

BILLION DOLLAR DIVIDE:

VIRGINIA'S SENTENCING, CORRECTIONS AND CRIMINAL JUSTICE CHALLENGE

JUSTICE POLICY INSTITUTE | APRIL 2014



Mission: Reducing the use of incarceration and the justice system and promoting policies that improve the well-being of all people and communities.

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PART 1: INTRODUCTION

VIRGINIA'S CRIMINAL JUSTICE, SENTENCING AND CORRECTIONS CHALLENGE

“With so many of our citizens in prison compared with the rest of the world, there are only two possibilities: Either we are home to the most evil people on earth or we are doing something different—and vastly counterproductive. Obviously, the answer is the latter.”

--Former U.S. Sen. Jim Webb (D-VA), sponsor of the National Criminal Justice Commission Act ¹

As a new administration took office in January and the legislature reconvened, lawmakers considered an executive budget that projected that the state would cross the divide of spending one billion general fund dollars on corrections by 2015—a threshold that the state has only crossed one time before.^a That same month, the Virginia Criminal Sentencing Commission told lawmakers that after several years of flat or declining prison growth, the latest data show that Virginia’s prison population has had its first increase in five years, and arrests of individuals for drug offenses are on the rise as well.

Before these benchmarks were spotted on the horizon in 2014, the Commonwealth of Virginia

had already seen a 735 percent increase in the prison population since the 1970s. Today, there are 37,000 individuals under the custody of the state in its prisons or jails.² In 2012, the U.S. Department of Justice’s (DOJ) Bureau of Justice Statistics reported that Virginia had the nation’s 15th highest state imprisonment rate, with 451 per 100,000 state residents behind bars, with a prison population that is larger than prison populations of 38 out of 50 states (more than two-thirds of the states).³ Looking at the information collected by the DOJ over a different time period and in a different way, between 1982 and 2007, Virginia’s incarceration rate increased by 205 percent, with 1 in 89 Virginia residents reported to be incarcerated by 2007.⁴

Increased arrests and incarceration of Virginia residents are impacting the Commonwealth in profound ways. There has been a 288 percent increase in corrections spending since the 1980s,

^aIn 2009, Virginia’s corrections budget reached \$1,000,801,763, declining under a billion dollars in each subsequent year. Assuming that the Executive Budget proposed in December does not change, Virginia’s corrections budget is again budgeted to exceed one billion dollars by 2015.

and 14 new correctional facilities were built and opened. This increased reliance on criminal justice and corrections systems' responses to solving social problems have not necessarily made Virginia communities safer, and have come with a series of negative consequences: Significant racial and ethnic disparities in incarceration, high concentrations of felony disenfranchisement in the African-American community and other negative outcomes of overreliance on criminal justice responses to social problems. These negative consequences should raise questions for lawmakers.

These trends are the result of changes to Virginia's sentencing and criminal justice system. While the drivers of prison population growth interlock and weave into each other, to understand how Virginia got to where it is today, the Justice Policy Institute has summarized the trends under three major themes: *more people serving longer sentences, more people coming into the system and fewer people leaving the system.*

MORE PEOPLE SERVING LONGER SENTENCES

Truth-in-Sentencing is a collection of different but related policies and legislation that more closely align imposed sentences with time served. Under a series of changes related to the 1995 sentencing reforms, all sentenced persons must serve at least 85 percent of their sentence. Changes that generally fall under the Truth-in-Sentencing framework include:

Eliminating parole eligibility: While several thousand people sentenced before 1995 are still eligible for parole under the "old law," most people in prison in Virginia are not eligible for parole;

Reduction in "good-time" and earned-time

credits: After 1995, people sentenced to prison in Virginia were unable to earn their release at the same rate that they could previously, leading Virginia to have some of the lowest "good-time" allowances in the Southern region;

More mandatory minimums: Virginia increased the number of offenses that carry a compulsory prison term where the courts have no discretion over the length of the sentence. About twenty-five percent of mandatory minimums apply only to drug offenses.

Along with Truth-in-Sentencing, Virginia lawmakers **added more offenses** to the statute to criminalize more behaviors.

MORE PEOPLE COMING INTO THE SYSTEM

Increased arrests, including for drug offenses:

During a time when there has been vigorous national discussion about other ways to reduce the harms of drug abuse and a reconsideration of sentencing and drug policy in a number of states, Virginia has seen an increase in arrests for drug offenses that should be a cause for concern. The Virginia Criminal Sentencing Commission reported that drug arrest rates in Virginia are on the rise, surpassing the U.S. average.

Increased new court commitments: As more and more Virginians have ended up arrested and brought to court under the evolving sentencing system, more and more people have been committed by the courts to prison.

FEWER PEOPLE LEAVING THE SYSTEM

Low parole release rate among the few eligible for parole: Among the 4,000 people who were imprisoned before the 1995 law changes who

might be eligible for parole (sometimes called “old law” prisoners), few are actually paroled.

Low geriatric release rates: The number of older and ill prisoners has grown due to sentencing changes, compassionate release for older and ill prisoners—of which there is an increasing number due to increases in length of stay—is rare in Virginia, despite evidence that this population could be more effectively and inexpensively supervised outside of correctional institutions.

THE IMPACT ON PUBLIC RESOURCES, COMMUNITIES AND PUBLIC SAFETY

These changes to sentencing, correctional and criminal justice policy in Virginia have had a series of negative impacts on the corrections system, public spending and Virginia’s communities, including:

Rising prison populations: Virginia’s prison population has increased 735 percent since the 1970s. After a drop in the prison population that matched what was happening in other states, the Virginia Criminal Sentencing Commission reported that 2013 brought the first increase in the prison population in the past five years.

Rising costs: Longer sentences have led to a 288 percent increase in corrections spending since the 1980s: A billion dollars was spent on 14 new prisons that have been built since the 1990s. Fourteen new correctional facilities were built and opened since the 1990s. The growing elderly prison population is also driving up correctional costs: The nearly 6,000 people over age 50 in prison have health care costs that are higher than younger people in prison.

Rising length-of-stay: While the research on length-of-stay shows that the length-of-time someone is behind bars doesn’t necessarily impact reoffending and recidivism, Virginia had the second highest increase in the length-of-stay of people sentenced to prison among surveyed states: Between 1990 and 2009, there has been a 72 percent increase in the time served for people sentenced for drug offenses, and 62 percent increase for people sentenced for property offenses.

Crowding in facilities: More arrests and longer sentences means that more people are being held in Virginia prisons or local jails — something that can make a corrections system less safe, places the system at-risk of costly litigation and reduces people’s access to meaningful treatment or programmatic opportunities.

More racial and ethnic disparities affecting Virginia communities: African Americans comprise 20 percent of Virginia’s population, 61 percent of the state prisoners and 72 percent of those in prison for a drug offense. The impact of sentencing policy in Virginia has also led to a larger proportion of the African-American community losing the right to vote through felony disenfranchisement. Virginia Department of Corrections public data on Hispanic representation in prison may mask the disparate impact of the sentencing and correction policies on Virginia’s Hispanic community.

More collateral consequences: In 2010, it was estimated that there were at least 450,000 Virginia residents who have a felony conviction. In Virginia, a felony conviction can serve as a barrier to someone getting a job, going to school, finding housing and whether they can receive public benefits—a series of hurdles that make it

more challenging for someone leaving prison to move on to crime free life.

ARE VIRGINIANS SAFER AS A RESULT OF THESE POLICIES?

Virginia's reduction in crime has generally tracked the national reductions in crime (including states that have made less zealous use of prisons and jails to solve public safety problems). Research that has emerged since the 1995 law changes show that longer prison sentences and time served do not necessarily make communities safer. States like South Carolina, Texas, New York and Maryland have seen their incarceration rates *decline* and seen their violent crime rates *decline* as much or more than the Commonwealth, during a time when Virginia's incarceration rate rose. While some measures of recidivism have declined, the evidence does not support a conclusion that the changes made to the law in 1995 are reducing recidivism rates.

RECOMMENDATIONS

Longer prison and jail terms and increased arrests have had a negative impact on Virginia communities—particularly communities of color. Taking a page from other states, there are steps Virginia can take to have a safer, more effective, less expensive and fairer criminal justice system.

- **Reconsider and review sentencing laws, practices and policies.** The state should review and reconsider the state's mandatory minimum sentences and new (or updated) criminal statutes through a cost-benefit lens to get a better fix of their impact on public resources, disproportionality and public safety. Recent proposals have called for reinstatement of parole for some

individuals, to create and expand mechanisms for early release and reduce the time people engaged in some behaviors would spend incarcerated by revising the statute.

- **Reduce the collateral consequences associated with criminal convictions and prison.** The McDonnell administration took some steps to address the challenges facing individuals with a criminal conviction and returning from prison to the community through a focus on re-entry, and creating a mechanism for some individuals to regain their right to vote. The Commonwealth needs to build on its focus on reentry, and address the barriers facing individuals who have come in contact with the criminal justice system so that they can successfully get a job, receive benefits to help them transition to crime free lives and participate in civic and community life.
- **Embrace more effective public safety and drug policies.** The state should follow the lead of other jurisdictions that are embracing better drug policies that have reduced reliance on the criminal justice system to solve public health or other problems relating to drug use, and refocus public safety policies on preventing crime. The state should help localities solve public health problems, and minimize criminal justice contact for those engaged in low-level drug behaviors.

This is the second in a series of publications by the Justice Policy Institute examining criminal justice policies in the Commonwealth. The first publication, *Virginia's Justice System: Expensive, Ineffective and Unfair*, was released in November 2013 and provided an overview of the Commonwealth's justice system. This report

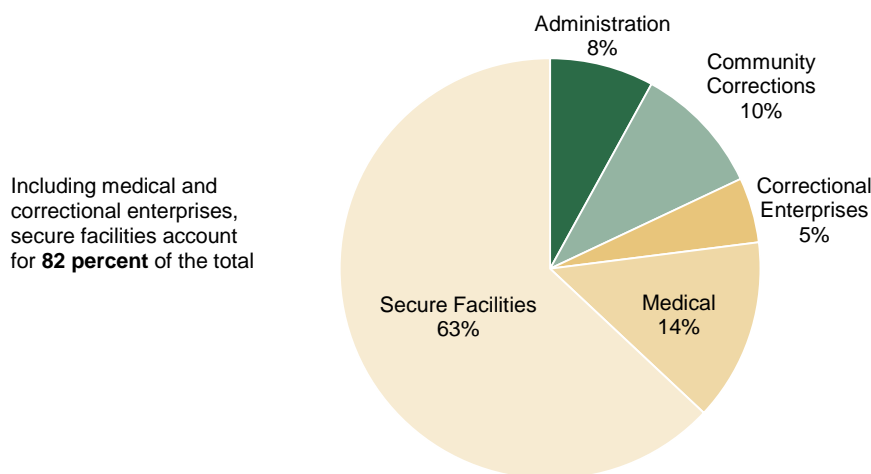
explores Virginia's sentencing, correctional and public safety policies in further detail.

JPI notes that, Virginia is not "the worst of the worst" in terms of its reliance on incarceration and arrest to manage public safety challenges.

Compared with other states, Virginia has seen slower growth in incarceration than other states (and saw a dip in incarceration in the previous five years). The use of the voluntary sentencing guidelines, the ongoing study of how the guidelines are being used and the Virginia Criminal Sentencing Commission report to the stakeholders and lawmakers on sentencing policy have ameliorated some of the impact of statutory sentencing changes. Improvements in community corrections and the adoption of evidenced-based practices in community supervision hold promise. Today, Virginia is spending a smaller proportion of total general fund dollars on corrections (approximately 5.4 percent) than it did in 1984 (7.4 percent). Close to \$200 million were cut from the Department of Correction's budget between fiscal year 2002 and fiscal year 2012.

The question is, with the Commonwealth once again about to cross the divide of spending a billion General Fund dollars on corrections, and with 2013 being the first year of a documented increase in the prison population since the previous five, shouldn't alarm bells be ringing in Richmond around the current state of sentencing, corrections and criminal justice policy? Including medical and correctional enterprises, secure facilities account for 82 percent of what Virginians spend to change individuals' behavior through the corrections system, with only about 10 percent of the budget going towards community corrections programs that can get as good or better outcomes as prison in reducing recidivism.⁵ As a new administration wrestles with budgetary and social policy choices, why did a series of reform proposals considered this year around sentencing, corrections and criminal justice policy fail to move forward? Is this the most effective way to divide Virginia's billion dollar investment in public safety and human need?

How should Virginia divide up its billion dollar corrections budget?



DOC Appropriations, All Funds (FY 2011)
Total = \$1,011.1 million (of which \$930.6 million is General Fund)

Source: The Department of Corrections Budget: 2011.

This report is designed to focus lawmakers and residents on whether they can make better decisions around sentencing and public safety policies, and reconsider recent “missed opportunities” to improve sentencing and correctional practices in the Commonwealth.

What were the policy changes in the 1995 and how have they impacted the system?

In 1994, the Commonwealth of Virginia passed major sentencing reform that changed how Virginia’s determinate sentencing (sentences to confinement for a fixed or minimum period that are specified by statute) works. The legislation, which became effective in 1995, was meant to address high levels of crime and recidivism, and embrace a Truth-in-Sentencing framework, with the goal that individuals sentenced to prison would be required to serve at least 85 percent of their terms of incarceration.

- **Elimination of parole:** Discretionary parole for anyone sentenced for a crime committed after January 1, 1995 was eliminated, a reaction to what was portrayed as an overly permissive parole system at the time.
- **Increase in sentence lengths:** Sentence lengths were increased through a number of mechanisms, including factors that related to the person’s prior felony history, through mandatory minimum sentences which set a fixed term for incarceration. Changes to how “good-time” and earned-time credits for an earned release are calculated also have the effect of increasing the amount of time someone serves on a particular sentence.
- **Instituting the Virginia Commission on Criminal Sentencing:** Since 1991, Virginia has had *voluntary sentencing guidelines*— a tool that is designed to reduce sentencing disparities between courts. When the bulk of the sentencing changes that lengthened prison terms were introduced in the mid-1990s, as part of negotiations, the state created a sentencing commission to study how sentencing trends were progressing, analyze the information for the legislature and, where appropriate, recommend changes. Guidelines – while voluntary – can affect sentence lengths by providing judges, stakeholders and the system with the data on sentencing trends across the courts and regions of the state, and show whether different courts and judges are sentencing people to similar sentencing lengths, or not.

The elimination of parole, mandatory minimums, changes to how “good time” credits are earned, new felonies and adjustments to the voluntary sentencing guidelines influence how many people are in prison. The criminal justice system is also influenced by the intensity of where and how law enforcement deploys their resources. All of these points in the system depend on the actions of different court actors – local police departments, judges, public defenders, prosecutors and probation officers – and how they interpret or operationalize statutes, guidelines and deploy public safety resources.

PART 2

MORE PEOPLE SERVING LONGER SENTENCES

The 1980s and early 1990s witnessed a rise in crime rates and a growing attention to crime and violence in the media, with a particular emphasis on crime committed by people of color.⁶ The public discourse was dominated by stories of individuals who might have been sentenced to a longer prison term who were paroled, earned release through various kinds of mechanisms and were subsequently rearrested for serious crimes.

Public safety and elected officials in Virginia and beyond responded to both the real and perceived public safety challenge by making a series of changes to sentencing in the mid 1990s under the rubric of Truth-in-Sentencing – a collection of different but related public policy stances on sentencing that refers to policies and legislation that focus on the public need for certainty in sentencing: The basic tenet of Truth-in-Sentencing legislation is to more closely align imposed sentences with time served.⁷ Truth-in-Sentencing is sometimes used as a catchall to describe a series of ways to align sentences with the actual time served that can include:

- Ending or reducing parole eligibility;
- Reductions in earned time, or “good time” that can reduce the time served;
- Mandatory minimum sentencing.

By 2008, 28 states had Truth-in-Sentencing laws that met the federal requirement for violent offenders.⁸

Virginia’s Truth-in-Sentencing approach was part of a national wave of policies like these, including a federal law that gave Virginia \$47 million in grant funds to build more prisons to deal with the longer length of stays associated with the policy shift.⁹

Virginia’s Truth-in-Sentencing approach required all felony offenders to serve 85 percent of the sentence. A year after the effective date, 74 percent of prison admissions were sentenced under Truth-in-Sentencing.¹⁰

ENDING PAROLE

In the 1993 gubernatorial election, then Congressman George Allen campaigned on a “tough-on-crime” approach and won, at least in part, on support for changes to the system that would involve instituting Truth-in-Sentencing elements, including eliminating parole and other changes to require that individuals serve 85 percent of their sentences. After his election, Gov. Allen instituted his Governors’ Commission on Parole Abolition and Sentencing

Reform to study the issue, setting the framework by which the state could introduce legislation to abolish parole. The new statutes allowed people sentenced before January 1, 1995 – now known as “old-law inmates” – to be grandfathered into parole eligibility, but eliminated discretionary parole for anyone sentenced after that date.

REDUCTION OF “GOOD TIME” AND EARNED TIME

As part of the Truth-in-Sentencing framework, the state reduced the amount of time a person in prison could earn off their sentence due to good behavior, or participation in programs and treatment (sometimes called, “good time^b”, and “earned time” elsewhere). Prior to 1995, depending on one’s security level, a sentence could be reduced by 30 days for every 30 days of compliance while incarcerated – a maximum of 50 percent. After 1995, and currently, the most an incarcerated individual could reduce their sentence is 4.5 days for every 30, or 15 percent.

Good-time allowances were cut in Virginia

Good-time Class Level	Prior to 1995	After 1995
One	30 for 30	4.5 for 30
Two	20 for 30	3.0 for 30
Three	10 for 30	1.5 for 30
Four	0 for 30	0 for 30

Source: Correctional Good-Time Credits in Southern States (2001). Council of State Governments

According to a National Conference of State Legislatures survey done in 2011 on “good-time” and earned time, Virginia had among the fewest opportunities for a person to earn their

^bThe National Conference of State Legislatures defines “good-time” as something given to individuals for following prisoners rules and required participation in activities, and defines, earned-time as a credit against an individual’s sentence or period of incarceration that he or she earned for participation or in completion of productive activities.

release from prison for participation in programs, services and treatment as a matter of law among the Southern states (See Appendix).

MORE MANDATORY MINIMUMS

Mandatory minimum sentences, those which carry a compulsory prison term upon conviction for specific offenses, have been part of Virginia’s criminal sentencing system since 1968. As of 2007, 36 relevant statutes provided for mandatory minimum sentences to be applied to roughly 82 offenses. The number of these statutes varies from year to year, with the most (19) having been introduced in 2000.¹¹

Of all mandatory minimum sentences, less than a third apply to violent or sexual offenses. The rest apply to drug offenses, driving, including DUI offenses and “other.”¹² At least 25 percent of mandatory minimum sentence statutes in Virginia apply only to drug offenses.

Mandatory minimums have been found to have little to no impact on crime prevention or deterrence. Rather, research on mandatory minimums has shown that prosecutors use the threat of mandatory minimums to extract pleas from defendants who face a minimum prison term. Research has shown that these practices often result in stiffer penalties for those convicted of lesser, yet related offenses than those covered by the statute, likely reflecting a net-widening with regards to the range of offenses experiencing enhanced penalties under the law.¹³

MORE OFFENSES

Through the 1990s and continuing to the present, Virginia has added new felony offense crimes that have covered drug-related offenses, abortion-related offenses, hate crimes, gun

crimes, technology-assisted offenses and offenses against youth. Some of these crimes relate to serious behavior.¹⁴ Adding more offenses to the statute can also contribute to something called, “overcriminalization.” The Heritage Foundation defines overcriminalization as a federal challenge – a trend to use the

criminal law rather than the civil law to solve every problem. Overcriminalization can affect the effective use of public resources and fairness, and The Heritage Foundation has called for the repeal of unjust laws and for new laws to be more precise.¹⁵

PART 3

MORE PEOPLE COMING INTO THE SYSTEM

“The total number of adult arrests increased by 2.3 percent in 2012, largely due to the increase in drug arrests.”

--Virginia Criminal Sentencing Commission (2014)

Sentencing is not the only determinant of prison and jail population trends. How the state uses the resources at its disposal to address public safety and community challenges can increase (or decrease) the pool of individuals coming into the system. While it is not a linear relationship, the resources deployed to law enforcement do increase their capacity to arrest more individuals. Between 2003 and 2014, state general fund dollars for state police increased by \$68 million dollars, and the Commonwealth will spend a quarter of a billion general fund dollars on policing (\$249 million) if the 2015 executive budget as introduced is approved.

The growing number of arrests, particularly for nonviolent offenses, can have an impact on how many individuals will end up in prison or jail in a given year, and can increase the number of individuals eligible to be sentenced under the laws advanced in the 1990s.

INCREASED ARRESTS

Virginia has seen a rise in the number of individuals arrested by law enforcement

agencies. While people being arrested for violent offenses do end up serving longer sentences under the Truth-in-Sentencing framework, when individuals who might be dealing with behaviors that relate to an underlying addiction, mental health or chronic joblessness are repeatedly arrested for nonviolent offenses, they, too, might end up serving a prison term under the sentencing structure: Some of the offenses that have been the focus of law enforcement since the 1990s have low severity thresholds and mandatory incarceration statutes associated with them, particularly if the individual has prior convictions.

Between 1999 and 2011, the number of arrests for Group A offenses (those considered most serious) increased by 71,694, or 98 percent (see Table, “Simple assaults, drugs and shoplifting”). Within this category of offenses, *relatively* less serious behavior such as nonviolent drug crimes, simple assaults and shoplifting comprise the largest number of arrests, and have seen huge growth over the time period.

Simple assaults, drugs and shoplifting drove the increase in arrests

Offenses with highest number of arrests in 2011	1999	2011	Number change	Percent Change
Simple Assault	21,239	40,173	+18,934	+89 %
Drug/Narcotics Violations	13,864	36,408	+22,544	+163 %
Shoplifting	6,561	15,433	+8,872	+135 %
All Other Larceny	5,903	14,918	+9,015	+153 %
Damage/Destruction/Vandalism	3,409	4,788	+1,379	+41 %
Burglary/B&E	3,159	4,638	+1,479	+47 %
Aggravated Assault	3,965	4,180	+215	+5 %
Weapon Law Violation	2,722	3,802	+1,080	+40 %
Total Group A*	72,835	144,529	+71,694	+98 %

*This is not a complete list of Group A offenses.

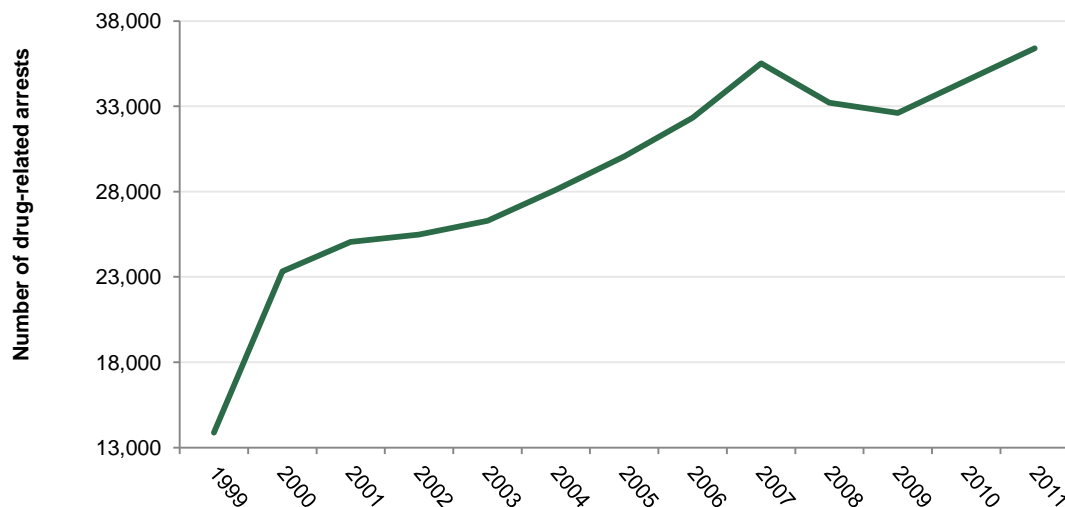
Source: Virginia State Police, Crime in Virginia, annual publication 2002 to 2011.

Two-and-a-half times as many people are being arrested for a drug offense in 2011 as were in 1999. Since the 1990s, Virginia has changed the drug laws, expanding the list of drugs that are criminalized, and decreasing the amount of controlled substances that constitute a serious felony offense.¹⁶

As part of a briefing to legislators in January, 2014, Virginia's Criminal Sentencing Commission reported that there has been recent

growth in the number of individuals arrested for drug offenses: As a rate per 100,000, the sentencing commission reported that the drug arrest rate in Virginia had surpassed the U.S. rate, with an overall increase in arrests of +3.3 percent between 2011 and 2012 (with a +4.2 percent increase in marijuana arrests and +1.0 increases in all Schedule I and Schedule II drugs).

Apart from a two-year dip, drug arrests have increased steadily since 1999, by 163 percent.



Source: Virginia State Police, Crime in Virginia, annual publication 1999 to 2011.

INCREASED COURT COMMITMENTS

When you arrest more people for any offense, you increase the pool of individuals that may be convicted and committed by the courts to prison for an offense. Since the 1990s, as arrests have risen, new court commitments have been on the rise, from under 9,000 in the late 1990s, reaching a plateau around 13,000 in 2007, leveling off under 12,000 through 2013.¹⁷

Some of these new court commitments do not end up going to prison. They may be convicted, and receive treatment through a specialty court (such as a drug court), or their conviction may result in some nonincarcerative disposition (after being in held in jail). While drug courts and their counterparts are important ways to help hold individuals accountable, they may needlessly push people deeper into the system than is necessary, and drive up taxpayer costs¹⁸

PART 4

FEWER PEOPLE LEAVING THE SYSTEM

“While the ‘geriatric release’ mechanism might have been originally enacted to help offset the increasing numbers of elderly offenders, few offenders have been released under ‘geriatric release’ policy since it was enacted in 1994.”

--The Virginia Department of Corrections (2007)

Changes to sentencing and corrections policy under the Truth-in-Sentencing approach played a role in reducing the number of people that could leave the system through various mechanisms for those few individuals still eligible for parole because they were sentenced prior to 1995, or who might be eligible for release due to their age.

LOW PAROLE RELEASE RATE

Virginia allowed those sentenced before January 1, 1995 to remain eligible for discretionary parole. As “old law” prisoners, they are theoretically eligible for the same parole opportunities that existed when they were sentenced. About 4,000 people are still eligible for parole under the old sentencing system.

In practice, parole is rarely granted.¹⁹ In 2011, the Virginia Parole Board granted parole to only 3.5 percent of those eligible. Because there is no central repository on state parole board practices, policies and how they align with the

statute, it is hard to compare states. But to put Virginia’s rate into context, Massachusetts formed a Task Force to address concerns over parole rates that had declined from 69.9 percent in 1990 to 40.5 percent in 2000,²⁰ as this was viewed as questionably low.

One reason for the low parole release rate might have to do with how the parole board conducts its work, and is resourced. In 2010, the Parole Board consisted of three part-time and two full-time staff, and involved no personal interviews or contacts with the individuals who might be paroled. Instead, board members review each individual’s electronic file but do not meet or speak with them.²¹ According to an analysis by the Legal Aid Justice Center based in Richmond, those who have been denied parole have been given very basic and vague reasons for the denial, most commonly, “the serious nature and circumstances of the offense.”²² Virginia legislators recently passed a bill that requires more detailed descriptions of the denial justification.²³

LOW GERIATRIC RELEASE RATES

Virginia has a geriatric release provision that allows for the discretionary release of “people age 60 who have served 10 years or those who are age 65 and have served 5 years.”²⁴ However, release is rarely granted. According to the Virginia Department of Corrections, “few offenders have been released under the ‘geriatric release’ policy since it was enacted in 1994.”²⁵

Eligible people must apply for geriatric release according to a process laid out in the Virginia

statute. In 2007 only 10 percent of eligible individuals applied (52 of 500) and only two were granted release. Of prisoners who applied, that is a release rate of 3.9 percent. Of all eligible inmates, it is a release rate of 0.4 percent.²⁶ The reason most often stated for the denial of release is the “serious nature of the crime.”

Regardless of the reasons why geriatric releases are not being granted, keeping elderly people in the corrections system has a significant impact on costs. Virginia can pay five times as much for the off-site medical costs of an older prisoner than for a younger prisoner.²⁷

PART 5

THE IMPACT OF VIRGINIA'S SENTENCING AND CORRECTIONS POLICIES

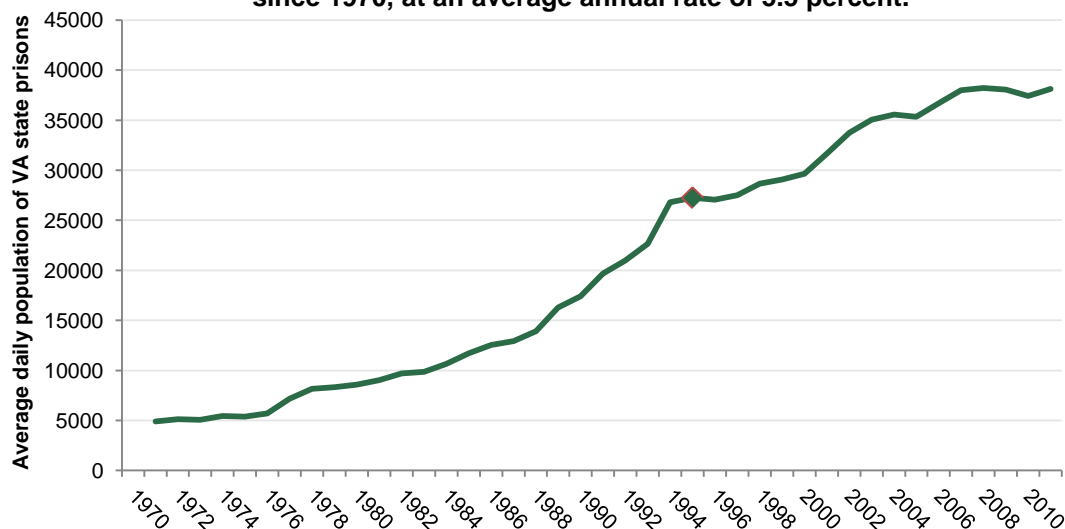
Nearly a decade ago and a decade after the mid-1990s shift in sentencing and corrections policies, Virginia's growing use of incarceration has had a number of negative impacts on Commonwealth communities, and there are more effective ways to improve public safety, address public health challenges and help people change their behavior.

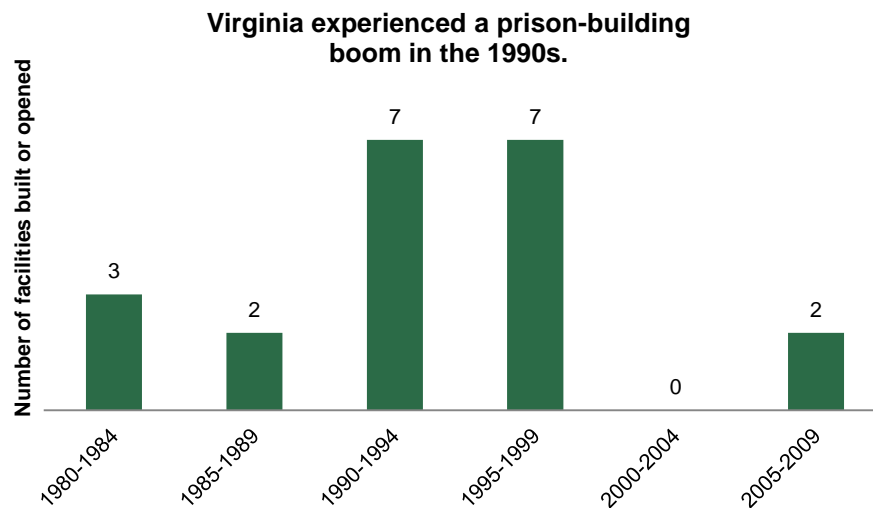
RISING PRISON POPULATIONS

The Commonwealth's prison population has increased substantially since the 1970s, and grew after the 1995 law changes. The prison population reached a high plateau in 2009 to

38,859 prisoners (the same year that the state last spent more than one billion dollars in general fund dollars on corrections), and dropped to 36,966 in 2013. In January 2014, the Virginia Criminal Sentencing Commission reported that, "from June 20th, 2012 to May 31st, 2013 (the most recent data available), the inmate population

Virginia's prison population has increased steadily by 735 percent since 1970, at an average annual rate of 5.5 percent.





Source: <http://www.vadoc.state.va.us/facilities/>

grew 0.1 percent to 37,193. This is the first increase in the inmate population in five years.²⁸

RISING COSTS

When more people go to prisons, taxpayers will end up paying the rising costs of building and maintaining more prisons for these growing populations. Virginia, like all states, has experienced increased growth in spending on corrections as its prison population has grown.

Between 1984 and 2014, corrections spending in Virginia rose by 288 percent. The Senate Finance Committee estimated that the state will spend 5.4 percent of its general funds on prisons in 2014 (down from the 7.4 percent it was spending in 1984, when the state was spending far less of the general fund (\$241 million) on corrections).²⁹ In 2012-2014, appropriations for the Department of Corrections were close to \$1.0 billion (and if the executive budget introduced in January is enacted, the corrections budget is expected to surpass a billion dollars by 2015).³⁰ With about 8 million people living in Virginia, corrections costs averages \$125 per resident, and \$279 for

the 3.5 million Virginians that filed taxes in that year.³¹

In 2012, the Vera Institute of Justice Center on Sentencing and Corrections reported that the annual cost of incarceration per person in prison was estimated to be \$25,129.³² While this is a lower figure reported than other states, every dollar spent on someone's incarceration is one dollar that isn't available to be spent on another way of addressing a public safety challenge or a human need in The Commonwealth.

Between 1990 and 2000 the state built or opened 14 new correctional facilities, spending approximately \$1 billion in prison construction and nearly doubling bed capacity. The department oversees 45 facilities and 12,375 full-time employees. In recent years, the Department of Corrections has faced budgetary shortfalls which have forced the closing of nine facilities since 2008. Prison closures have reduced some costs.³³

Adding to the costs of Virginia's correctional system is an incarcerated population that is increasingly older and in need of more medical

care. Due to lengthy sentences, the elimination of parole and the low rates of parole of “old law” prisoners and geriatric release, the population of incarcerated people in Virginia’s prisons who are age 50 or above (considered to be “older” in the incarcerated population³⁴) were reported to be 5,966 in 2011.

Older prisoners cost more money to incarcerate, mainly because of their health care needs. Average prison medical expenses increased by 35.7 percent between 2007 and 2013 and represent about 17 percent of all DOC expenditures.³⁵ The cost of prison medical services is rising, and grew from \$120 million in 2007 to \$162 million in 2013 (and was projected to remain above \$147 million in 2014).³⁶ A 2006 report by the Virginia DOC found that Virginians can pay five times as much for the off-site medical costs of an older prisoner than for a younger prisoner.³⁷

RIISING LENGTH-OF-STAY

One of the primary goals of the 1995 Truth-in-Sentencing framework was to ensure that people in prison served up to 85 percent of their sentence. No surprise, then, the changes to

Virginia’s sentencing and corrections policies have had an impact on the average length-of-stay.

According to the Pew Charitable Trusts, length-of-stay (LOS) in the prison population increased 91 percent from 20.4 months in 1990 to 39.6 months in 2009. This was the second highest increase of all the states, following only Florida where LOS increased 166 percent in the same period.³⁸ Florida, like Virginia, also instituted a series of changes to its sentencing system in the mid-1990s, having eliminated parole in 1983.³⁹ The Pew Charitable Trusts found that time served for incarcerated people in Virginia increased by 68 percent for violent offenses, 62 percent for property offenses and 72 percent for drug offenses. The research on the impact of longer length-of-stay and longer sentences on actual recidivism and reoffending are mixed.⁴⁰

The 1995 reforms were intended to ensure that people convicted of violent crime served time behind bars. Data from the Virginia Criminal Sentencing Commission from the 1990s do show that the estimated time served by people convicted of violent offenses did increase, with

Virginia had the second highest growth in the length-of-stay

State	Average LOS in years		% change
	1990	2009	
Florida	1.1	3.0	166%
Virginia	1.7	3.3	91%
North Carolina	1.4	2.7	86%
Oklahoma	1.7	3.1	83%
Michigan	2.4	4.3	79%
Georgia	1.8	3.2	75%
Arkansas	1.9	3.2	69%
North Dakota	1.3	2.0	54%
California	1.9	2.9	51%
West Virginia	2.1	3.1	51%

Source: Pew Center on the States, *Time Served: The High Cost, Low Return of Longer Prison Terms* (Washington, DC: (Pew Charitable Trusts, 2012). The distinction of “second highest” was among 34 of the 50 states reporting data).

Individuals convicted of violent and nonviolent offenses served longer sentences.

Estimated time served (in years) in prison for select felony convictions, before and after Truth-in-Sentencing						
<u>Property/Drug Offenses</u>	1988-1992			1995-1997		
	Average Imposed Sentence	Average Time Served	Percent of Sentence Served	Average Imposed Sentence	Average Time Served	Percent of Sentence Served
Burglary	6.8	2.2	32.4%	3.4	3.0	89.7%
Involuntary Manslaughter	6.2	1.9	30.6%	4.1	3.7	89.4%
Sale schedule I/II drugs	7.4	1.6	21.6%	2.6	2.3	89.0%
Possession schedule I/II drugs	5.4	1.4	25.9%	1.6	1.4	88.9%
Larceny	4.4	1.3	29.5%	1.6	1.4	89.4%
Sale Marijuana	4.4	0.9	20.5%	1.8	1.6	88.3%
Fraud	4.3	1.2	27.9%	1.6	1.4	89.4%

Source: Truth-in-Sentencing in Virginia: Virginia Criminal Sentencing Commission (2005)

those sentenced to any of the FBI Uniform Crime Report's index crimes serving more than 85 percent of their sentence (and for the relatively few individuals sentenced each year for the most serious offenses, individuals served upwards of 90 percent of the sentence).

Those convicted of drug offenses and property offenses under the new system also served longer sentences. For example, the average pre-1995 sentence for the sale of Schedule 1 or 2 drugs was 7.4 years with the average time served of 1.6 years, or 21.6 percent of the sentence. After 1995, the average imposed sentence for the same offense was much less at 2.6 years, but the average time served increased to 2.3 years or 89 percent of the sentence. Put another way, a person may appear to be sentenced to a shorter term in prison (2.6 years, rather than 7.4 years), but served a longer term in prison (2.3 years instead of 1.6 years) for similar behavior.

CROWDING AND CAPACITY CHALLENGES

"Overcrowding can place significant demands and stresses on jail facilities, staff and inmates and negatively impact health and safety conditions. Overcrowding has forced sheriffs and jail administrators to reduce or eliminate programs, postpone or forego routine maintenance and repairs and convert jail space formerly used for programs into inmate housing areas. Moreover, overcrowding has limited the ability of sheriffs and jail administrators to effectively manage their facilities."—Joint Legislative and Audit Review, 1996.⁴¹

"State facilities are just as crowded as before, and more state responsible prisoners are backed up in local and regional jails. Capital maintenance costs are increasing."—State of Virginia Senate Finance Committee (2012).⁴²

Virginia's corrections system challenges in balancing capacity and population predates the mid 1990s reforms, dating back to the 1970s and continued into the 1990s. The impact of having more people in the system continues.⁴³

For a short time during the prison building boom, the state's crowding problem was eased—Virginia built more prisons than the state could fill with individuals from their own state. By 1999, the system had excess capacity of 4,500 beds. As Virginia reached the millennium, it had in the words of one columnist at the time, “\$225 million worth of empty cells.”⁴⁴ In subsequent years, the state rented out its empty beds to house prisoners in other states, or “contract prisoners.”⁴⁵

Since 1993, Virginia has added almost 14,000 jail beds at a total state and local capital costs of almost \$1.5 billion.⁴⁶ Virginia's county jails include thousands of people awaiting placement in a state prison, shifting the population burdens to the counties.⁴⁷ In exchange for some funding, Virginia's jails must commit more than 20 percent of their available bed space to “state-responsible inmates” who are meant to be housed in state prisons.⁴⁸ In 2011, there were 4,000 people incarcerated in local jails who should have been in a Department of Corrections facility.⁴⁹ While there may be benefits for some individuals who would be incarcerated to serve their sentence as part of a “local control” population, even under Virginia's funding formula to state jails, increasing jail populations can impose a burden on local budgets, staffing and management issues in jails. Prisons are designed differently to serve different types of individuals. Jails typically hold people awaiting trial or sentenced for shorter periods of time, usually less than one year: there are sometimes fewer programs available in jails as it is more difficult to plan treatment and counseling interventions around this population.

Jail populations in Virginia have been on the rise since 2012, and the Virginia Criminal Sentencing Commission projects that the “local-

responsible” jail population will continue to rise through 2019.

If Virginia transfers its prison crowding and capacity issues to county jails, Virginia counties may experience all the challenges documented to occur when a corrections system has to deal with crowding issues: facilities become harder to manage and keep safe, can face more lawsuits when crowded conditions exist and can affect the health of the individuals incarcerated.⁵⁰

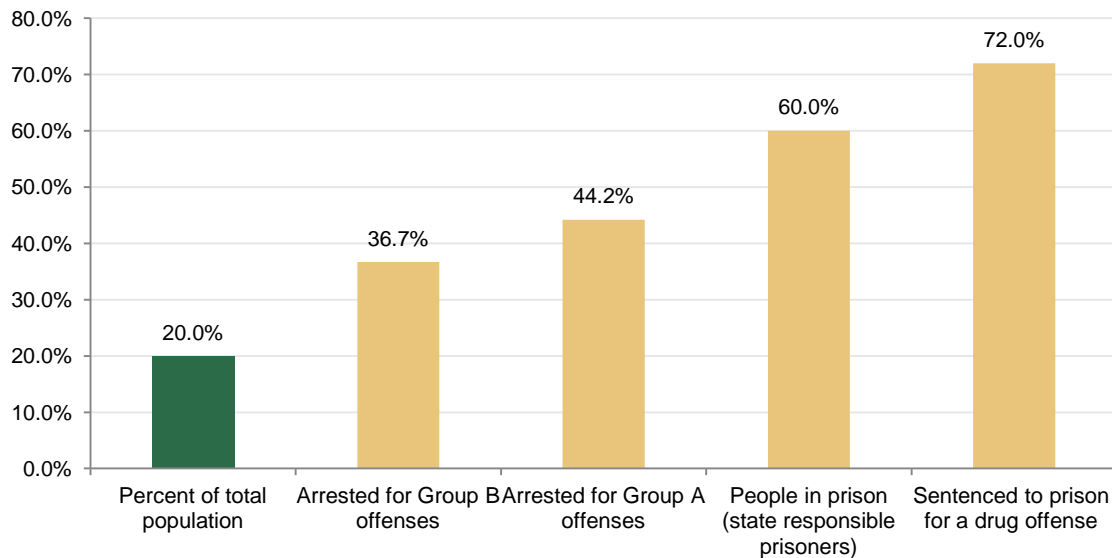
MORE COLLATERAL CONSEQUENCES

Collateral consequences of criminal convictions are additional civil state penalties, mandated by statute, that attach to a criminal conviction: These additional penalties can affect an individual's ability to vote, work, attend or seek support to attend school, where one can live and ones' ability to contribute to their families and communities. In 2010, it was estimated that 451,471 individuals in Virginia were disenfranchised as a result of a criminal conviction. Within this universe of individuals who have been disenfranchised, there are hundreds of thousands of individuals in Virginia with a criminal conviction who also cannot:

- Get a business license;
- Contract with state or local government;
- Receive a public benefit (such as unemployment insurance, Medicaid and Temporary Assistance to Needy Families);
- Enroll in public schools;
- Many of these individuals must also disclose their criminal convictions to employers, creating barriers to future employment and earnings potential.^c

^cWith the support of funding from the federal government, the American Bar Association has compiled hundreds of statutory limitations that the Commonwealth currently places on individuals with a criminal conviction that cover a

African Americans are overrepresented at various stages of the system.



Source: State Offender Population Profile – FY 2012. Virginia Department of Corrections Research and Forecasting Unit. (2013); Virginia State Police, Crime in Virginia, 2011.

The more individuals that are arrested and convicted in Virginia, and the more changes made to Virginia statute to increase restrictions on those with a conviction means that more-and-more Virginia residents will face a challenge seeking work, educational, housing and other life opportunities long after their prison sentence has ended.

MORE RACIAL AND ETHNIC DISPARITIES AFFECTING VIRGINIA COMMUNITIES

African-American community

Nationally, the African-American community has borne the brunt of our criminal justice policy choices: In 2010, African Americans were incarcerated in the nations' prisons and jails at

5.8 times the rate of whites.⁵¹ African Americans in Virginia have historically experienced the criminal justice system—from arrest to incarceration—disproportionately. As Virginia's justice policies increased the number of people ending up in prison, the Commonwealth's African-American community has been disproportionately affected. The disparities run across the different categories of criminal justice contact, and are more pronounced amongst drug offenses.⁵²

While African Americans make up only slightly less than 20 percent of the adult population in Virginia, they were 45.2 percent of those arrested for Group A offenses in 2002, and 44.2 percent of those arrested in for Group A offenses in 2011. Arrests for less serious Group B offenses showed only slightly less racial disproportionality, with African Americans arrested for 37.6 percent of all Group B offenses in 2002 and 36.7 percent in 2011. African Americans, while just less than 20 percent of the Virginia general population, are 61 percent of the prison population and 72 percent of those in prison for

spectrum of activities that limit can limit an individual's success. For more information, visit the American Bar Association's compilation of Virginia of the collateral consequences affecting individuals with a criminal conviction at their website, <http://www.abacollateralconsequences.org/>

a drug offense. Research has shown that while there are some differences between how different communities are impacted by crime and violence, data on involvement with drugs show that African Americans are no more likely to use or sell drugs than whites.⁵³ African Americans also represent close to two-thirds (64 percent) of those individuals in prison for a violent offense and 46 percent of those individuals in prison for a public order offense. It is important to keep in mind that, violent crime represents a smaller percentage of the universe of individuals sentenced to prison on an annual basis.

The disparate impact of the criminal justice system on the African-American community extends beyond prison. Virginia's rate of felony disenfranchisement—that is, the loss of voting rights due to a felony conviction—is higher than the national average with 5,576 per 100,000 experiencing disenfranchisement, or 7.3 percent of the adult population. African Americans in Virginia suffer disenfranchisement disproportionately. One in five (20.4 percent) of African-American Virginians are disenfranchised, the third highest rate of all the states.⁵⁴ The U.S. average rate of disenfranchisement is 1,878 per 100,000, affecting 2.5 percent of the population and 7.7 percent of African Americans.

To some degree, Virginia lawmakers have acknowledged the negative impacts of the changes to sentencing policies by enacting recent reforms to impact the felony disenfranchisement challenge. In 2013, Governor McDonnell announced the implementation of an automatic restoration process to restore voting and civil rights to individuals who have

completed their sentence, probation or parole, paid all court costs, fines and restitution for a nonviolent offense and have no pending felony charges.⁵⁵

Hispanic community

Nationally, the latest data show that individuals who have been defined or define themselves as Hispanic are incarcerated in prisons or jails at 2.7 times the rate of whites.⁵⁶ Virginia's Hispanic population has been on the rise in recent years, now comprising 8.4 percent of the population. Due to the way corrections departments record the ethnicity of people entering their system, corrections statistics can undercount the representation of people who would define themselves as Hispanic in the system. In 2012, the U.S. Census reported that 8.4 percent of Virginia's population were defined as Hispanic, but among the 34,125 individuals under state correctional control for whom race or ethnicity was reported (or reported as "other"), only 2 percent were reported to be Hispanic (including only 14 Hispanic women, despite the fact that there are approximately 300,000 Hispanic women in the state).

Are there only 14 Hispanic women in prison in Virginia, or do the data mask deeper disparities?

Race	Men	Women	Total	Percent
White	11,988	1,507	13,495	37%
Black	21,095	1,074	22,169	60%
Hispanic	730	14	744	2%
Other	312	25	337	<1%

Source: FY2012 State Responsible Offender Demographic Profile

ARE VIRGINIANS SAFER AS A RESULT OF THESE POLICIES?

Are all the documented negative impacts of the change in Virginia policies worth it?

Crime rates fell in other states that did not follow the same path as Virginia

According to the Virginia Criminal Sentencing Commission, Virginia's violent crime rate has declined since the early 1990s: the violent crime rate is now lower than any time since the 1960s. The drop in violent crime between 1991 and 2012 in Virginia among index violent crimes was identical to the crime drop witnessed in the United States over the same period (49 percent).

Within the universe of the 49 other states that drive the national crime rate, 22 states did not embrace the same Truth-in-Sentencing framework that Virginia chose to embrace, and have seen crime rates fall as much, or more.

Other states experienced the same, if not bigger drop in violent crime including among those jurisdictions that made less zealous use of prison.

Crime rates began their decline prior to Truth-in-Sentencing

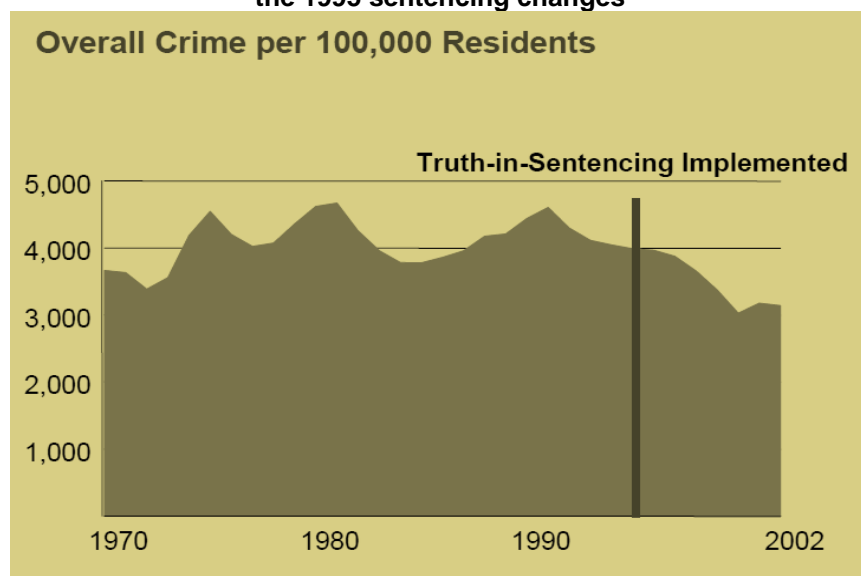
Like other states, Virginia's crime decline followed the national drop in crime – a trend that began before Truth-in-Sentencing was implemented in Virginia.

Crime rates fell as much, or more in places where incarceration rates declined

As noted by the Virginia Commission on Criminal Sentencing, since the mid-1990s law changes, Virginia has seen its violent crime rate decline at about the same rate as the United States average. The reasons why different states might see different trends around crime and incarceration are diverse: When an analyst from Virginia's Senate Finance Committee recently explained some of reasons behind crime trends to colleagues with the National Conference of State Legislators, they noted proactive policing, data analysis of crime trends, changes in the drug market, changes in age groups and longer prison terms could all be potential reason why crime is down in Virginia, and noted that "no single explanation" explains the trend.

Between 1994 and 2012, the U.S. Justice Department's lead reporting arms on crime and correctional statistics (the Federal Bureau of Investigation's Crime in the United States series, and the Bureau of Justice Statistics' Prisoner

Overall crime, measured by Index Offenses, had begun to drop before the 1995 sentencing changes



Source: Virginia Criminal Sentencing Commission, A Decade of Truth-In-Sentencing in Virginia, 2005.

series) show that other states saw the same or even better crime reduction outcomes over the same timeframe, and either saw their incarceration rates fall—or saw lower rates of increase than Virginia experienced.

New York State, Maryland and South Carolina saw both reductions in their violent crime rates, and their incarceration rates over the same time period. Texas saw a slight decrease in their

inmates to serve at-least 65 percent of their sentences with medium risk to serve at-least 75 percent of their sentence, while high risk prisoners remain at the 90 percent level.⁵⁷

Texas faced the choice of spending \$2 billion on 17,000 prison beds that a 2007 projection indicated would be needed, or choose different policies. In 2003, the state legislature required that all drug possession offenders with less than

States that saw their incarceration rates fall saw crime rates fall as much as (or more) than Virginia since the 1994 sentencing reforms.

	Change in the Incarceration Rate (1994-2012)	Violent Crime Rate (change) 1994-2012	Property Crime Rate (change) 1994-2012
New York	-25%	-58%	-53%
Maryland	-9%	-50%	-47%
South Carolina	-7%	-46%	-23%
Virginia	14%	-47%	-41%
Texas	-6%	-42%	-35%
U.S. States	17%	-46%	-39%

Source: The Federal Bureau of Investigations' Uniform Crime Reports (1994 to 2012), and the U.S. Justice Department's Bureau of Justice Statistics Prisoners survey (1994 to 2004).

incarceration rate over the time frame, and declines in violent crime and property crime that are similar in character to the declines that Virginia experience.

Among those states that saw incarceration rates and crime rates fall (and other states of note), they have engaged in different policy choices of note.

In **Georgia**, the State Board of Pardons and Paroles in 1998 established a rule that people convicted of any of 20 serious violent crimes must serve 90 percent of their court-ordered sentences. Seven years later, while revising its release guidelines and under legal challenges to the rule, the board shifted to a risk-based policy. The new release guidelines call for low risk

a gram of drugs be sentenced to probation instead of state jail time. In 2005, probation departments began receiving additional funds with the goal of implementing evidence-based supervision practices and treatment programs to reduce unnecessary revocations to prison both by preventing new offenses and reducing technical revocations. The corrections budget Texans adopted in 2007 represented a historic shift, as, in lieu of building more prisons, policymakers allocated \$241 million for residential and non-residential treatment-oriented programs for non-violent offenders, along with enhancing in-prison treatment programs. In 2009, the Legislature continued funding for this initiative, and added new components such as 64 reentry coordinators

with the goal of reducing the number of released inmates who return to prison.⁵⁸

South Carolina (2010) sought to professionalize its parole board by increasing training requirements for board members. The state also developed a standardization of the review process when it adopted a requirement that a validated risk and needs assessment be used for release decisions.⁵⁹

New research emerges on the public safety impact of longer prison terms.

In the nearly two decades since Virginia's sentencing changes, criminal justice researchers have shown that there are other ways to enhance public safety than simply relying on long prison terms.

- **The impact of the incentive for release on recidivism:** An analysis of information from the Georgia corrections system published in *The Quarterly Journal of Economics* in 2013 found that, when discretion is taken from parole boards through Truth-in-Sentencing type practices, prisoners engage in more institutional misconduct, are less likely to participate in rehabilitative programming and are more likely to recidivate upon release. While *not calling for mass early parole for all people in prison*, the researcher did suggest that traditional discretionary parole that takes into account the person's assessed risk to reoffend and a system that incentivizes people in prison to engage productively to earn their release may have a bigger impact on recidivism than the deterrent of a fixed sentence.⁶⁰

- **The impact of reduced length-of-stay in prison:** A 2012 study conducted by the Pew Charitable Trusts of data from three states—Florida, Maryland, and Michigan—found that a significant proportion of people convicted of nonviolent offenses who were released in 2004 could have served shorter prison terms without impacting public safety.⁶¹ The analysis found 14 percent of the people in the Florida release group, 18 percent of the people in the Maryland release group, and 24 percent of the Michigan release group who could have served prison terms shorter by between three months and two years without jeopardizing public safety.
- **The impact of time incarcerated:** A 2011 study published in the *American Society of Criminology* looked at the average time in confinement of prisoners in the Netherlands to examine the relationship between time in prison and future criminality. The researchers said, *“on the whole, very little evidence of a relationship between time served and future offending was found. In particular, 3-year reconviction rate and the proportion of offenders reconvicted in the next 3 years do not seem to depend on incarceration length. Although a relationship between time served and future sentence length was found, the evidence is modest.”*⁶²

“If inmates in other states respond similarly to those in Georgia when parole discretion is limited, then not only have millions of individuals been incarcerated over the past two decades as prison populations have ballooned but the institutional incentives to which they have been exposed may have been more criminogenic than in the past. The decline of parole may thus help explain why recidivism rates have remained high while crime rates for the rest of the population have fallen over the past two decades.—”

-- How Should Inmates Be Released From Prison? An Assessment of Parole Versus Fixed-Sentence Regimes, *The Quarterly Journal of Economics* (2013).

Again, few, if any, researchers have called for a mass release of individuals from prison. The question that this new research puts before lawmakers is, what is the most effective way to spend limited correctional dollars, consistent with public safety, holding individuals accountable for their behavior and the relative benefit to the public from this approach. If the mid-1990s law reforms needlessly incarcerate individuals beyond the point (or in a way) that aggravates recidivism, or concentrates scarce dollars on prison beds that could be used differently, a policy change may be appropriate.

Impact on recidivism

Since the early 1990s, there has been a drop in recidivism in Virginia, as measured by the re-incarceration of individuals within three years of release.

"Truth-in-Sentencing was found to have no significant impact on standardized recidivism rates...."

-- Recidivism Trend, FY1990-2006, Research and Forecasting, Department of Corrections.

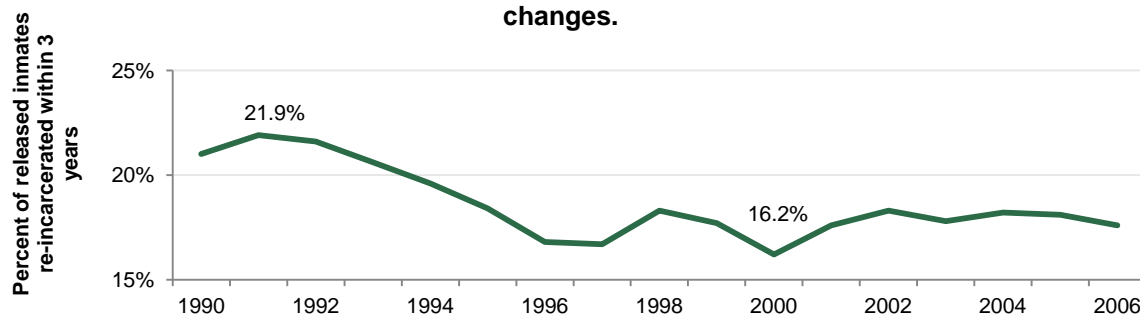
This is good news, but it needs to be tempered in terms of cause, effect and impact.

First, similar to the drop in crime in the United States as a whole and in Virginia, the decline in recidivism began before the 1995 sentencing law changes took affect: it isn't clear that there is a direct cause and effect relationship between the longer sentences beginning in 1995 and a decline in recidivism that began in early 1990s. Second, recidivism trends have leveled out in the last decade.

recidivism rates...Based on the work done in other states, a more exhaustive study would be required to exclude the possibility of Truth-in-Sentencing influencing recidivism rates."

As decisions are made on how to divide Virginia's billion dollar corrections budget, the issue of recidivism as it relates to the length of a person's prison term should bring the issue into sharp relief for taxpayers, legislators and residents of The Commonwealth. It is, again, good news that recidivism rates in Virginia have

Re-Incarceration rates began dropping before the 1995 sentencing changes.



declined. But with no easy way of isolating whether the long prison terms associated with the 1995 sentencing changes are reducing recidivism, the question then becomes whether

lawmakers, taxpayers and residents of The Commonwealth are getting the most out of their public safety dollar if there are ways to hold individuals accountable other than prison.

PART 6

MISSED OPPORTUNITIES AND RECOMMENDATIONS FOR THE FUTURE

With 2013 bringing the first increase in the prison population in Virginia in five years, and 2014 being the first year since 2009 the governor proposed a budget where corrections spending will exceed \$1 billion in General Fund dollars, taxpayers might have imagined that their lawmakers would be searching for more cost effective solutions to solve Virginia public safety and social policy challenges.

Instead, 2014 saw a legislative session where a series of proposals that might have helped Virginia reduce reliance on the criminal justice system to solve social problems failed to move forward. Aligning with some of the issues JPI documents in this report, lawmakers considered the following proposals this year that might have addressed some worrisome trends in sentencing, corrections and criminal justice policy, or addressed the impact of these policies:

- **Sentencing reform:** HB 244, legislation around the Grand Larceny Threshold, failed to move forward. The legislation would have increased from \$200 to \$500 the threshold amount of money taken or value of goods at which the crime rises from petty larceny to grand larceny, and increased the threshold by the same amount for the classification of certain property crimes.
- **Parole reform:** HB 951, legislation to improve the parole process for some people

incarcerated, failed to move forward. The legislation would have required the Parole Board to release any person eligible for parole whose time served has exceeded the midpoint of the most recent discretionary guidelines. The legislation was recommended for consideration in 2015.

- **Restoring the right to vote.** HB 7, legislation that would have increased the ability of people with a criminal conviction to vote, failed to move forward. The legislation would have provided for automatic restoration of the civil right to be eligible to register to vote to persons convicted of nonviolent felonies upon completion of sentence, including the completion of any term of probation or parole, and the payment of all restitution, fines, costs, and fees assessed as a result of the felony conviction (with a couple of qualifying exceptions, including felony drug and election fraud crimes).

- **Expungement of a criminal conviction after five years.** SB 111 was legislation that would have allowed a person convicted of certain criminal offenses (e.g. offenses defined as nonviolent, and excluding driving under the influence and domestic violence offenses) to petition to have their conviction expunged after a five-year period, upon a showing that their opportunities for employment, education or professional licensure are prejudiced by the existence of the criminal record. This legislation failed to move forward.
- **Eligibility for the Temporary Assistance for Needy Families for individuals with drug related felonies.** HB 1068, legislation that would have allowed people with a drug or drug related felony who are currently denied TANF solely because of their conviction to be eligible to receive these benefits, failed to move forward. The legislation said that individuals still needed to comply with certain enumerated court obligations, and have completed or are seeking drug treatment to qualify for TANF.
- **Earned release for people convicted of drug offenses:** HB 723, legislation around “good-time” credits on drug-related felonies, failed to move forward. The legislation would have increased the maximum of “good-time” credits that could have been earned for each 30 days served on a sentence for drug-related felonies.

Individually or collectively, these changes would have begun the process of addressing Virginia’s criminal justice system challenges of having *more people serving longer sentences, more people coming into the system and fewer people leaving the system*. Individually, or collectively, these changes would have begun the process of

reducing growth that will lead to a system that will consume \$1 billion in General Fund dollars, the first rise in the state-responsible incarcerated population in five years (and locally responsible incarcerated populations that are rising faster), and focus the Commonwealth’s attention on more cost-effective alternatives to arrest and imprisonment.

Looking towards the next legislative session and the future, the Justice Policy Institute offers the following recommendations to help focus policymakers on choosing the most effective, least expensive and least harmful strategies to enhance public safety in the Commonwealth.

- **Review and reconsider sentencing laws, practices and policies.** The state should review and reconsider the states mandatory minimum sentences and new (or updated) criminal statutes through a cost-benefit lens to get a better fix of their impact on public resources, disproportionality and public safety. Recent proposals have called for reinstating parole for some individuals, to create and expand mechanisms for early release and reduce the time people engaged in some behaviors would spend incarcerated by revising the statute.
- **Reduce the collateral consequences associated with criminal convictions and prison.** The last administration took some steps to address the challenges facing individuals with a criminal conviction and returning from prison to the community through a focus on re-entry and creating a mechanism for some individuals to regain their right to vote. The Commonwealth needs to build on its focus on reentry, and address the barriers facing individuals who have come in contact with the criminal justice system so that they can successfully

get a job, receive public benefits to help them transition to a crime free lives and participate in civic and community life.

- **Embrace more effective public safety and drug policies.** The state should follow the lead of other jurisdictions that are embracing better drug policies that have

reduced reliance on the criminal justice system to solve public health or other problems relating to drug use, and refocus public safety policies on preventing crime. The state should help localities solve public health problems, and minimize criminal justice contact for those engaged in low level drug behaviors.

APPENDIX

Virginia has among the fewest statutory obligations for “good-time” or earned time among the Southern State.

State	Good-time credit available	Earned time credit available	Other information
Alabama	20, 40 or 75 days per 30 days served for behavior, discipline, work practices and job responsibilities.	30 days per 12 months for blood donations, on top of other earned time.	Time awarded based on classification
Arkansas	30 for 30 per month served for work practices, job responsibilities and rehabilitation activities.	90 days per completion of GED. 90 days per completion of vocational certification. 90 days per completion of drug or alcohol treatment.	Earned time not to exceed 270 days, earned on top of good time. Board of Corrections to create classification system
Florida	10 for 30 days per month served for participating in training, working diligently, using time constructively or other positive activities.	6 days per 150 hours of participation in correctional educational program; 60 days for completion of GED. 60 days completion of vocational certificate. Up to 60 days for service in outstanding deed (saving life or assisting with recapture of escapee.	Education/vocation is a onetime credit.
Georgia		1 day per 1 day of participation in academic education. 1 day per day of participation in vocational education.	Instructs the parole board to consider credits when making a decision.
Kentucky	10 days per month based on conduct.	90 days for completion of GED, high school diploma, two or four year college degrees or civics education program on top of good time. 90 days for completion of two or four year applied science or technical education on top of good time. 90 days of completion of a minimum 6 month drug treatment program on top of good time. 7 days per month for outstanding performance related to institutional operations and programs; additional 7 days per month during an emergency on top of good and earned time. 1/5 days per month per 8 hours of participation in a state or local government entities work on project related to maintenance and operation of a correctional facility.	
Louisiana	30 days per 30 days or 3 days per 17 days in custody for good behavior and performance of work or self-improvement activities.	35 days per 30 days working in lieu of incentive wages. 30 days per 30 days working on disaster remediation. 5 days per 30 days for performance in self-improvement activities in lieu of incentive wages.	People can earn either good time or earned time, not both

State	Good-time credit available	Earned time credit available	Other information
Maryland	5 or 10 days per month served.	5 days per month of participation in educational or other training courses on top of good time.	5 days per month of participation in vocational courses on top of good time. 5 days per month for satisfactory performances in assigned tasks on top of good time. 10 days per month of participation in special selected work projects or other special programs on top of good time. Total credits not to exceed 20 days per month.
Mississippi	4.5 days per 30 days served for compliance with good conduct and performance requirements.	30 days per month of participation in educational or instructional programs on top of good time; additional time of up to 10 days for every 30 days participation for completion. 30 days per month for satisfactory participation in projects on top of good time; additional time of up to 10 days for every 30 days of participation for completion. 30 days per month of participation in special incentive programs on top of good time	
Missouri	1-2 months per year for acceptable behavior and appropriate program involvement.		Statute instructs department to create a policy
North Carolina	No good time available.	Up to 30 days for each educational degree achieved. 5, 15 or 30 days credit for completion of apprentice program, dependant on program. 2-6 days per month working full-time. Additionally, one day per credit per 8 hours overtime worked. DOC can also award time for working in inclement weather. Up to 30 days for each exemplary act. 2-6 days per month for full-time participation in programs that assist in productive reentry. 20 percent of the minimum sentence for participation in treatment, education and rehabilitative programs -- eligibility determined by the court. Monthly credit cannot exceed 6 days per month.	Statute instructs department to create a policy.

State	Good-time credit available	Earned time credit available	Other information
Oklahoma	22, 33, 44, 45 or 60 days per month for rehabilitation, obtaining job skills, and education-al enhancement, participation in alcohol/chemical abuse programs, incentives for inmates to accept work assignments and jobs, work attendance, productivity, conduct record, participation in programs, cooperative general behavior and appearance.	10-30 days for educational accomplishments on top of good time. 90 days for completion of GED on top of good time. 80 days for vocational certificate on top of good time. 70 days for completion of a minimum 4 month alcohol/chemical abuse treatment program on top of good time. Up to 100 days for meritorious act within the public interest in enhancing public safety on top of all other time. 10-30 days for programs not specified on top of good time.	
South Carolina	3 or 20 days per month for a good conduct record.	Up to 1 day for every 2 or 6 days per month for actively enrolled and participating in academic training; granted upon successful completion on top of good time. Up to 1 day for every 2 or 6 days per month for actively enrolled and participating in vocational or technical training; granted upon successful completion on top of good time	
Tennessee	Up to 8 days per month served for good institutional behavior.	Up to 8 days per month of participation on top of good time. 60 days for completion of GED, high school diploma, 2 or 4-year college degree or applied sciences program on top of all other credits. Up to 8 days per month working on top of good time.	People can earn up to 16 days per month and one educational completion credit.
Texas	No good-time available.	10 to 30 days per month of participation in an educational program. Literacy program only if a person is a tutor or pupil. 10 to 30 days per month of participation in a vocational program. 10 to 30 days per month for participation in a treatment program. 10 to 30 days per month for working in an an industrial or other work program. 10 to 30 days per month working in an agricultural program.	
Virginia	4.5 per 30 served for participation and cooperation in programs based on a risk assessment, related to successful reentry	Time awarded is agency discretion for assistance in preventing an escape, blood donation to another prisoner, extraordinary service, or suffers bodily injury.	
West Virginia	1 day for 1 day served as determined by DOC rules.	Time can be awarded at agency discretion, with approval of governor for exceptional work or service.	

Good time definition: Given to individuals for following prisoners' rules and required participation in activities; **Earned time:** A credit against an individual's sentence or period of incarceration that he or she earned for participation or in completion of productive activities; **Source:** National Conference of State Legislatures (Good and Earned Time Policies for State Prisoners).

ABOUT THE DATA AND INFORMATION

Virginia's criminal justice, sentencing and corrections challenge was developed based on a literature review, and an analysis of the data from a variety of national and Virginia criminal justice agencies and data repositories. The report includes information from national sources, including the U.S. Justice Department's Bureau of Justice Statistics, the U.S. Congress and the Federal Bureau of Investigations Crime in the United States series. Other national information sources include, the Pew Center on the States' Public Safety Performance Project and the American Bar Association. The report includes information from various Virginia governmental agencies that analyze data and information on the criminal justice system, including the Virginia Commission on Criminal Sentencing, the Virginia Department of Corrections, the Virginia Department of Planning and Budget and the Virginia State Police. As part of a literature review on sentencing, corrections and criminal justice trends, a series of academic studies and information generated by organizations were reviewed.

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