime. As law enforcement officers risk their lives to detect and apprehend criminals and gather every last shred of evidence, they are quickly dismayed by the insignificance of a sentence that is sharply discounted at the back end. This dismay turns to outrage when the veteran officer faces the same offender repeatedly, and is able to interrupt his budding criminal career only briefly as the list of frustrated victims grows.

Others familiar with the system, such as court personnel and public safety agency employees, share the disillusionment common among law enforcement officers. This lack of respect for the integrity of the criminal justice system contributes to a general sense of helplessness and dissatisfaction with public institutions. Ultimately, the inability to punish criminals appropriately diminishes respect for law itself.

Parole Leads to Wide Disparities in Sentencing

In practice, the current system has produced haphazard results, created an atmosphere of confusion, and contributed to widely disparate sentence lengths as judges attempt to extrapolate what sentence must be pronounced in order to achieve roughly the amount of incarceration the court deems appropriate.



For example, a judge who wishes to impose an active sentence of three years for a conviction for grand larceny may fashion a pronounced sentence of 12-15 years, having computed the discounts the defendant is likely to enjoy. Once the sentence is imposed, the multi-faceted process of sentence reductions results in a widening chasm between the events in the courtroom and the reality in the prison. Perhaps the judge's speculations and predictions will have been close to the mark; perhaps they will have been far wide of it. But, either way, what actually happens to the inmate bears little resemblance to the sentence imposed in the courtroom.

Inevitably, then, consistency in sentencing is at best elusive under the current system.

PAROLE DECEIVES CITIZENS AND DENIES JUSTICE Continued

If justice is to be equal for all, sentencing ought to follow some course of predictability and consistency, whether the offender is sentenced in a large urban area or a rural community, and regardless of his or her race, gender, or socio-economic position.

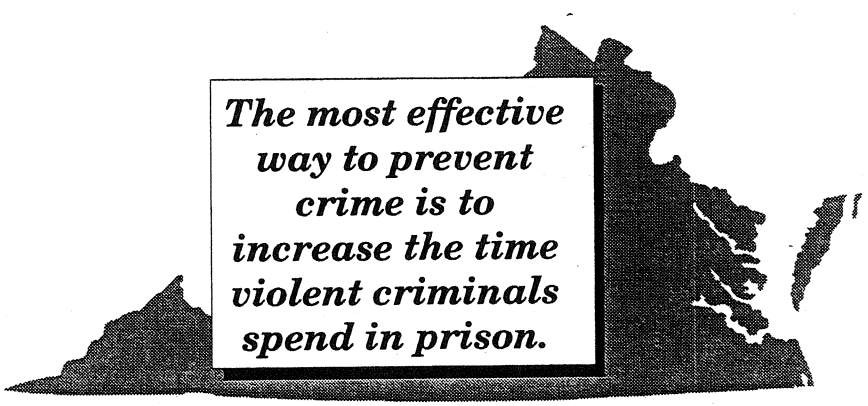
Judges commonly address this objective in criminal sentencing the only way they can as a practical matter — by reducing the pattern of sentencing decisions to numerical values that can provide guidance from case to case.

Dishonest numbers or unpredictable post-sentence developments make a mockery of this effort. False and variable assumptions produce sentences that vary widely, broadening both the perception and reality of disparity and injustice.

In the absence of truth-in-sentencing, a full measure of justice is simply unattainable.

Section II

Recommendations



RECOMMENDATIONS

The Commission recommends comprehensive structural reform of Virginia's sentencing system.

The four sets of recommendations below comprise a plan for immediate restructuring of the sentencing system. Once approved and implemented, the Commission's plan will:

- Bring Truth-in-Sentencing to Virginia
- Prevent Violent Crime By Keeping Violent and Repeat Criminals In Prison Much Longer
- Place Non-Violent Offenders in More Economical and Productive Settings
- Expand Prison Capacity to Ensure Secure Incarceration

While the Commission recommends dramatic change in the way Virginia sentences criminals and the length of time they serve, it recognizes that other significant steps have been taken in recent years to increase the punishment for violent criminals. Measures such as mandatory minimum sentences and incremental restrictions on parole eligibility have been important, though by themselves inadequate, responses to the existing crime surge and expected tide of violence in Virginia.

The Commission's recommendations for action at the special session of the General Assembly build on these improvements and especially on the progress made by the Governor and the General Assembly in the 1994 Regular Session, when important reforms such as bifurcated trials and severe new penalties for violent three-time offenders were enacted.

The Commission's recommendations also come against the backdrop of a declining parole grant rate for offenders already in the Virginia correctional system under the policies of the Parole Board appointed by Governor Allen.

Virginia is at a crossroads.

The Commission believes that further tinkering with the existing parole system will not be enough to save Virginians from a wave of carnage at the hands of violent criminals as the crime-prone age group swells during the next decade. Nor will further modest changes restore Virginians' lost confidence in the criminal justice system, or deter lawlessness by those who believe they can beat the system.

As long as there is the hidden hand of parole sweeping aside the solemn judgments of judges and juries, neither criminals nor law-abiding citizens will respect the criminal justice system in Virginia.

The Commission recommends following the path of fundamental and comprehensive reform:

- All Virginians will be safer if our sentencing system metes out honest time and criminals actually serve it.
- Fewer Virginians will be victimized if violent criminals — especially repeat violent criminals — are kept out of our neighborhoods and communities.
- The goal of a safe society can be better served by a more economical and forward-looking approach to the punishment of non-violent offenders.
- Justice requires truth-in-sentencing, safety requires longer sentences, and prudence requires increased prison capacity.
- *The time to act is now.*

The Commission recommends that Virginia implement a determinate sentencing system that allows the jury or judge to know the period of incarceration that will actually be served by the criminal being sentenced.

Accordingly, the Commission recommends the adoption of a truth-in-sentencing system under which both discretionary and mandatory parole are abolished, "good-time" is replaced by a limited system of earned sentence credits, and post-release supervision is preserved.

Under the system proposed by the Commission, all inmates will serve at least 85% of the sentence they receive from the judge or jury.

I. REPLACE THE MISLEADING PAROLE SYSTEM WITH TRUTH-IN-SENTENCING

Recommendation 1

ABOLISH DISCRETIONARY AND MANDATORY PAROLE EFFECTIVE JANUARY 1, 1995.

The constitutional rights of criminals preclude the abolition of parole for offenses committed before the effective date of the new legislation. Accordingly, the change from the existing parole and "good-time" regime to the new truth-in-sentencing system should occur as quickly as practicable, allowing reasonable time for an orderly transition.

If enacted by the General Assembly and signed by the Governor before the end of September 1994, legislation adopting the Commission's recommendations will become effective on January 1, 1995. The proposed new sentencing commission (see Recommendation #3) would come into existence and begin its work on that date.

After consultation with judges and prosecutors, the Commission recommends that the abolition of parole become effective on January 1, 1995, the effective date of the legislation. This means that persons convicted of offenses committed on or after January 1, 1995 would not be eligible for parole.

The Commission believes that the lag time of several months between commission of an offense and sentencing will provide sufficient time to prepare judges, prosecutors, and court and corrections officials to implement the new truth-in-sentencing system. A crucial part of this preparation will be the sentencing commission's development of new sentencing guidelines and worksheets, and the introduction of these changes to judges, prosecutors, probation officers, and other officials. The Commission recommends that sentencing commission members be appointed immediately after the effective date of the legislation so they can complete the revision of guidelines and worksheets well in advance of any sentencing under the new system.

Recommendation 2

EXPAND THE EXISTING SENTENCING GUIDELINES SYSTEM AND REVISE GUIDELINES TO REFLECT ACTUAL TIME SERVED

The Commission recommends use of voluntary sentencing guidelines to assist judges in implementing the new truth-in-sentencing system and avoiding unwarranted disparities in sentencing.

The Commission proposes a guideline system with the following attributes:

- Guidelines will be based on actual time to be served.
- Initial guidelines for each offense will be determined by taking the average time served for that offense during the five-year period 1988-1992. This baseline will be increased for certain violent and repeat offenders, as described in Recommendations #7-9 below.
- Judges will be required by statute to ensure completion of guideline worksheets in every felony case and make them part of the trial record.
- Judges will be permitted to depart from the guideline sentence when the factual circumstances warrant, subject only to the requirement that they state the reason for such departure on the worksheet.
- Because the guidelines will be voluntary, judicial decisions to depart from the guideline sentences will be purely discretionary, and neither the Commonwealth nor the defendant will have any new appeal rights.

Preserving Judicial Discretion - *Voluntary* Guidelines

A major issue addressed by the Commission was the character of the proposed sentencing guidelines. The Commission considered and rejected the use of mandatory sentencing guidelines, which have been adopted in a number of states and in the federal system following the abolition of parole.

The Commission believes that broad judicial discretion in sentencing is generally desirable and should be preserved. It is the judge who conducts the trial, who may question the attorneys, victims, and witnesses, and who is best situated to

II. PREVENT VIOLENT CRIME BY DRAMATICALLY INCREASING TIME SERVED BY VIOLENT AND REPEAT OFFENDERS

Recommendation 9

INCREASE AVERAGE TIME SERVED BY 300-500% FOR NON-VIOLENT OFFENDERS WITH PRIOR VIOLENT CONVICTIONS

The Commission also recommends guideline sentence enhancements for those whose instant offense is non-violent, but who have a prior conviction for a violent offense.

The fact that a criminal was convicted of a non-violent offense does not establish that the person is a non-violent criminal. To the contrary, the data provided to the Commission demonstrated clearly that many non-violent offenders "graduate" to violent offenses, and that many persons arrested and convicted for non-violent property crimes actually are violent criminals.

When a person with a prior conviction for a violent offense is convicted of a non-violent offense, the probability is high that he or she is engaged in an ongoing pattern of violent and non-violent criminal activity. The Commission believes that these offenders must be targeted for sharply increased incarceration.

The Commission recommends the following enhancements to the guideline sentences for these crimes:

- For persons convicted of offenses other than the violent crimes discussed above, and who have a prior conviction for an offense carrying a maximum sentence of less than 40 years, the Commission recommends a 300% increase in the guideline sentence.

- For persons convicted of offenses other than the violent crimes discussed above, and who have a prior conviction for an offense carrying a maximum sentence of 40 years or more, the Commission recommends a 500% increase in the guideline sentence.

The Commission proposes no increase or decrease in the average time served by non-violent offenders who have no prior convictions for violent offenses.

Identifiable Crimes Prevented

The offenders targeted for enhanced punishment under Recommendations #7-9 account for 34.5% of all new admittees in the current corrections system. By targeting these worst

offenders with sharply increased sentences, a large amount of future victimization can be prevented.

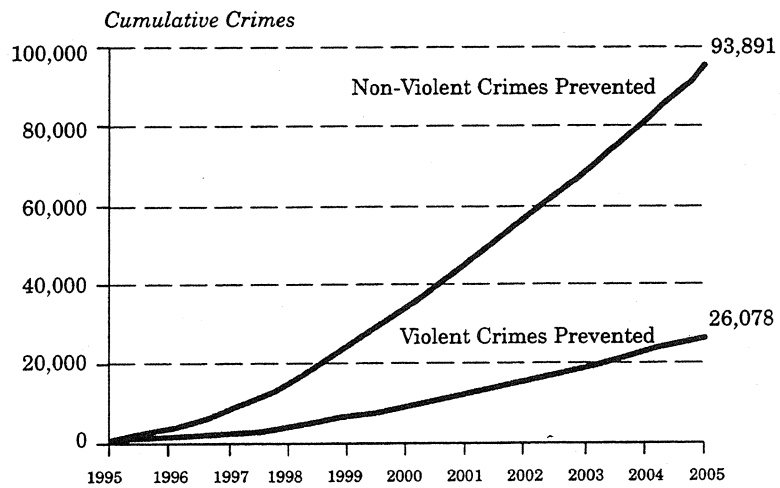
An analysis by the Department of Criminal Justice Services Research Center has determined that the increases in prison time recommended by the Commission would — if adopted eight years ago — have prevented more than 4,300 identifiable crimes for which repeat offenders were convicted during 1986-1993. Each of these preventable crimes had a real victim — a Virginian who was murdered, raped, robbed or otherwise victimized by a felon who should have been behind bars, and who would have been behind bars under the Commission's plan. (See Appendix B).

This study also highlights the disproportionately severe impact borne by our minority communities. According to these statistics, two-thirds (66%) of the preventable murders involved a non-white victim, nearly two-thirds (63%) of the preventable felony assaults were upon non-white victims, and almost one-half (45.6%) of the total of preventable crimes claimed non-whites as their victims.

Display 9

Forecast of Preventable Felony Cases* Under the Commission's Plan (1995 - 2005)

From 1995-2005 an estimated 119,969 felony crimes would be prevented under the Commission's Plan.



**** Based on index crimes reported to the police, this excludes many violent and non-violent crimes.***

The 4,300 crimes for which previously released criminals actually were convicted represents only the tip of the iceberg. Typically, only a fraction of all crimes leads to arrest and conviction. When preventable crime is computed based on all reported offenses, and then is projected out over the next ten years, the real impact of the Commission's proposal becomes apparent.

During the next ten years, according to the Department of Criminal Justice Services Research Center, the increased sentences in the Commission's plan will prevent more than 26,000 violent crimes. (See Display 9).

When non-violent victimization is added, the number of crimes that will be prevented by the Commission's proposed reforms climbs to approximately 120,000 crimes.

II. PREVENT VIOLENT CRIME BY DRAMATICALLY INCREASING TIME SERVED BY VIOLENT AND REPEAT OFFENDERS

By assigning values derived from data collected from the Federal Bureau of Investigation, the Virginia State Police, the National Council on Compensation Information, Jury Verdict Research, Inc., and the National Fire Incident Reporting System, the Research Center has been able to develop a very conservative estimate of the costs, to victims, of the crimes that would have been prevented. Focusing on homicide, rape, robbery, assault, arson, burglary, and larceny, the Center concluded that the crime that would have been prevented if the Commission's recommendations been implemented in 1986, represented a cost to victims of crime of $209 million. This analysis does not include 1,769 crimes - about 40% of those which would have been prevented - for that cost data is not available.

A conservative forecast of the costs attributable to this preventable crime predicts a cumulative savings to victims and society of $2.7 billion over the next ten years. (See Appendix C for additional data).

Geriatric Release and Clemency

In proposing sharply longer sentences for violent and repeat offenders, the Commission recognizes that some of the worst criminals with the longest sentences may remain incarcerated past the point at which, by virtue of their age and physical condition, they have ceased to pose a threat to the community. In some circumstances, the interests of the law-abiding citizenry may not be served by continued incarceration of such inmates.

There are various ways to address this situation, which is likely to involve a relatively small number of inmates and will not materialize until well into the future. One option is a geriatric release provision, such as that inserted into the "three strikes" legislation passed by the General Assembly and signed by the Governor earlier this year. Another option is the adoption of special executive clemency rules for exemplary geriatric inmates.

The Commission recommends that the Secretary of Public Safety continue to study this issue and develop recommendations for action in the future.

III. PUNISH NON-VIOLENT OFFENDERS IN MORE ECONOMICAL AND PRODUCTIVE WAYS

The Commission believes that getting *tough* is the answer when it comes to violent and repeat offenders. When it comes to first-time non-violent offenders, we need to be *innovative.*

Currently, non-violent offenders are scattered throughout the corrections system, occupying expensive beds in medium and even maximum security facilities that could be used to incapacitate dangerous violent offenders.

Since the non-violent offenders are the ones for whom intervention and rehabilitation hold some promise, the present arrangement is doubly wasteful. Non-violent offenders are incarcerated in costly facilities where they have minimal opportunities to redirect their lives to productive, law-abiding activity.

Recommendation 10

APPLY TRUTH-IN-SENTENCING TO NON-VIOLENT OFFENDERS

The Commission proposes no increase or decrease in time served for non-violent offenders who have no prior convictions for violent offenses. The sentencing guidelines recommended by the Commission have been crafted so that the proposed guideline sentences for these non-violent criminals will mirror the average time served for the same offenses during the 1988-1992 base period.

By holding constant the prison time served by non-violent offenders while dramatically increasing the time served by violent criminals, the Commission's plan will use the Commonwealth's resources far more effectively than would be the case if the parole grant rate were merely reduced across-the-board while leaving the sentencing system unreformed.

The question then arises: *Why abolish parole for non-violent offenders if they are not going to serve any longer sentences on average?*

The Commission considered and rejected the idea of retaining the current parole system solely for non-violent offenses for the following reasons:

- First, truth-in-sentencing is as important for non-violent felonies as for violent felonies.

III. PUNISH NON-VIOLENT OFFENDERS IN MORE ECONOMICAL AND PRODUCTIVE WAYS

The Commission's plan not only addresses the need for violent criminals to serve longer — it also addresses the need for juries and judges to know the real impact of their sentences when they pronounce them. Both objectives are critical, and the latter applies equally to non-violent and violent offenses.

When a sentence handed down in the courtroom is rendered meaningless by the subsequent effects of generous "good-time" credits and discretionary parole, the deception is the same regardless of the type of offense. Judges and juries need to know the truth about what time will be served when they sentence a non-violent drug offender just as much as they need real numbers when sentencing violent criminals.

- Second, a system that is a hodge-podge of real-time sentences for violent offenders and misleading parole-eligible sentences for non-violent offenders would be extremely confusing.

Even if there were some good reason to retain parole for certain less serious offenses, the task of operating a system with truth-in-sentencing for some crimes and parole eligibility for others would be hopelessly complicated. The Commission heard from judges and prosecutors that such an approach would be extremely difficult to administer, and that it likely would leave victims and the general public even more perplexed and frustrated than they are now.

Moreover, the Commission does not propose to treat all non-violent offenders the same. Those convicted for an instant offense deemed non-violent, but who have a prior violent offense in their record, are targeted for significantly enhanced penalties under the Commission's proposed guidelines. These enhancements would be virtually impossible to accomplish if non-violent offenses were subject to a sentencing system that featured parole reductions rather than real-time sentences.

- Finally, it is important to recognize that many non-violent criminals entering the state correctional system are recidivists.

Many citizens do not realize that in Virginia it often takes several non-violent convictions before an offender even sets foot in prison. A non-violent offender who reaches the prison gate has likely slept through several wake-up calls and passed by many doors which lead to rehabilitation.

It was partly because of this reality that the Commission rejected suggestions that sentences for non-violent offenders

actually be reduced to allow for increased incarceration of violent criminals at less cost. The same reality led the Commission to reject the idea that non-violent offenders be exempted from parole abolition. Judges and juries need to know when they sentence a recidivist — even a completely non-violent recidivist — that the time will be served.

Juries and judges have to be able to stop the revolving door that allows non-violent offenders to pursue costly careers of property crime and return again and again to the community after short stints in prison.

Recommendation 11

USE WORK CAMPS TO SAVE MONEY AND PREVENT FUTURE CRIME

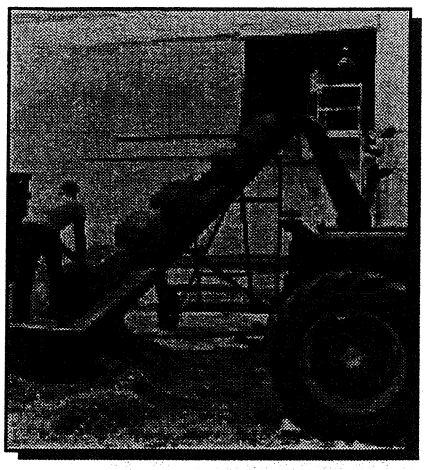
The Commission recommends the construction of low-cost work centers designed to house certain low-risk offenders. The offenders in these facilities will be required to participate in constructive projects that will aid them and benefit the larger community.

Such work centers will meet a variety of correctional needs — chief among them, reducing the idleness that tends to make inmate populations more difficult to control, and alleviating both capital and operating costs. Work centers will also serve a positive purpose for inmates by providing a prison setting in which educational, treatment, counselling, and work-related activities are feasible.

Currently, opportunities for inmates to receive help and to help themselves are simply not available because the population that could benefit from such programs has not been isolated in facilities designed for the programs. Many inmates who would qualify for educational, drug treatment and work activities today are scattered throughout various maximum and medium security prisons. Their presence there among some of the most incorrigible inmates in the system often makes any meaningful rehabilitative programming virtually impossible.

One of the chief complaints that members of the Commission heard repeatedly from the public was that inmates ought to do more than sit in their cells. The Commission agrees. While opportunities for recreation are provided in every penal system in the country — in part, because such opportunities serve as incentives with which to control inmate behavior — future crime can be prevented by requiring participation in work, training,

III. PUNISH NON-VIOLENT OFFENDERS IN MORE ECONOMICAL AND PRODUCTIVE WAYS



and other productive activity as a condition for assignment to work centers. In addition, as noted earlier, the Commission recommends that inmates' qualification for earned sentence credits be conditioned on satisfaction of work and other program requirements.

The Commission believes the focus of the work centers should be inmate labor. While treatment and education programs will become more practical at these facilities, a majority of the inmates' day should be spent working. Farming and light construction work on-site are expected to be a major source of increased labor opportunity. The Commission also recommends increased use of carefully screened low-risk inmates for road work and other public works projects, such as tearing down abandoned buildings and digging ditches for wastewater systems.

The Commission recommends that a survey be developed by the Department of Corrections to identify community and public works projects that are amenable to inmate labor. The survey should be sent to all sheriffs, chiefs of police, city managers, county administrators, and other officials who can inform the Department of the types of projects in their communities that are suitable for inmate labor.

The Commission expects the cost savings from use of work centers to be significant. Recognizing that public safety is its primary responsibility, the Commission worked closely with the Director of Corrections and his staff in developing criteria to be used in determining whether an inmate should be placed in a work center. To qualify for such an assignment, the offender (i) must have received a sentence of three years or less, (ii) must have been incarcerated for a non-violent offense, (iii) must have no prior violent offense convictions, and (iv) must pass review under a Department of Corrections (risk assessment) procedure. This last criterion includes factors used by corrections professionals to determine whether an inmate poses a risk of flight or harm to the public or other inmates.

The Commission recommends the use of prefabricated facilities that could be easily and quickly constructed by private contractors. Already, the Department Of Corrections has been directed by the Secretary of Public Safety to develop a Request For Proposals (RFP) for the construction of the work centers.

The capital cost for these facilities is projected to be approximately $20,000 per inmate, and the operating cost is estimated to be $13,000 per year. This compares favorably with the average $69,000 and $19,800 in per-inmate capital and

operating costs, respectively, for maximum security facilities. It is also less expensive than the average $24,000 in capital costs and $17,100 in annual operating costs that the state currently spends on medium security prisons.

A major benefit of the short construction time for the proposed work centers is the relief it would provide for the persistent problem of jail overcrowding resulting from the backlog of state-responsible inmates. The relief provided by the work centers would be realized well before the impact of parole abolition would be felt.

Recommendation 12

PROVIDE SUBSTANCE ABUSE SERVICES IN APPROPRIATE DESIGNATED FACILITIES

The Commission recommends the designation of several work centers or other appropriate facilities for the focused provision of substance abuse services to inmates.

Recognizing the limitations on state resources, the Commission further recommends that the Department of Corrections aggressively seek out charitable and other privately funded inmate services organizations, and promote public-private partnerships, to assist in making effective drug treatment programs available to inmates at these designated facilities.

The continued use and abuse of controlled substances by inmates and probationers remains a stubborn obstacle to rehabilitation and crime prevention. Inmate surveys show that approximately 80% of all incarcerated individuals have some kind of substance abuse problem. This situation cannot be ignored without dire consequences for society.

The Commission has concluded that to achieve even modest success through work, education and other programs, inmates must first overcome their chemical dependency. Effective treatment must, of course, begin with a sincere commitment on the part of the offender. Mechanisms must be developed to identify such inmates effectively.

During the course of its work, the Commission heard from numerous organizations and individuals who would be interested in providing such treatment and counselling services to Virginia inmates. Currently, they are impeded by the lack of an effective screening mechanism to identify the inmates who could benefit

IV. EXPAND PRISON CAPACITY TO ENSURE SECURE INCARCERATION

Recommendation 16

INCREASE DOUBLE-CELLING IN EXISTING AND PLANNED FACILITIES

Shortly after taking office, the Governor directed the Department of Corrections to conduct a study of how many inmates could be double-celled or double-bunked in order to get the maximum use of current facilities. The criteria for this double celling/bunking were that it must not result in any adverse impact on security or operations, and that it could be carried out without extensive modification to the affected facilities.

The Department has reported to the Governor and to the Commission that the total population in the state correctional system can be increased by approximately 2,100 inmates through double celling/bunking. While there will be some resulting increase in cost for food services and staff supervision, the savings will far outweigh these costs. With most prisons having a capacity of about 700 inmates, double celling/bunking means a savings of three prisons — or about $150 million in capital costs alone.

The Commission supports the Department's double celling/bunking proposal and recommends that future facilities be planned with the expectation that there will be the maximum double celling/bunking feasible in light of safety and security considerations.

The Commission notes that increased double celling/double bunking of existing facilities has the added advantage of providing speedy relief for persistent jail overcrowding resulting from the backlog of state-responsible inmates in local facilities.

Recommendation 17

PURSUE PRIVATIZATION AND USE OF INMATE LABOR TO REDUCE COSTS

The Commission understands that the Governor's Commission on Government Reform, the Stosch Subcommittee on Privatization, and the Department of Corrections have all been actively pursuing the prospect of savings through private construction, ownership and even operation of prison facilities. The General Assembly has also expressed its support for this concept.

While the Commission has avoided duplicating the extensive efforts already underway in this area, the Commission wishes to acknowledge its support for these innovations.

The Commission also endorses the concept of using inmate labor to assist in prison construction and hold down construction costs wherever possible, and is encouraged that the Director of Corrections is already developing plans to implement this sensible program. In the Commission's view, the use of inmate labor for prison construction in appropriate circumstances is a winning proposition for the inmates, for prison administrators, and for the taxpayers.

Recommendation 18

CONSTRUCT ADDITIONAL PRISONS TO MEET ANTICIPATED NEEDS

The Commission has been advised by the Department of Planning and Budget that, under the plan set forth in this Report, the ten-year capital cost for new prison construction will total $800-850 million, and the operating cost in the tenth year will have increased by $350-400 million. The anticipated number of prison beds needed in 2005 throughout the system will be 52,064.

While this cost is significant, only about a fourth of it is attributable to the Commission's proposals. Because of the imminent decade-long increase in the crime-prone age group, Virginians will need to invest at least $600 million in prison construction and a corresponding amount of increased operating funds over the next ten years just to keep pace with the bed space demands of the current sentencing system.

The Commission recommends that Virginians make the long-term investment necessary to implement the recommendations contained in this Report. This investment will yield the most precious return of all — enhanced safety.

Lives will be saved.

Costly crime will be prevented.

Fewer Virginians will fall prey to violent predators.

Fewer Virginians will live in fear.

IV. EXPAND PRISON CAPACITY TO ENSURE SECURE INCARCERATION

By targeting violent criminals, and especially repeat violent criminals, for sharply increased penalties, the Commission's proposal ensures that Virginians will get their money's worth for their investment in new prison space.

The new cells will be occupied by violent criminals. And every violent criminal behind bars is one less predator free to claim new victims.

POSTSCRIPT: MATTERS FOR FUTURE ACTION

During the course of its work, the Commission received numerous suggestions for reform of other aspects of the criminal justice system. Many of the concerns voiced and suggestions offered went beyond the scope of the Commission's sentencing reform mandate, but appeared to have considerable merit to various Commission members.

The Commission believes that it is critical that the General Assembly focus on sentencing reform at the upcoming special session.

The Commission nevertheless wishes to identify some of the criminal justice issues raised at public hearings and through other channels during the period of the Commission's work. These matters should be considered as part of the unfinished agenda of criminal justice reform awaiting attention at the 1995 session of the General Assembly. These include: a crime victims' bill of rights; more restrictive pre-trial detention; reform of juvenile justice laws, facilities and programs; and expansion of the death penalty to embrace additional heinous homicides.

The Commission has also identified the need for improved coordination and consolidation of the research and data analysis functions currently scattered among Virginia's public safety agencies. A similar conclusion was reached by the Governor's Commission on Prison and Jail Overcrowding in 1989.

The Commission recommends that the Governor and General Assembly address each of these important criminal justice issues at the earliest opportunity.

Appendices

- **Appendix A: Sentencing Practices in Virginia**
- **Appendix B: Sentence Enhancements**
- **Appendix C: Preventable Crime**
- **Appendix D: Commission Members**
- **Appendix E: Staff and Acknowledgements**

Appendix A

Sentencing Practices in Virginia

Sentencing in Virginia

Felony Class	Penalty Range
1	Life - Death
2	20 yrs - Life
3	5 - 20 yrs
4	2 - 10 yrs
5	1 - 10 yrs
6	1 - 5 yrs
Unclassed	Varies

Misdemeanor Class	Penalty Range
1	0 - 12 mo
2	0 - 6 mo
3	Fine Only
4	Fine Only
Unclassed	Varies

- Jail sentence options available for class 5 and class 6 felonies.
- Judges may suspend all or portion of sentence imposed, except for certain specified mandatory minimum sentences.
- Judges may order terms of probation in lieu of or along with jail or prison sentences.
- Virginia is one of six states with jury sentencing; judges may reduce but not increase recommended jury sentences.
- Time spent in jail prior to sentencing is deducted from time to be served, if specified by court order (§53.1-187).

Offenders Sentenced to 12 Months or Less

Good Conduct Credit

- **Statutory Good Conduct Credit**
  - **1 day for each day served (§53.1-116)**
- **Exemplary Good Conduct Credit**
  - **5 days served for every 30 days served**
  - **granted by jailer for those performing institutional assignments (§53.1-116)**
- **Judicial Good Conduct Credit**
  - **any amount specified by the court**
  - **granted for work in the community (§53.1-129)**

- Offenders sentenced to 12 months or less are not eligible for parole (§53.1-116)
- Time spent in jail prior to trial and sentencing earns good conduct credit at a rate of 15 days for every 30 served (§53.1-116)
- Mandatory minimum sentences of twelve months or less are not eligible for good time (§53.1-116)
- Good conduct credit may be taken away by jailer for rule violations (§53.1-116)

Offenders Sentenced to 1 Year or More

Good Conduct Allowance (GCA)

- **Class I - 30 days for every 30 served**
- **Class II - 20 days for every 30 served**
- **Class III - 10 days for every 30 served**
- **Class IV - 0 days for every 30 served**

■ Inmates receive 15 days for every 30 served prior to being assigned GCA class, including pre-trial detention time (§53.1-116)

■ Inmates are initially assigned to GCA Class II (20 days for every 30 served) (DOC policy)

■ Inmates' good conduct allowance class assignment is reviewed yearly (DOC policy)

■ Institutional Infractions can result in loss of good conduct allowance which can later be restored (§53.1-189)

■ Those convicted of 1st degree murder, certain sexual assaults or those with a life sentence receive no more than 10 days for every 30 served (§53.1-199)

■ Those convicted of escape forfeit all good conduct allowance earned (§53.1-189)

■ No good conduct allowance earned for those not completing program assignment (effective July 1, 1994) (§53.1-32.1)

Additional Considerations Related to Good Conduct

Good Conduct Allowance (GCA) Adjustments (DOC Policy)

- Conviction of new offense committed in prison: no good conduct allowance earned for 12 months.
- Return to confinement after completed or attempted escape: no good conduct allowance earned for 12 months.
- Refusal to provide blood sample for DNA tests: portion of earned good conduct allowance revoked.
- Assignment to isolation for rule violation: no good conduct allowance earned while in isolation.

Good Conduct Time (GCT) Statute (§53.1-192 thru 197)

- Inmates who committed crimes prior to July 1, 1981 fall under old good conduct time system (less than 3% of inmates).
- Statutory good conduct time earns 10 days for every 20 served.
- Extraordinary good conduct time earns 5 additional days for every 30 served.

Discretionary Parole

Number of Prior Commitments:	Eligible After Satisfying:
0	1/4 of sentence of 12 yrs.
1	1/3 of sentence of 13 yrs.
2	1/2 of sentence of 14 yrs.
3 or more	3/4 of sentence of 15 yrs.

Sentence:	Eligible After Satisfying:
Life	15 yrs.
Life (Class 1 Felony)	25 yrs.
Life (1st degree murder of child under age 8)	25 yrs.
2 or more life sentences	20 yrs.
2 or more life sentences with one Class 1 felony	30 yrs.

Mandatory Parole

Mandatory Parole Features

- **Granted 6 months prior to the expiration of their sentence**
- **Minimum of 6 months supervision (§53.1-159)**

■ Inmates must serve a minimum of three months prior to being released on mandatory parole

■ Department of Corrections may release inmates up to 30 days prior to their mandatory parole release date (§53.1-28)

■ Inmates not eligible for mandatory parole
- Life sentences
- Death sentences
- Inmates revoked while on mandatory parole

■ All of earned good conduct credit is credited toward mandatory parole release date

■ Parole Board has authority to deny release on mandatory parole for up to six months for inmates posing clear and present danger

■ **Inmates committed for 1st degree murder or certain sexual assaults (§53.1-151):**

Number of Prior Commitments	Eligible after Satisfying
0	2/3 or 14 yrs.
1 or more	3/4 or 15 yrs.

■ **Inmates not eligible for discretionary parole (§53.1-151):**

- Death sentences
- Death commuted to life without parole (§53.1-230)
- "Three time loser"
- "Three strikes" (§19.2-297.1)
- Inmates with life sentences convicted of escape
- Life sentence after being paroled on life sentence
- Boot Camp inmates (§19.2-316.1)
- Certain prostitution and other "morals" offenses sentenced under §18.2-351

■ **Incarceration time not eligible for parole:**

- Sentences for escapes (§53.1-203)
- Mandatory 20 years for conviction as a drug kingpin (§18.2-248)

■ **Inmates who will serve their natural lives in prison:**

- Death sentences
- Death commuted to life without parole
- "Three time losers" who receive life sentences

Additional Considerations Related to Parole

Definition of Prior Commitments (§53.1-151)

- Offender must have been "at liberty" between commitments
  - "At Liberty" includes:
    - release pending trial, sentencing or appeal
    - release on probation or parole
    - escape
    - no other legal restraints
  - Prior commitments include those which resulted from commission of a felony while in a correctional facility
- In-State Commitments
  - Offender must have been committed to the Department of Corrections with a felony sentence of 1 year or more
  - Offender need not have been physically received at a Department of Corrections facility
- Out-of-State Commitments
  - Commitments to any correctional facility in any state, the District of Columbia, or any Federal correctional facility count as prior commitments for determining parole eligibility for the following offenses:
    - murder
    - certain sexual assaults
    - robbery
    - abduction
    - kidnapping
    - burglary
    - felonious assault
    - drug sales

Definition of Three-Time Loser (§53.1-151)

- Convictions for three separate felony offenses of murder, rape, or armed robbery, when not part of a common act.
- Convictions for three separate felony offenses of drug sales; offender must have been at liberty between convictions.
- Initial determination made by Department of Corrections; Parole Board may review and decide inmate is parole eligible.

Parole Violators Recommitted to Prison

- Technical Violators (§53.1-151; §53.1-199)
  - are still parole eligible and receive good conduct allowance
- New offense
  - new sentence added to unserved time on previous sentence
  - mandatory parole release date based on total time sentenced
  - discretionary parole release date based on new sentence only
  - assigned new Good Conduct Allowance class
- Discretionary parolees whose parole is revoked may not be released to mandatory parole for at least 6 months (§52.1-159)

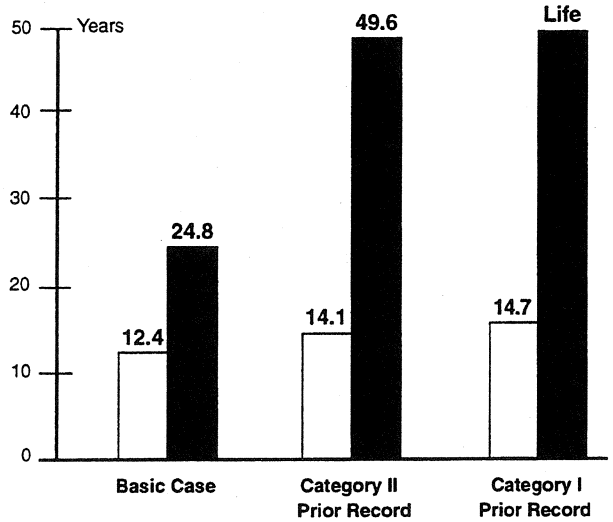
Appendix B

Sentence Enhancements

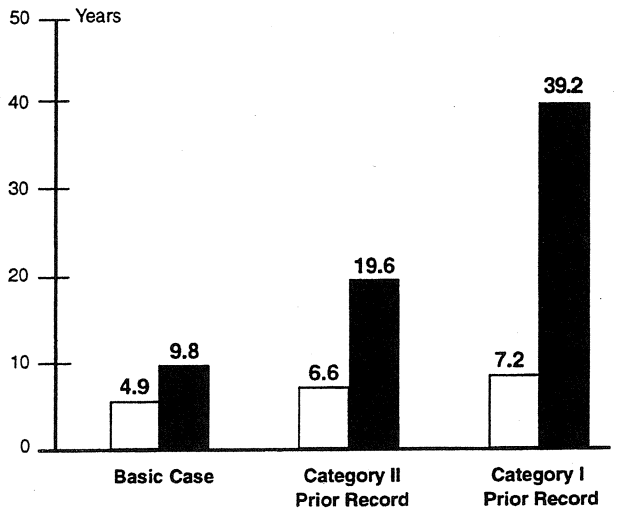
Normative Adjustments to Prison Time Served

Time Served Midpoints
1988 - 1992

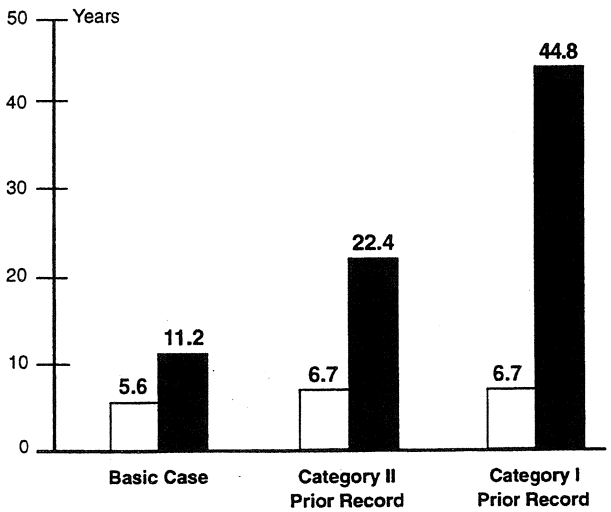
First Degree Murder



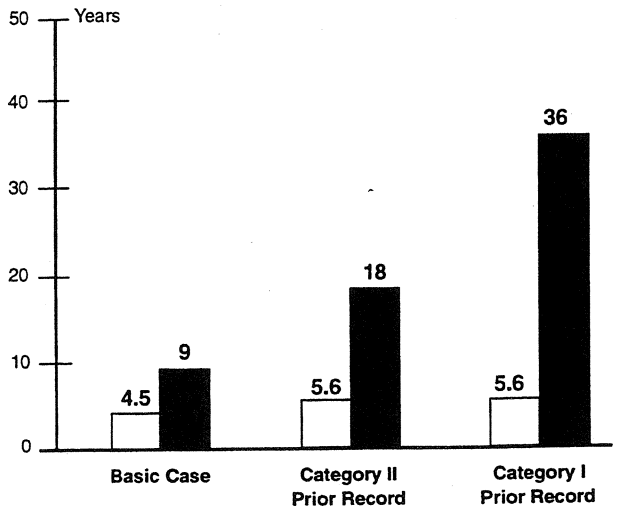
Second Degree Murder



Forcible Rape



Forcible Sodomy

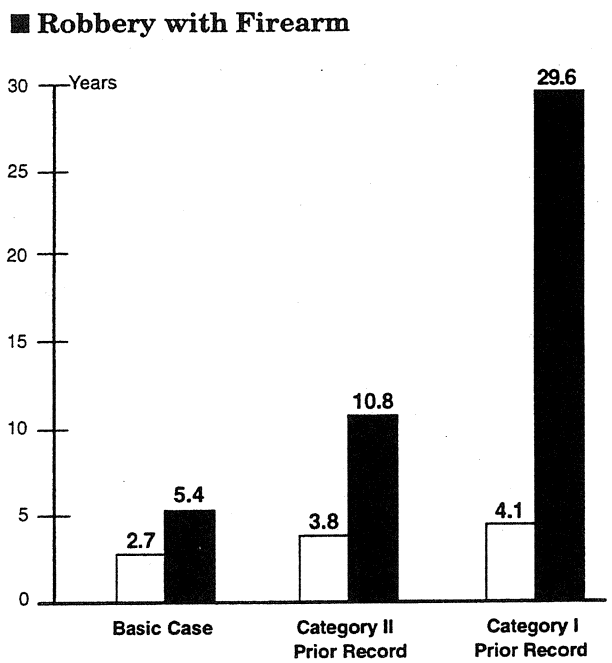


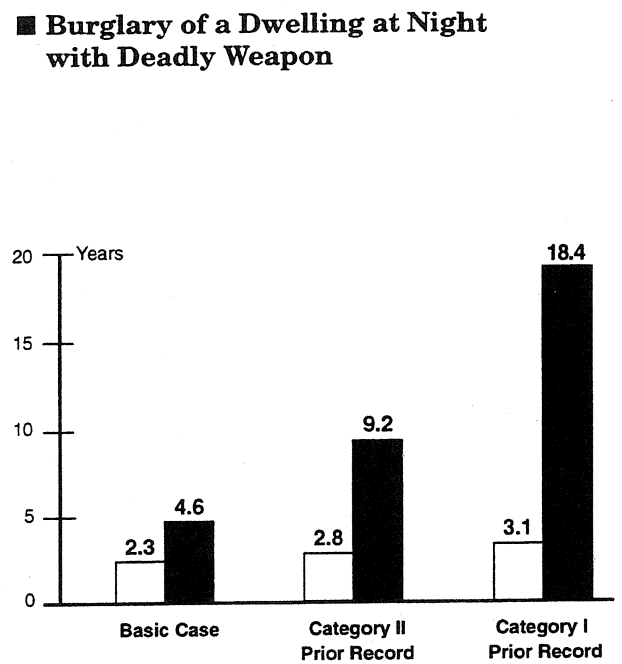
1988-92 Practice Proposed Practice

- A basic case is a case with no aggravating circumstances (i.e., no multiple counts, no additional offenses, no weapon use and no prior record).
- Category II is any prior convictions or juvenile adjudications for a violent crime with a statutory maximum penalty less than 40 years.
- Category I is any prior convictions or juvenile adjudications for a violent crime with a statutory maximum penalty of 40 years or more.

Normative Adjustments to Prison Time Served

Time Served Midpoints
1988 - 1992





1988-92 Practice Proposed Practice

- A basic case is a case with no aggravating circumstances (i.e., no multiple counts, no additional offenses, no weapon use and no prior record).
- Category II is any prior convictions or juvenile adjudications for a violent crime with a statutory maximum penalty less than 40 years.
- Category I is any prior convictions or juvenile adjudications for a violent crime with a statutory maximum penalty of 40 years or more.

Appendix C

Preventable Crime

Preventable Felony Convictions Under the Commission's Plan
(1986 - 1993)

Preventable Violent Convictions = 1,644

Original Conviction	New Conviction Offense					
	Homicide	Rape	Robbery	Assault	Other	TOTAL
Homicide	10	5	6	12	6	39
Rape	2	49	11	15	34	111
Robbery	4	6	84	58	30	182
Assault	9	12	22	36	19	98
Burglary	19	40	110	122	404	695
Drugs	5	5	17	28	17	72
Other Felony	29	34	149	142	93	447
TOTAL	78	151	399	413	603	1,644

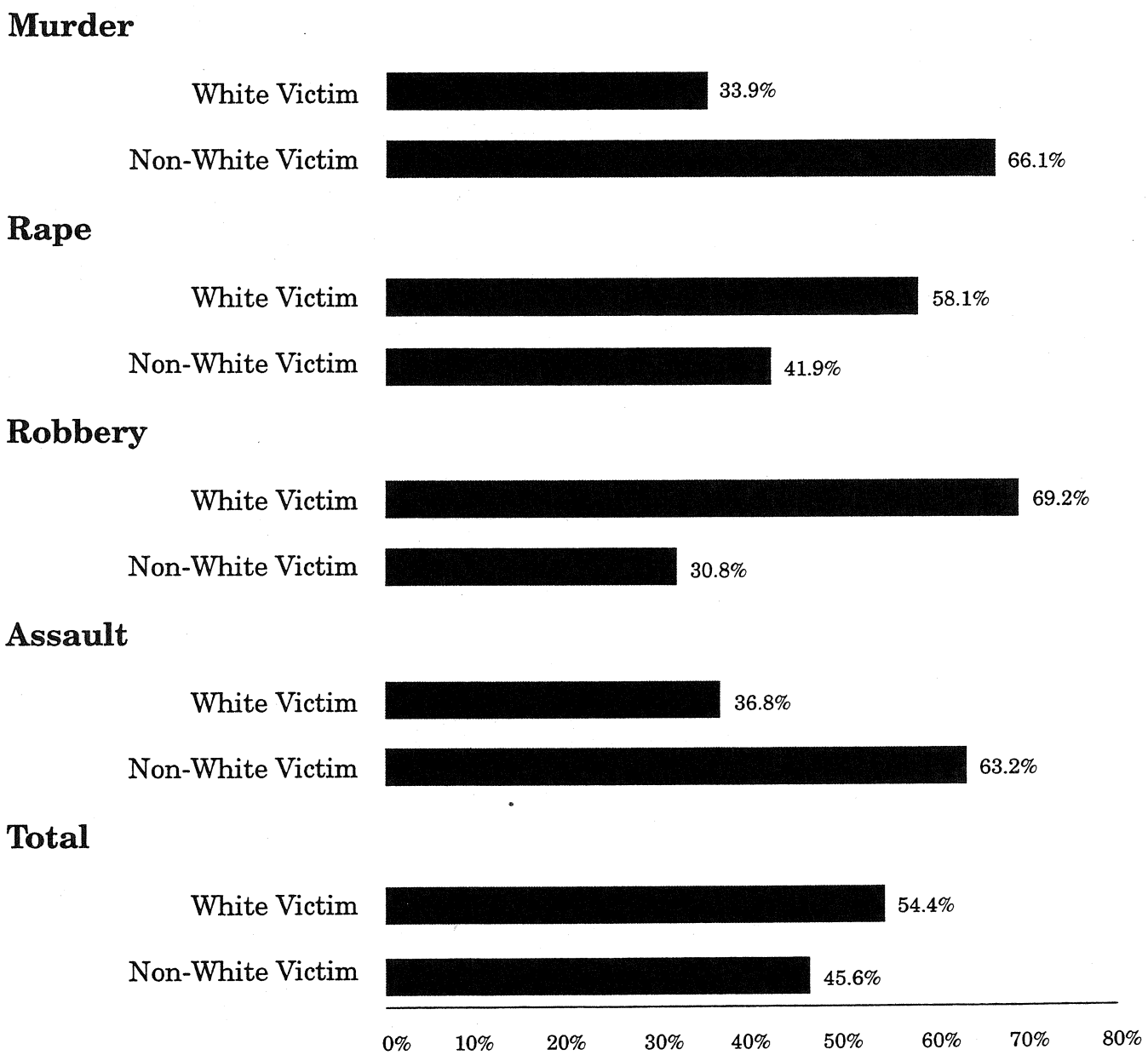
Preventable Non-Violent Convictions = 2,729

Original Conviction	New Conviction Offense				
	Other Burglary	Fraud	Grand Larceny	Other*	TOTAL
Homicide	2	5	15	19	41
Rape	28	28	35	18	109
Robbery	8	93	47	31	179
Assault	13	19	28	40	100
Burglary	329	329	675	116	1449
Drugs	5	22	32	41	100
Other Felony	53	245	271	182	751
TOTAL	438	741	1103	447	2,729

* Excludes felony drug offenses

Note: Results are based on 1986-1991 releases for offenders affected by Commission's Plan and a minimum two year follow-up period. Preventable convictions represent offenses that would have been prevented had the time served mid-point under the Plan been served.

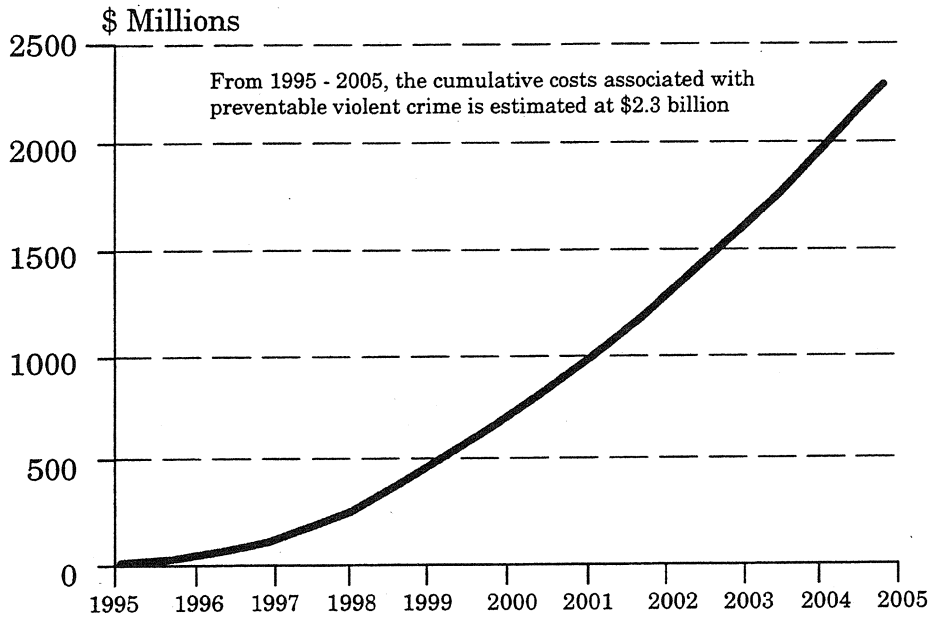
Percent of Felony Convictions Prevented Under the Commission's Plan By Victim Race (1986 - 1993)



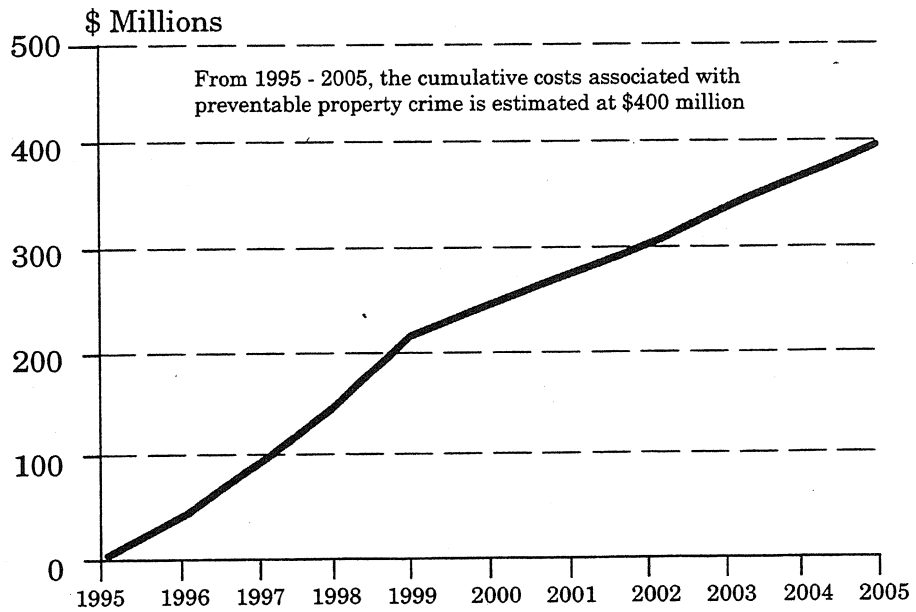
Note: Results are based on 1986-1991 releases for offenders affected by the Commission's Plan and a minimum two year follow-up period. Prevented convictions represent offenses that would have been prevented had the time served mid-point under the Commission's Plan been served.

Estimated Victim Costs* Associated With Preventable Crime Under the Commission's Plan
(1995 - 2005)

Violent Crime



Non-Violent Crime



* 1989 dollars adjusted for inflation.

Sources: Virginia PSI, OBSCIS and UCR databases. "Victim Costs of Violent Crime and Resulting Injuries," *Health Affairs,* (1993). "Pain, Suffering and Jury Awards: A Study of the Cost of Crime to Victims," *Law and Society Review,* (1988).

Appendix D

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