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# LEGAL AID JUSTICE CENTER

## VIRGINIA INSTITUTIONALIZED PERSONS PROJECT

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### Virginia Parole Board, Fact Sheet

- The Virginia Parole Board consists of three full-time and two part-time members who serve at the pleasure of the Governor, with no statutory term limits. Since January 2002, the Chair of the Board has been Helen Fahey, a former state and federal criminal prosecutor. Another member is a representative of crime victims, as required by Virginia law.
- Virginia law requires the Board to adopt rules governing the granting of parole that are subject to approval by the Governor, and to release on parole those persons found suitable for parole according to those rules.
- Virginia law requires such release decisions to be premised on “a thorough investigation . . . into the prisoner’s history, physical and mental condition and character and his conduct, employment and attitude while in prison.”
- Virginia law requires such release decisions to be made annually after an inmate has served enough time to become eligible for parole. However, parole reviews may be deferred for up to three years for inmates with at least ten years remaining on their sentences.
- Approximately 6,000 Virginia inmates who have been convicted of violent offenses remain eligible for parole, because their offenses predated the 1995 abolition of parole. The largest single category of most serious offense for these inmates is robbery (17.2% of all offenders).<sup>1</sup>

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<sup>1</sup> Virginia Department of Corrections Research, Evaluation and Forecast Unit, Parole Eligible Inmates Incarcerated in the Virginia Department of Corrections as of September 2008 at 3.

\* Admitted in Massachusetts and Illinois

## The Board's Parole Grant Rate Since 1994

- Since Virginia abolished parole for new offenses committed after 1994, the Virginia Parole Board has had one of the lowest parole grant rates in the Nation.
  - The grant rate dropped from over 40% before parole was abolished to 18% in fiscal year 1996, to 8% in fiscal year 2000, to less than 5% in fiscal year 2008.
  - For inmates convicted of violent offenses, the parole grant rate has ranged from 2.1% to 3.7% in the past seven years.
  - According to the former chairman of the New Jersey parole board, Virginia's recent 5% grant rate "frankly strikes me as absurd."<sup>2</sup>
  
- By the end of 2008, almost half of parole-eligible inmates had already served at least 19 years, and almost a quarter had already served at least 24 years. Over one-third were already at least 50 years old.<sup>3</sup>
  
- By the end of 2010, 24% of Virginia inmates eligible for parole will have already served longer than they would have served under the new sentencing guidelines that apply to offenses committed after 1994.<sup>4</sup>
  - By the end of 2008, well over half of these inmates had already served more than five years longer than they would have served under the new guidelines.<sup>5</sup>
  - These figures understate the problem. Among other things, they compare time served by parole-eligible inmates to the *high end* of the new sentencing guidelines, even though judges have favored the *low end* of the guidelines.<sup>6</sup> The differences between low and high end are often 15 years or more.

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<sup>2</sup> S. Somashekhar, '95 Law Denies Early Release to Nearly All of State's Prisoners, The Washington Post, Jan. 18, 2009.

<sup>3</sup> Virginia Criminal Sentencing Commission, Report on Parole-eligible and Geriatric Inmates in State Correctional Facilities to the Governor, General Assembly, and Chief Justice of Virginia, Sept. 1, 2009, at 11, 12.

<sup>4</sup> *Id.* at 17, 21.

<sup>5</sup> *Id.* at 20.

<sup>6</sup> VCSC 2008 Annual Report at 19, 28.

- Although the cost of incarcerating elderly inmates is well over twice the average, even based on average inmate costs, Virginia is spending *over \$150 million each year* to house parole-eligible inmates convicted of violent offenses.

### **The Board's Policies and Procedures**

- The Board's policies and procedures lack transparency, because the Board is generally exempt from the Virginia Freedom of Information Act and the Virginia Administrative Process Act.<sup>7</sup>

- The Board's website includes a Policy Manual, which states that parole decisions are "guided" by 14 factors, only one of which is the offense itself.
- According to a former Attorney General, after Virginia abolished parole in 1994 "it certainly in my view became harder to get out on parole, even though technically the law did not affect those who were already in prison."<sup>8</sup>

- In recent years, 45% of the Board's denials of parole were accompanied by no explanation other than the following six words: "serious nature and circumstances of crime." Many inmates receive this same boilerplate denial year after year.

- The Board has abandoned its prior use of risk assessment guidelines to inform its parole decisions. Such tools were required by Virginia law for guidance in sentencing Virginia inmates convicted for offenses occurring after 1994, and are used by parole boards in most other states.<sup>9</sup>

- Board members no longer personally interview inmates, as their counterparts do in most other states.<sup>10</sup> The Board's policy is to make only one of its five members available for a meeting with the inmate's family or representative, and only every other year.

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<sup>7</sup> Va. Code §§ 2.2-3703(A)(1), 2.2-4002(B)(9)-(10).

<sup>8</sup> S. Somashekhar, *supra*.

<sup>9</sup> S. Kinnevy & J. Caplan, Findings from the APAI International Survey of Releasing Authorities at 1 (Apr. 2008).

<sup>10</sup> *Id.* at 15.

- Board members no longer regularly meet or work together in the Board's Richmond office. They vote one by one by computer, based on their individual review of an electronic file. A grant of parole requires three votes (or four votes, in the case of inmates sentenced to life for first degree murder). Under this process, in many cases two or three Board members never have occasion to review the file.

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