

Joint Legislative Audit and Review Commission

The Virginia General Assembly

**Review of Virginia's
Parole Process**

**REPORT OF THE
JOINT LEGISLATIVE
AUDIT AND REVIEW COMMISSION ON**

Review of Virginia's Parole Process

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



SENATE DOCUMENT NO. 4

**COMMONWEALTH OF VIRGINIA
RICHMOND
1992**

Members of the Joint Legislative Audit and Review Commission

Chairman

Delegate Ford C. Quillen

Vice Chairman

Senator Clive L. DuVal 2d

Senator Hunter B. Andrews

Delegate Robert B. Ball, Sr.

Delegate Vincent F. Callahan, Jr.

Delegate Jay W. DeBoer

Senator Richard J. Holland

Delegate Thomas W. Moss, Jr.

Delegate William Tayloe Murphy, Jr.

Delegate Lewis W. Parker, Jr.

Delegate Lacey E. Putney

Delegate Alson H. Smith, Jr.

Senator William A. Truban

Senator Stanley C. Walker

Mr. Walter J. Kucharski, Auditor of Public Accounts

Director

Philip A. Leone

Preface

Senate Joint Resolution 26 of the 1990 General Assembly directed the Joint Legislative Audit and Review Commission (JLARC) to study Virginia's parole review process. This review was undertaken partly in response to earlier studies that suggested Virginia's parole rate was too low, thereby aggravating the State's prison overcrowding problem. This report presents staff findings and recommendations regarding the State's parole system.

This study found that when alternative measures of parole are used, the State's parole rate is substantially higher than the national norm. More importantly, because of considerable variation in the factors that influence parole rates, conclusions about the adequacy of Virginia's parole system should not be made strictly on the cross-state comparisons of parole rates. Rather, the effectiveness of the system should be determined based on an assessment of the impact of parole laws and the actual decisionmaking and administrative practices of the Parole Board.

In this regard, the Virginia Parole Board has made major improvements to its methods for reviewing and deciding cases. However, problems do remain. In particular, the parole laws in Virginia allow many inmates to establish eligibility for parole much sooner than the Board is ready to release them. This has produced inefficiencies in the review process. Additionally, many of the changes made by the Parole Board to expedite the inmate interview and review process are being hampered by the inability of the Department of Corrections to provide the Board with timely access to important inmate files. Finally, due to the absence of policies to systematize the Board's discretion in deciding cases, inconsistencies are present in the decisionmaking process.

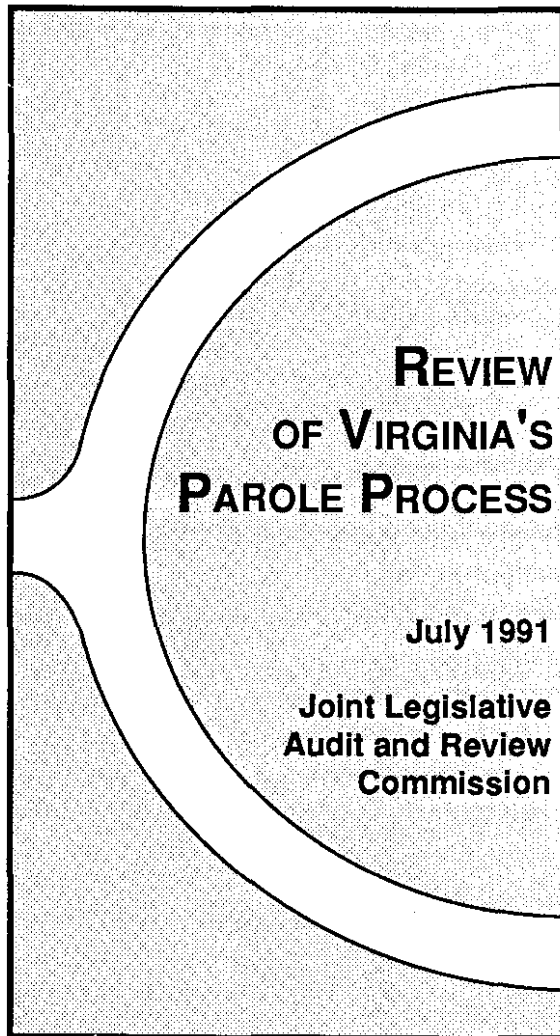
The Parole Board expressed general agreement with the findings and recommendations presented in this study. In many cases, the Board has already developed initiatives to address the concerns expressed in the report. On behalf of the JLARC staff, I wish to express our appreciation for the cooperation and assistance extended by the members and staff of the Parole Board and the Department of Corrections.



Philip A. Leone
Director

July 17, 1991

JLARC Report Summary



The Joint Legislative Audit and Review Commission (JLARC) was directed by Senate Joint Resolution 26 of the 1990 General Assembly to study Virginia's parole process. The study mandate specifically instructed JLARC to determine the reasons for Virginia's reportedly low parole rate and to suggest changes to law or policy that may be desirable.

This report examines the activities of the Parole Board and the Department of

Corrections (DOC) in administering the parole process. The report includes: an analysis of the national parole data that were used in ranking the State's parole rate; a review of Virginia's parole laws and those of ten other states; an analysis of the efficiency with which the parole process is implemented; and a review of the decision-making practices of the Parole Board.

Organization and Activities of the Virginia Parole Board

The Virginia Parole Board was established in 1942. Its mission is to establish parole policies which result in the earliest possible release of inmates who are deemed suitable for discretionary parole and whose release is compatible with the welfare of society. Currently the Board has five voting members, including a chairman who is responsible for managing and coordinating the activities of the agency.

To carry out the functions of discretionary parole, the Board employs a team of examiners who interview eligible inmates in the prisons and jails. Using the reports from these interviews, data from court records, and prison files, the Board decides whether eligible inmates are suitable candidates for parole. During the period from 1980 to 1989, the Board conducted over 89,000 parole reviews. During this same period, more than 30,000 inmates were granted discretionary parole.

Over the last five years, two factors have made the Board's task of managing this process increasingly difficult. First, a steady increase in the arrest and conviction rates for felons has resulted in a substantial increase in the State's prison population, and consequently an increase in the Board's caseload. Since 1985, the number of persons considered by the Board

for early release has increased by 42 percent. This has placed a premium on ensuring the efficiency of the parole review process.

Second, because of the State's well-publicized problem with prison overcrowding, the parole system is being increasingly looked upon as a mechanism to ease the demand for additional institutional bed-space. Underpinning this view is the notion that the State's parole rate is unnecessarily low because of inconsistent and overly restrictive Board decisionmaking practices.

Assumptions about Virginia's Parole Rate Are Not Supported by the Data

In a 1989 study of Virginia's criminal justice system, the Commission on Prison and Jail Overcrowding (COPJO) concluded

that the State's parole rate was below the national norm. However, several different analysis techniques used by JLARC staff to examine the national parole

data raise questions about the usefulness of this original finding. When an alternative measure of parole is used, the State's rate is substantially higher than the national norm. This relatively high ranking can be attributed to the fact that Virginia is one of 18 states that has provisions for both mandatory and discretionary parole release.

If state parole figures are disaggregated according to whether the release was granted by the parole board or required by law, Virginia places near the bottom of the national rankings for discretionary releases. However, this finding does not justify the conclusion that Virginia's discretionary release rate is unnecessarily low.

Even when Virginia is compared to states with similar sentencing and parole systems, disparities in release rates can be the result of a number of factors beyond

the control of the Board. These include mandated emergency release policies in some states to alleviate prison overcrowding, mandatory minimum sentence requirements for parole-eligible inmates, variations across states in parole board jurisdictions for misdemeanor cases, and variations in the case review schedules of parole boards. Cross-state differences observed for many of these factors work against attempts to quantify their influence on parole rates.

Current Eligibility Laws Cause Inefficiencies in the Parole System

Virginia's parole eligibility laws are designed to provide inmates with credits towards their parole eligibility date which vary based on their number of prison commitments and institutional behavior. This departs from the criteria imposed by the

Parole Board, which links the minimum amount of time that inmates are to serve in prison to the nature and circumstances of their

crimes. As a result, many inmates are able to establish parole eligibility under the law before the Board is ready to grant them discretionary parole. In fact, inmates who were considered for parole in 1989 had typically served slightly less than 20 percent of their sentences when they first established eligibility for parole. Because persons who are denied parole are reconsidered annually, the Board repeatedly reviews some cases before the inmates are finally released.

Recommendation (1): *The General Assembly may wish to amend section 53.1-151 of the Code of Virginia to eliminate the use of the felony term indicator to determine discretionary parole eligibility for inmates. In addition, the General Assembly may wish to amend section 53.1-198 of the Code of Virginia to eliminate the applica-*

"When an alternative measure of parole is used, the State's rate is substantially higher than the national norm."

tion of good-conduct allowance credits to discretionary parole eligibility for inmates. The combination of the felony term indicator and good conduct allowances should be replaced with a system that calculates discretionary parole eligibility for each inmate based on the proportion of the court-imposed sentence that has been typically served by inmates according to the type of crime committed. In mandatory parole release cases, good-conduct allowance credits would continue to be used to reduce the time served.

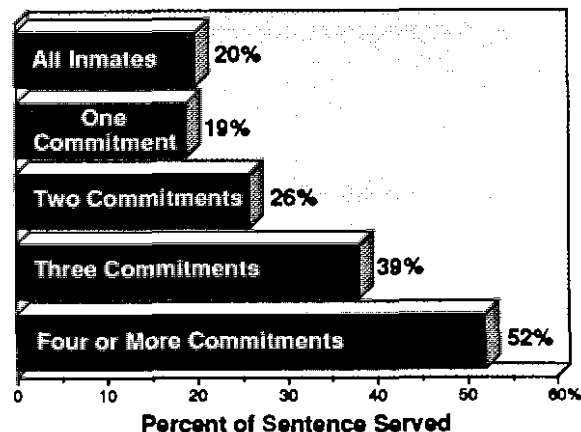
Recommendation (2): If the General Assembly chooses to adopt a time-served standard for purposes of establishing parole eligibility, the Parole Board and the Department of Criminal Justice Services should work together to develop the standard. This standard should be reviewed by the agencies at five-year intervals to ensure that the norms in both sentencing and parole decisionmaking practices are reflected.

Recommendation (3): If the General Assembly chooses to adopt the time-served standard, the Parole Board should work with the Department of Corrections to automate the calculation of the standard.

Inconsistencies In the Good-Time System Adversely Affect Early Release

The good-time system, which was revised in 1981, now provides inmates with an opportunity to advance their parole eligibility dates by conforming to the rules of the institution and by participating in programs designed to assist them with rehabilitation. This system typically accounts for seven to 44 percent of the credits that inmates earn toward their discretionary parole eligibility date, depending on their number of commitments to DOC. For mandatory release, inmates can use this system to reduce their time in prison by up to one-half of the court-imposed sentence.

Percent of Sentence Served at Time of First Parole Eligibility According to Number of Prison Commitments



The policies DOC initially put in place to administer this system fostered inconsistent and subjective staff evaluations of inmate progress. These policies have since been revised, and they appear to address most of the problems that plagued initial implementation of the new system in State prisons and field units. However, concern remains among DOC staff in the prisons and field units that the lack of treatment programs undermines the effectiveness of the good conduct allowance (GCA) system.

In addition, there are still problems with the implementation of good time in local jails. The methods and procedures used to evaluate inmate behavior and allocate State good time vary considerably across jails. Moreover, because of DOC policy regarding inmate transfers, State felons with sentences of greater than eight years who are housed in jails cannot earn more than one-half to two-thirds of the amount of good time that inmates in State prisons earn. Recent DOC policy issuances either do not address or are too vague to eliminate these problems.

Recommendation (4): *The State Parole Board should work with the Department of Corrections and the Department of Criminal Justice Services to determine the extent to which any lack of treatment programs in State correctional facilities has an adverse effect on the early release of eligible inmates. To address any deficiencies which may be identified, the Parole Board and the Department of Corrections should identify the types of programs needed and the resources required to provide them.*

Recommendation (5): *The Department of Corrections should ensure that all State custody inmates housed in local jails and awaiting transfer to State correctional facilities receive a GCA class assignment within 90 days of their incarceration.*

Recommendation (6): *The Department of Corrections should require that all State felons housed in local jail facilities be evaluated annually for GCA purposes. In addition, the Department should ensure that local jail personnel conducting these evaluations attain a working knowledge of DOC policies regarding GCA evaluations.*

Expanding Caseloads and Coordination Problems Slow the Review Process

Each year, the five member Board and its staff must review and decide cases for more than 11,000 inmates. Recent changes by the Parole Board to its system for scheduling parole reviews has increased the efficiency of this process. However, because of these changes, some of the counselors for the inmates being considered for parole no longer participate in the interview process. Without a policy from DOC requiring the counselors to be present at the hearings, their consistent input in the parole process can not be ensured.

In an attempt to reduce the time that inmates must wait for notice of parole decisions, the Board requires that each case be decided within 30 days after the inmate

is interviewed by a parole examiner. However, due to its increasing workload and the inability of DOC to provide the Board with timely access to key inmate files, this objective is not being met for a third of all cases. This is a particular problem for inmates in the jails. In many cases the Parole Board does not receive prompt notification of these inmates' discretionary parole eligibility dates. As a result, some of these inmates must wait until their mandatory release date to leave the system.

Once inmates are granted parole, it is the responsibility of DOC's Parole Release Unit to ensure that these inmates are released in a timely manner. Coordination problems between this unit and the Board have slowed the release process for more than one quarter of the inmates who are granted discretionary parole. By administering the parole process more efficiently, critically needed bedspace could be made available sooner for incoming inmates.

Recommendation (7): *To ensure that the input of institutional counselors is adequately incorporated in the parole review process, the Department of Corrections should establish a policy requiring all counselors to attend the parole hearings for each inmate under their supervision.*

Recommendation (8): *The Department of Corrections should ensure that pre- and post-sentence investigative reports are prepared in a timely fashion as required by law, and the Department should ensure that the reports are automated at least six months prior to inmates' parole eligibility dates. In addition, the Department should take the necessary steps to ensure that the Parole Board is promptly notified of the pending discretionary parole eligibility dates for inmates in the local jails.*

Recommendation (9): *The General Assembly may wish to shift to the Parole Board, those resources in the Department of Corrections' Parole Release Unit which are devoted to parole support functions.*

Recommendation (10): *When possible, the Parole Board should schedule all hearings six months prior to the inmate's parole eligibility date to allow sufficient time to plan for the release of all inmates who are granted discretionary parole.*

Organization of DOC Parole Supervision and Support Units Needs Review

In addition to the Parole Release Unit, the Parole Board receives support services from two other casework divisions within DOC — the Post Release Unit and Interstate Compact. Further, parole supervision services for inmates released on both mandatory and discretionary parole are provided by DOC through local probation and parole field offices.

The Post Release Unit coordinates the Board's warrants process for persons who are experiencing difficulty with parole supervision. The Interstate Compact Unit manages the casework of all persons on probation or parole in Virginia who wish to live in another state and those in other states who express the desire to live in the Commonwealth.

These divisions were removed from the direct supervision of the Parole Board in 1984 when the Board was established as a separate agency. With the present organizational arrangement, the Parole Board develops policies for these units but has no operational authority to ensure that its policies are properly implemented.

This has raised a number of questions about the operational efficiency of this realignment. In its study of this issue in 1987, the Department of Information Technology (Management Consulting Division) recommended that DOC's three parole support units — parole release, post-release, and interstate compact — be placed organizationally with the Parole Board. In addition, the study cited the "logical and close working relationships" between the Parole Board,

the courts, and probation and parole staff as one reason for a study of the alignment, management, and supervision of probation and parole services.

Recommendation (11): *The Secretary of Public Safety should examine the current organizational placement of post-release, interstate compact, and probation and parole functions within the Department of Corrections for possible transfer to the Parole Board. The Secretary should report the findings and recommendations from this assessment to the State Crime Commission prior to the 1993 session of the General Assembly.*

Guidelines Could Improve Parole Decisionmaking

The methods used by the Parole Board's five members to decide which inmates will be released have received considerable attention in recent years. Current agency policy identifies the factors that should be considered by both the examiners and members when reviewing a case, but is silent on the issue of how these factors should be applied. This absence of policy to guide the use of discretion has produced inconsistencies in both the ways that parole examiners view cases and the ways that Board members decide them.

This appears to be a particular problem with regard to the assessment of inmate risk. In order to address these problems, the Board has proposed that a structured guidelines system, which will incorporate an assessment of inmate risk, be implemented in 1992. This system will likely alter some of the Board's parole decisions as members are forced to rethink their views about the risk to society associated with paroling some inmates. For example, JLARC staff analysis shows that 37 percent of the inmates who were denied parole in 1989 would have been considered medium-low (seven percent) to low risk (30 percent) using the Board's newly

developed assessment tool. With this same instrument, 41 percent of the inmates granted parole in that year were later classified as either medium-high (26 percent) or high risk (15 percent).

Nonetheless, a review of the files suggested that the Parole Board was justified in making some decisions that appeared counter to the inmates' calculated risk of recidivating. Therefore, the Parole Board should maintain its current discretionary authority in order to respond to such cases. However, the Board should develop decisionmaking policies which include guidelines to ensure that its discretion is consistently applied.

Recommendation (12): *The General Assembly may wish to consider requiring the Parole Board to adopt a structured instrument for use in determining an inmate's risk and a set of policies governing the use of this tool.*

Community Resources Not Sufficient to Impact Parole Rate

One way in which the parole rate could be increased is through an allocation of more resources for community treatment of parolees considered to be high risk. Rather than deny some inmates parole, the Board presently has the option to release them on the condition that they be placed in a residential treatment facility.

However, most private treatment facilities either do not accept or are beyond the financial reach of most inmates. The State presently provides \$129,000 annually for the purchase of treatment services for parolees. At this funding level, the State is only able to secure about 125 beds in residential treatment facilities at a given time. This, according to the Board, is not sufficient to accommodate the planned in-

"... absence of policy to guide the use of discretion has produced inconsistencies in both the ways that parole examiners view cases and the ways that Board members decide them."

creases in the number of persons that will be granted parole to these facilities.

Recommendation (13): *The General Assembly may wish to require the Parole Board in conjunction with the De-*

partment of Corrections to determine what level of community resources would be necessary to accommodate the Board's future plans to release more inmates to residential treatment programs.

The Parole Board's Risk Assessment Instrument Can Be Improved

A key element of the Parole Board's structured guidelines system presently under study is a component to predict inmate risk. This instrument is specifically designed to aid Parole Board decisionmaking by identifying which candidates for parole have the highest risk of recidivating.

There are several shortcomings in the methodology that was used to develop this risk prediction instrument. In identifying the factors to predict risk, the methodology relies heavily on two bivariate statistical techniques — crosstabulation and correlation analysis. One limitation of these methods is that they are not capable of identifying redundant measures of the same phenomenon. When redundant measures are treated separately as predictors of risk, they will artificially raise or lower the inmate's risk score.

In addition, the procedures used to assign weights to the various factors identified as important predictors of inmate risk appear to be based on an interpretation of the relative strength between each factor and recidivism. Weights assigned using this interpretation are subjective and will not always accurately represent the rela-

tionship between the dependent and independent variables. Both of these problems can be reduced by using multivariate analysis to identify the key predictors of the risk an inmate poses for committing another felony if paroled.

Recommendation (14): *The Parole Board should refine the instrument used to predict risk by conducting a multivariate analysis of the impact of certain inmate characteristics on the likelihood of committing new felonies.*

Measuring the Parole Board's Effectiveness

Ultimately, the Parole Board must be evaluated according to its success in achieving the agency's stated goal of paroling only those offenders "whose release is compatible with the welfare of society and the offender." The Parole Board's performance in this regard is best evaluated through an examination of the rate at which persons released on discretionary parole receive new felony convictions because of continued criminal activity. However, the Parole Board does not systematically collect data on recidivism.

Recommendation (15): *The General Assembly may wish to mandate a study of recidivism among persons released on discretionary parole to determine the magnitude of the problem, the factors contributing to the problem, and possible strategies for lowering recidivism among persons released at the discretion of the Parole Board. This study could incorporate a review of the adequacy of community services to support persons released.*

Options to Ensure Long-Term Efficiency of Parole System

The results presented in this study point to a number of inefficiencies in the discretionary parole review process. Hampered by steadily expanding caseloads, the Parole Board is finding it increasingly difficult to hear and decide cases in a timely fashion. This report has proposed a number of changes to parole laws and policies that are designed to diminish the workload of the five-member Board by reducing the likelihood that annual reconsiderations of parole cases would be necessary. However, if the persistent rise in the number of new felony commitments to DOC does not subside, the changes recommended may not be sufficient to ensure the long-term efficiency of the parole process.

The State has three options that it could consider to ensure that further increases in the State's prison population do not prevent the timely disposition of future parole cases. The first is a presumptive parole system that would allow the Board to use a risk prediction instrument to make a parole decision shortly after an inmate was incar-

The State has three options that it could consider to ensure that further increases in the State's prison population do not prevent the timely disposition of future parole cases.

cerated. Once this decision was made, the Board could establish a presumptive release date using a time served standard based on the proportion of the court-imposed sentence that other inmates have typically served for

committing the same crime.

The presumptive nature of this system would eliminate the need for the Board to reconsider annually the cases of inmates denied parole, thereby significantly reducing the Board's annual workload. In addition, because decisions would be made early in an inmate's sentence, sufficient

time would be allowed to plan for the inmate's release.

The second alternative for alleviating the problem of the Parole Board's burgeoning caseload is to give the Board the option of setting off the future reviews of inmates denied parole on their first date of eligibility. This would decrease the Board's overall caseload by reducing the proportion of its cases that had to be reconsidered in any given year.

The third option that should be explored to improve the efficiency of the parole process is the expansion of the Parole Board. While this would not have a direct impact on the total number of cases that must be considered in a year, as would the previous options, it would decrease the

number of cases each Board member was required to hear. This would prevent backlogs in the review process and allow Board members more time to review cases.

Recommendation (16): *To ensure that future increases in the State's prison population do not hamper the efficiency of the discretionary parole review process, the Secretary of Public Safety should study the following options: (1) adoption of a presumptive parole process, (2) delaying the reconsideration of cases for inmates who are initially denied parole, and (3) expansion of the Parole Board. The Secretary should report the findings of the review with recommendations to the Virginia State Crime Commission prior to the 1992 Session of the General Assembly.*

Table of Contents

	Page
I. INTRODUCTION	1
Overview of Parole in Virginia	2
Study Mandate	8
Study Approach	8
Report Organization	12
II. VIRGINIA'S NATIONAL PAROLE RANKING	13
A Comparison of Total Parole Rates in 50 States	13
A Comparison of Discretionary Parole Rates	17
Parole Laws and Policies in the Case Study States	23
Conclusions	28
III. PAROLE ELIGIBILITY LAWS AND POLICIES IN VIRGINIA	29
Establishing Parole Eligibility	30
Administration of Virginia's Good-time System	41
The Good-time Credit Allowance System for State Felons	44
Administration of Good Time in Local Jails	48
Conclusions	51
IV. VIRGINIA'S DISCRETIONARY PAROLE SYSTEM	53
Timeliness of the Discretionary Parole Process	54
The Decisionmaking Process of the Parole Board	66
How the Parole Board Decides Cases	71
Improving the Proposed Risk Assessment Instrument	84
Measuring the Parole Board's Effectiveness	87
Conclusions	88
V. IMPROVING THE EFFICIENCY OF VIRGINIA'S PAROLE PROCESS	91
A Presumptive System	91
Delaying Reconsiderations	96
Expanding the Parole Board	97
APPENDIXES	99

I. Introduction

In 1990, the Virginia General Assembly passed Senate Joint Resolution 26 requesting JLARC to study the State's parole review process. The use of discretionary parole to provide for the release of State felons in Virginia is an integral part of the criminal justice system. Under current law, most felons sentenced to at least one year in prison can receive release through a majority vote of the State's five-member Parole Board. The State also has provisions for mandatory release, which occurs without Board action.

To carry out the functions of discretionary parole, the Board employs a team of examiners who interview eligible inmates in the prisons and jails. Using the reports from these interviews, data from court records, and prison files, the Board decides whether eligible inmates are suitable candidates for parole. From 1980 to 1989, the Board conducted over 89,000 parole reviews. During this same period, more than 30,000 inmates were granted discretionary parole.

Over the last five years, two factors have made the Board's task of managing this process increasingly difficult. First, a steady increase in the arrest and conviction rates for felons has resulted in a substantial increase in the State's prison population and subsequently an increase in the Board's caseload. Since 1985, the number of persons considered by the Board for release has increased by 42 percent. This has placed a premium on the need to ensure the efficiency of the parole review process.

Second, because of the State's well-publicized problem with prison overcrowding, the parole system is being increasingly looked upon as a mechanism to ease the demand for additional institutional bedspace. Underpinning this view is the notion that the State's parole rate is unnecessarily low because of inconsistent and overly restrictive Board decisionmaking practices.

In recent years, the Parole Board has made major improvements to its system for reviewing and deciding cases. To increase the efficiency of the interview and review process, the Board has automated many of the tasks associated with the collection and organization of inmate files. In addition, the agency is presently testing a set of parole guidelines designed to improve its decisionmaking.

This report presents an analysis of the State's discretionary parole ranking, identifies factors that might explain observed cross-state differences in parole rates, and provides a detailed review of Virginia's discretionary parole process. In addition, an attempt is made to determine whether the use of different methods to assess the risk an inmate poses to society would result in a higher statewide discretionary parole rate.

OVERVIEW OF PAROLE IN VIRGINIA

The Virginia Parole Board was established in 1942. Its mission is to establish parole policies which result in the earliest possible release of inmates who are deemed suitable for parole and whose release is compatible with the welfare of society. As a part of its overall duties, the Board is responsible for exercising supervision over prisoners released on parole until they have been discharged from the parole system.

History

For much of the 19th century there was no formal system of parole in Virginia. In its place, the State used a pardon system in which the authority to grant inmates parole from prison rested entirely with the Governor.

In 1942, after years of debate concerning the legality of the concept of early prison release, the General Assembly enacted legislation creating a parole system under the auspices of a three-member, part-time Parole Board. Included in this legislation were provisions establishing probation and parole districts which were organized and supervised by the newly created Parole Board.

During the 1970s, major organizational changes were made to the parole system. In 1974, the General Assembly established the Department of Corrections (DOC) and made the Parole Board, which had become a five-member, full-time body with an expanded probation and parole unit, a division in this new agency.

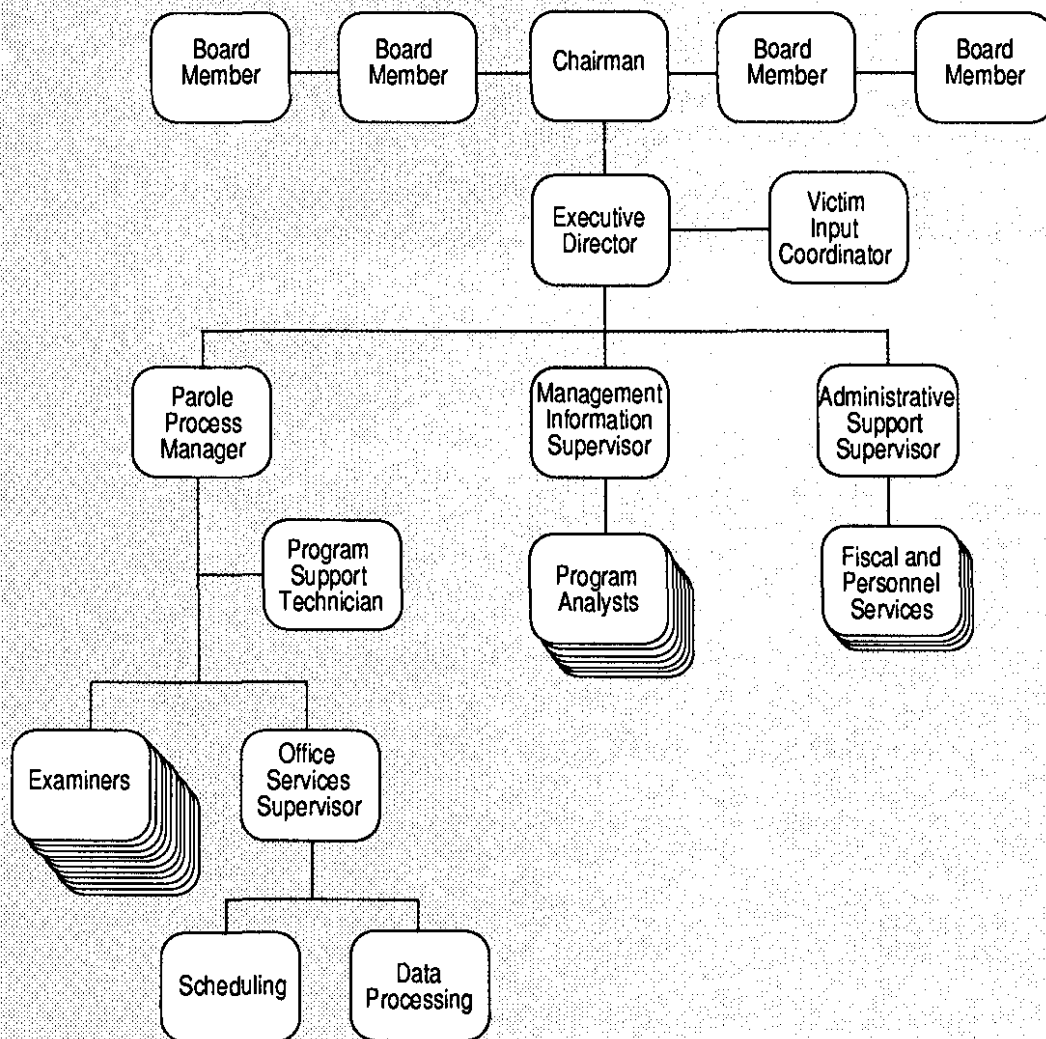
Widespread criticism of this bureaucratic structure in the late 1970s led to efforts to streamline the parole process. In perhaps the most important change to the system, the support services provided the Board through the Division of Probation and Parole were reorganized into three functionally distinct casework sections: (1) parole release, (2) post release, and (3) interstate parole. Not long after these changes were made, the Parole Board was established as a completely autonomous agency, but its three support service units and the Office of Probation and Parole remained under the guidance and supervision of DOC.

Current Organization and Duties of Parole Board

The current Parole Board is a small agency with five full-time Board members and 47 additional authorized staff positions (Figure 1). The operating budget for FY 1991 was \$2.2 million.

The five Board members are appointed by the Governor to serve staggered four-year terms. The Governor designates one of the members as Chairman. As the Board spokesman, the Chairman presides over Board meetings and works with a Board-appointed executive director to manage and coordinate the activities of the Board.

Figure 1
Organization of the Virginia Parole Board



Source: JLARC redraft of Parole Board organizational chart.

The major duties of the full Board are prescribed by law. They include the following:

- adopt, subject to approval by the Governor, general rules governing the granting of parole;
- release on parole all prisoners who are eligible and are found suitable for parole;

- revoke parole for any parolee who, according to the judgment of the Board, has violated the conditions of his or her parole;
- issue final discharges to parolees who complete the remaining portion of their sentence without violating their conditions of parole set forth by the Board; and
- at the request of the Governor, investigate and report on prisoners being considered for sentence commutations, pardons, reprieves, or fine remissions.

As Figure 1 illustrates, the agency has a victim's input coordinator position that reports directly to the executive director. This position, which is partially federally funded, was added in 1989 to increase community awareness of the Board's Victim Input Program. Originally established in 1985, this program allows the victims of potential parolees to have input in the parole process through written statements and meetings with Board members.

Other staff support is organized in the following three sections: (1) parole and processing division, (2) management information systems, and (3) administrative support. The parole and processing division is the largest section in the agency, with 21 staff members including ten parole examiners. Staff in this section are responsible for organizing and conducting the interviews with all inmates who are eligible for parole, and processing the examiners' report summaries for Board members. The manager of this unit sets the interview schedules and supervises the work of the ten parole examiners.

The Board's Management Information Systems Unit (MIS) was responsible for developing the agency's automated database and now provides the technical support needed to maintain and improve the system. In addition, this unit automated the agency's docketing process, which allows the Board to control the scheduling of almost all inmate interviews.

How Virginia's Parole System Works

There are two types of parole available to most prisoners in Virginia's correctional system: mandatory and discretionary. Mandatory parole release occurs without parole board action according to Section 53.1-159 of the *Code of Virginia*. Basically, this law requires that all inmates who are within six months of the end of their sentence, minus any credits for good behavior, be released from prison to the supervision of a parole officer. This includes those inmates who may have been denied discretionary parole during the course of their imprisonment.

With discretionary parole, an inmate agrees to abide by certain conditions in exchange for release from prison. The authority to grant discretionary parole is vested exclusively in the State's Parole Board.

Figure 2 illustrates how the discretionary parole process is implemented. After a prisoner has been convicted, sentenced and institutionalized, DOC determines the date on which the person will be eligible for discretionary parole. As the inmate's eligibility date approaches, the Board schedules an interview and parole examiners conduct the inmate interview. Board members then review the case and decide whether the inmate should be paroled. Finally, DOC's Parole Release Unit processes the Board's release orders for all inmates who are granted parole.

Determining Eligibility for Discretionary Parole. DOC's Court and Legal Services Unit is responsible for computing the parole eligibility date for each felon serving time in a State prison or local jail. To determine this date, DOC must account for all of the factors which impact an inmate's discretionary parole eligibility.

Each inmate's parole eligibility date is tied in part to a State law that increases the proportion of a sentence that must be served based on the number of commitments to DOC. For example, prior to establishing eligibility for parole, persons who are committed to DOC for the first time must serve one-fourth of their sentence or a maximum of 12 years, whichever is less. By comparison, persons committed for a second time must serve one-third of their sentence or a maximum of 13 years.

DOC must also account for the prison term reductions that inmates can accrue through the good-time system. Good time is the amount of time an inmate has reduced from his or her prison term as a reward for conforming to certain rules. These credits are usually earned at a fixed amount for every 30 days served. Prisoners can accumulate good time from any or all of the following three sources: (1) the courts, (2) local sheriffs, and (3) the Department of Corrections.

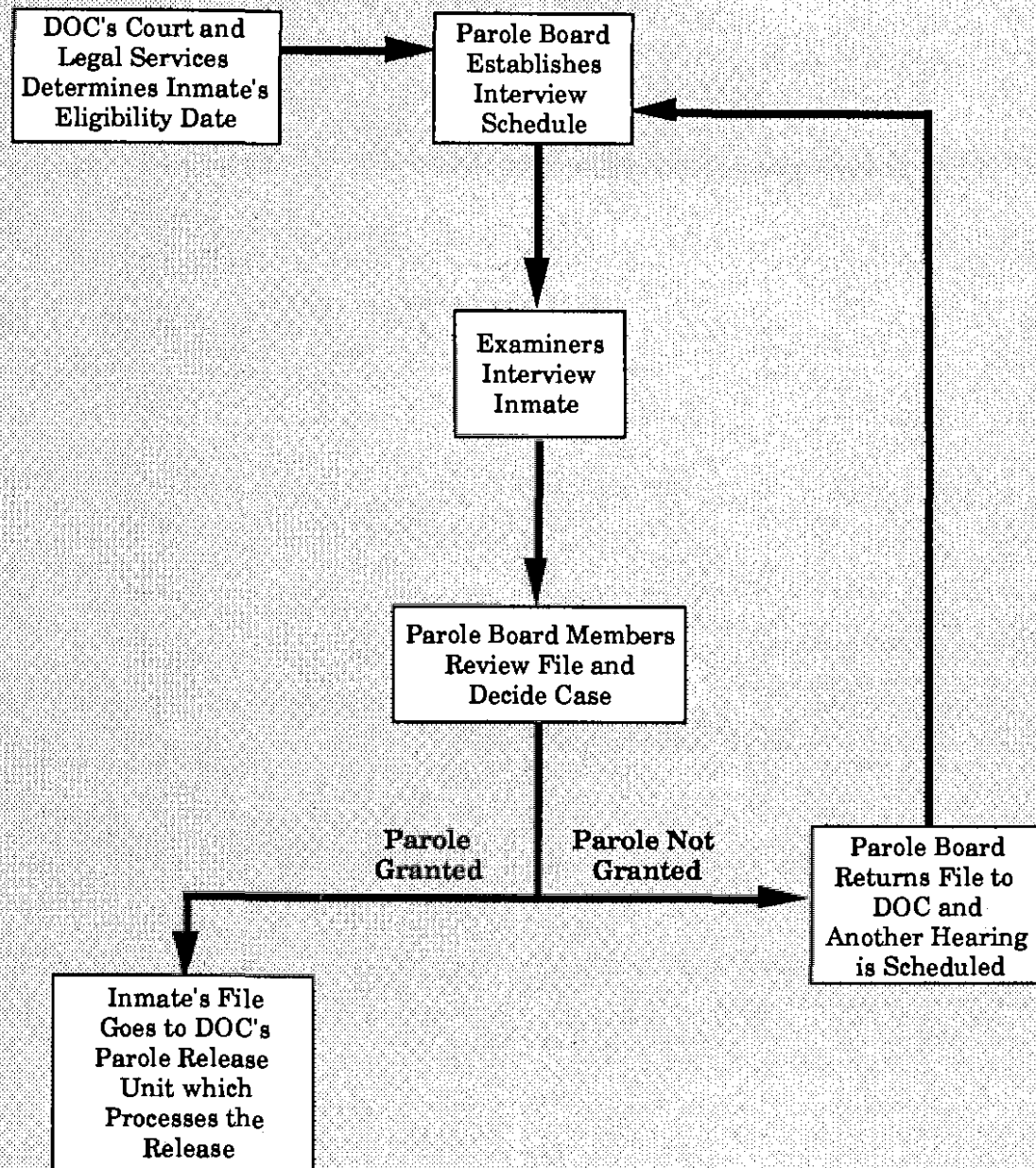
Credits earned through the court system (referred to as judicial good time) are provided at the discretion of judges. Once a person is sentenced and confined to a local jail, judges have the authority to allow that person to voluntarily work on State, county, or city property. As a reward, judges can award these inmates credits toward their total time of confinement, thereby impacting the date at which they become eligible for parole.

The sheriffs manage the good-time system in local jails. State law requires sheriffs to reward local inmates with prison term credits for every 30 days they serve without violating the rules of the institution. As an added incentive, sheriffs can reward exemplary conduct with additional credits.

DOC implements two different good-time systems for all State felons. Persons incarcerated prior to July 1, 1981, can receive statutory good time under one set of rules. These persons can also receive what is often referred to as discretionary good time if the Director of DOC judges their behavior to be extraordinary.

The second good-time system was established for persons incarcerated after July 1, 1981. With this system, DOC varies the amount of good time to be received according to the inmate's good conduct allowance (GCA) level. The GCA level for each

Figure 2
Virginia's Parole Review Process



Source: JLARC staff analysis.

inmate is determined by a scoring system that evaluates inmates on a combination of five institutional, program, and behavioral factors. Unlike the other forms of State good time, only one-half of the credits earned under this system are applied to the inmate's total time of confinement for purposes of determining parole eligibility.

In addition to good-time awards, inmates can also receive credits toward their sentence if they perform an extraordinary service, help prevent an escape, donate blood to other prisoners, or receive a serious injury while in prison.

DOC's Court and Legal Services Section collects data on all of these factors and uses a computer model to determine the date the inmate officially establishes eligibility. During the course of the inmates' imprisonment, these computations are repeated whenever a change occurs in any of the factors that impact their dates of parole eligibility.

Interviewing Parole-Eligible Inmates. Using data developed by DOC on each inmate's parole eligibility date, the Board's parole and processing section develops a quarterly interview schedule for each examiner. Usually within 10 working days prior to the upcoming quarter, staff at the relevant prison or jail receive a final letter from the Board identifying the inmates that will be interviewed during the quarter.

To help the examiners prepare for the interviews, the Board's MIS staff constructs a computerized file with information on the current offense, sentence length, and criminal history for each inmate scheduled for an interview. This information is loaded on portable computers, which examiners take with them to prisons and jails to interview parole-eligible inmates.

During the interviews, examiners review the inmate's progress report developed by DOC staff, and question the inmate on factors such as the circumstances of the offense, behavior while institutionalized, and any prior criminal activity. In addition, parole examiners sometimes talk to the DOC counselors regarding the inmate's overall progress.

Once the interviews are completed, the examiners enter their interview summaries and recommendations for each case on the portable computers so the Board's MIS staff can electronically transfer this information to the agency's central computer. Data processing specialists at the Board prepare a formatted report from these files for each Board member.

The Parole Decision. A simple majority vote of the Board is required to make a parole decision. Initially, three members are randomly selected to review the case. Prior to deciding each case, these members review the standardized reports and some of the source documents that were used to construct the interview summaries. If these three members do not reach a consensus, the fourth Board member is asked to vote. The Chairman will vote only if there is a tie among the four other members. The Board's options are (1) to grant parole with or without special conditions, (2) to not grant parole, or (3) to deny parole and schedule another review of the case prior to the inmate's next annual interview. The third option is rarely used.

If parole is granted, the Board establishes the terms and conditions of parole supervision. If deemed appropriate, the Board may require that the inmate participate in special educational, rehabilitation, or vocational training programs offered in the community. If parole is denied, the Board will usually review the case again one year later.

Parole Release. DOC's Parole Release Unit is responsible for actually facilitating the release of those inmates who are paroled from prison or jail. Using a copy of the Board's order of release, the unit examines the inmate's file for all required documents and then sends the specified conditions of release to the relevant prison or jail. If the Board requires that the inmate receive treatment as a condition of release, PRU must determine whether this treatment is available before processing the release. If treatment is unavailable, the case is returned to the Board for further review.

STUDY MANDATE

In 1990, the General Assembly passed Senate Joint Resolution No. 26 (Appendix A). This resolution directs JLARC to study Virginia's parole review process, determine the specific reasons for Virginia's low parole rate, and "suggest changes to law, policy or practice that may be desirable based on these reasons." The impetus for this resolution grew out of a study conducted by the Commission on Prison and Jail Overcrowding (COPJO) in 1989. This Commission was asked to assess the short- and long-term demands for prison and jail bedspace, as well as to develop a comprehensive plan for managing the escalating growth in Virginia's prison and jail population.

As a part of its research, COPJO found that from 1983 to 1989, Virginia's inmate population increased at an average annual rate of almost nine percent. Projecting this growth over a period of ten years, the Commission concluded that the planned increases in bedspace for the State's prison system would not be sufficient to eliminate overcrowding problems throughout the 1990s.

One major reason for the rise in the inmate population, according to COPJO, is the State's tough stand on crime. COPJO reported that, relative to other states, Virginia incarcerates more criminals, gives them longer sentences, and is not as inclined to use alternatives to lengthy imprisonment. Of particular concern to the Commission was the State's handling of its parole system. Using cross-state data on the total number of persons on parole in 1987, COPJO concluded that Virginia's parole rate was substantially below the national average. Because pressures on the need for prison bedspace can be reduced through higher parole rates, COPJO recommended a study of the parole system in Virginia.

STUDY APPROACH

The JLARC study of parole was broadly designed to address three major concerns: (1) that the State's low parole ranking was based on a measure of parole and

accompanying cross-state comparisons that may not be appropriate; (2) that factors which may adversely impact Virginia's discretionary parole rate are varied and often beyond the control of the Board; and (3) that Board decisions to deny release to low-risk inmates have kept the State's parole rate unnecessarily low. Based on these concerns the following issues were developed:

- Is the rate at which the Virginia Parole Board releases inmates on discretionary parole below the national norm for states with similar parole systems?
- Is there variation in the parole laws and practices of states which invalidates cross-state comparisons of discretionary release rates?
- What impact do Virginia's parole eligibility laws and good-time policies have on the prison time that inmates must serve before they can be considered for parole?
- How is the good-time classification system for felons administered in State correctional facilities and the local jails?
- Is Virginia's parole review process implemented in a timely and efficient manner?
- What factors influence the discretionary decisionmaking of the Parole Board?
- Would a more structured assessment by the Board of the risk an inmate poses of committing another felony if released on parole result in higher discretionary release rates?

The first approach taken in this study was to determine how Virginia's discretionary parole rate compared with other states. Part of this analysis focused on whether key differences exist in the parole laws and policies of other states which weaken attempts to conduct a valid cross-state analysis of discretionary release rates. Next, a review of Virginia's entire discretionary parole system was conducted to determine if identifiable factors exist that hinder either the efficiency or effectiveness of the process.

Examining Cross-State Discretionary Parole Rate Differences

A key component of this study was an analysis of differences in state parole rates. Cross-state measures of the rate at which states release prisoners on parole provide a reasonable basis for determining whether Virginia is more or less inclined to use parole as an alternative to longer imprisonment. However, before such comparisons could be made, it was necessary to account for existing differences in the various types of parole systems.

JLARC staff conducted literature reviews and telephone surveys to develop an appropriate comparison group of states for this analysis. One key criterion used to select these states was whether the laws which govern sentencing and parole apportioned discretion between the paroling authorities and the judges in a similar fashion to Virginia. A total of 34 states were selected for the analysis of discretionary parole rate differences. From this group, 10 case study states were selected for a more detailed survey on the policies and practices of the parole boards.

Using telephone surveys, JLARC staff questioned parole authorities and support staff regarding a number of issues. Included among these were questions concerning state parole eligibility laws, good-time laws, parole board policy for reconsidering the cases of inmates previously denied parole, board decisionmaking practices, and guidelines used to structure decisionmaking. With this information, JLARC staff assessed whether there was cross-state variation in factors that influence discretionary release rates but are beyond the control of the Parole Board.

Review of Virginia's Discretionary Parole Review Process

The second portion of the study was a review and analysis of the policies and practices that shape Virginia's discretionary parole process. This review included an analysis of the State's parole eligibility laws, the good-time system, the timeliness of the review process, and the decisionmaking practices of Virginia's five-member Board. The general purpose of this analysis was to identify and assess the relative influence of these factors on Virginia's discretionary parole rate. The research activities conducted to complete this analysis included site visits, structured interviews, an analysis of automated data on the parole process, an analysis of Parole Board decision practices, and an assessment of how a structured consideration of inmates' parole risk could impact the State's discretionary parole rate.

Site Visits. As a part of the review of the State's parole process, JLARC staff conducted site visits at 12 randomly selected prisons and field units (see Appendix B for a list of these facilities). These site visits were performed to gather information on how DOC staff in the prisons implement the State's good-time system. On these visits, interviews were held with the warden or superintendent of the facility, inmate counselors, staff responsible for inmate classification, and the head of the committee charged with disciplining unruly inmates.

Also, because some state felons serve their terms in local jails, JLARC staff conducted telephone surveys of the staff in 24 randomly selected jails regarding the implementation of good time. Appendix B provides a list of the jails included in the study and discusses the methods used to select the sample.

Structured Interviews. During the course of this review JLARC staff conducted numerous structured interviews with parole examiners, Board members, the Board's support staff, and DOC personnel that provide parole-related services. Information from the interviews provided a variety of perspectives on how the process is

implemented and what the system's problems are, as well as what the solutions to those problems should be.

Nine of the 10 parole examiners were interviewed regarding their role in the parole process and the methods used by the Board to organize the flow of information needed to support decisionmaking. Prior to most of these sessions, staff observed the face-to-face interviews that examiners conducted with each inmate on their docket.

The interviews with the Board members were designed to cover a range of topics. Most importantly, members were asked to discuss the goals they pursue when deciding cases, the impact of their increased workload, the criteria used to decide cases, and how the proposed guidelines would alter the parole process.

System support staff for the Board and DOC provided information on how the process for managing the data needed to conduct parole reviews is organized. Particular attention was given to the coordination requirements the system imposes on the Board and DOC and whether these responsibilities are being met.

Analysis of Automated Data. A computerized file containing information on all persons who were considered for parole in 1989 was obtained from DOC and the Parole Board. This data was used to determine the amount of time inmates served prior to becoming eligible for discretionary parole, as well as whether the Board complied with both the review requirements of the law, and its self-imposed time standards for deciding cases.

In addition, analysis of this data was used to determine whether DOC, which is responsible for releasing inmates after they are paroled, implemented this function according to its operating standards. To supplement this analysis, hard copy records were reviewed for a representative sample of cases that were delayed.

Analysis of Parole Board Decisionmaking. The automated file of persons considered for parole in 1989 also contained information on inmates' backgrounds, criminal records, incarceration experiences, and the Board's assessment of the risk each posed to society if released on parole. This file was used to conduct a descriptive analysis of the Board's decisionmaking practices. A key issue in this portion of the analysis was whether the Parole Board's decisionmaking was consistent across individual cases. This issue was evaluated in part, by reviewing and comparing the files of inmates who were denied parole in 1989 with a similar group of inmates who were granted parole.

Impact of Structured Risk Assessment. With this final issue, JLARC staff examined whether a more objective assessment of risk by the Parole Board could have the effect of increasing the State's discretionary release rate. To accomplish this, each inmate considered for parole in 1989 was placed in one of the four levels of risk developed by the Board. Then the actual parole status of the inmates was analyzed by risk level to determine if any inmates assessed to be low risk for recidivating were being denied parole.

REPORT ORGANIZATION

The remaining chapters in this report provide an analysis of Virginia's discretionary parole system. Chapter II presents the results from an analysis of Virginia's parole ranking. Chapter III assesses the impact of State law on the prison time that inmates must serve before establishing parole eligibility. Chapter IV provides an analysis of how the discretionary parole process is implemented and examines the decisionmaking practices of the Board. Finally, in Chapter V JLARC staff present three options for changing the parole system that could improve the efficiency and effectiveness of the parole system.

II. Virginia's National Parole Ranking

One of the findings of the Commission on Prison and Jail Overcrowding (COPJO) was that Virginia's parole rate is below the national average. However, several different analysis techniques used by JLARC staff to examine the national parole data raise questions regarding the usefulness of that original finding. First, the average national parole rate reported by COPJO is not typical of the rates observed for most of the 50 states and the District of Columbia.

Second, the method used to calculate this parole rate is based on an assumption about state incarceration rates that is not valid. Finally, nationwide parole rate comparisons suggested by COPJO do not recognize important differences in state sentencing and parole systems which directly impact release rates.

When these issues are examined, a different and somewhat more complex picture of Virginia's national parole rate ranking emerges. This analysis indicates that Virginia's *total* parole rate, which is comprised of persons that are released on both mandatory and discretionary parole, is above the national norm. However, when the rate at which the State's Parole Board grants *discretionary* releases is compared to a similar measure for states with comparable sentencing and parole systems, Virginia is placed near the bottom of the national rankings.

Still, considerable caution is necessary when interpreting these findings. Even among states with similar sentencing and parole systems, there is sufficient variation in parole laws and board practices to weaken the comparisons from which differences in release rates were determined. Therefore, any conclusions about the adequacy of Virginia's discretionary parole rate should be developed based on an analysis of the State's parole system and the actual decisionmaking practices of the Parole Board.

A COMPARISON OF TOTAL PAROLE RATES IN 50 STATES

Cross-state measures of the total number of persons released on parole provide a reasonable basis for determining which jurisdictions rely more heavily on parole as an alternative to longer imprisonment. Because these measures include those inmates who are paroled at the discretion of board members as well as through mandated release laws, they can be used to determine the rate at which states typically release inmates on parole. One frequently used research strategy for analyzing this type of data is to calculate a national parole rate and use this as a standard for evaluating the individual release rates of other states. However, when conducting this type analysis, it is important to select a national parole rate which is most typical of the distribution of release rates for each state.

Selecting the Appropriate Measure of Central Tendency

In assessing Virginia's ranking among states that offer some form of parole, COPJO relied exclusively on a comparison of the Commonwealth's total parole rate with a national average. The use of an average to represent a distribution of data is appropriate only when the data from which the average is calculated are not skewed by extreme or outlier values. If the data are skewed, the average is likely to be substantially above or below, and therefore unrepresentative of, most of the cases in the data. Under such circumstances, it is usually more appropriate to rely on a statistic which is not sensitive to outlier values, such as the median. The median has this property because it represents the middle case in the data.

The data in Table 1 illustrate how the use of a different measure of central tendency alters Virginia's parole rate ranking. Notice first that the average total parole rate reported by COPJO of 196 per 100,000 adult population is higher than the rate observed for 36 of the 50 states that offer early release. Further, although Virginia ranks in the top half (19th) of states that offer some form of parole, the national average is substantially higher than Virginia's rate. The size of this average is obviously influenced by the unusually large parole rates in Washington D.C. (789) and Texas (570). When the median parole rate of 110 is represented as the typical value in the data, Virginia's rate is actually 28 percentage points higher than the national norm and is more consistent with the State's overall ranking.

An Alternative Measure of Total Parole Rates

There are also questions about the appropriateness of the parole rate measure on which COPJO based its conclusions about the State's total parole rate. The parole rate data reported by COPJO represent the total number of persons who were on parole in 1987 per 100,000 adult population. This statistic may be misleading for two reasons. First, it does not account for differences in the periods of parole supervision that exist across states. Other factors being equal, states that have longer periods of supervision are more likely to have a larger number of persons on parole during any given year.

Second, this statistic favors those jurisdictions that have the largest ratio of parolees to adults in the general population, without respect to the number of persons who are actually in the state prisons. In other words, this method incorrectly implies that the rate of incarceration across states is equal. As one consequence, two states that release substantially different proportions of their prison populations can have the same parole rate if both have a comparable number of adults in the general population. This problem is avoided if the parole rate is calculated as the total number of persons released on parole as a proportion of the total number of persons incarcerated. Using this method, states which release the largest share of their confined inmate populations will have the higher parole rate.

Table 2 shows how changing the measure of the parole rate in this manner affects Virginia's relative ranking. The total number of persons released on parole in

Table 1

National Parole Rankings

<u>State</u>	<u>Parole Rate</u>	<u>National Ranking</u>
Washington D.C.	789	1
Texas	570	2
Pennsylvania	423	3
Washington	310	4
New Jersey	269	5
Tennessee	257	6
Georgia	243	7
Maryland	236	8
New York	232	9
Delaware	231	10
Louisiana	230	11
Arkansas	226	12
Nevada	212	13
California	203	14
Mississippi	189	15
Missouri	168	16
Illinois	159	17
Kansas	147	18
VIRGINIA	141	19
South Carolina	130	20
Hawaii	127	21
Kentucky	122	22
Alabama	115	23
New Mexico	113	24
Wisconsin	113	25
Utah	108	26
Montana	107	27
Wyoming	105	28
Oregon	104	29
North Carolina	97	30
Michigan	94	31
Iowa	94	32
Idaho	92	33
South Dakota	91	34
Arizona	90	35
Massachusetts	89	36
New Hampshire	81	37
Indiana	76	38
Ohio	75	39
Oklahoma	74	40
Colorado	69	41
West Virginia	60	42
Rhode Island	56	43
Vermont	49	44
Minnesota	46	45
Nebraska	39	46
Alaska	38	47
Florida	31	48
North Dakota	31	49
Connecticut	19	50

MEAN = 196

MEDIAN = 110

NOTE: Parole rate is total number of persons on parole in 1987 per 100,000 of the state's adult population.

Source: *Correctional Populations in the United States, 1987*. U.S. Department of Justice.

Table 2

**Total Persons Paroled in 1987 as a Percent of
Each State's Confined Inmate Population**

<u>State</u>	<u>Parole Rate</u>	<u>National Ranking</u>
Texas	43%	1
California	42%	2
Tennessee	40%	3
Massachusetts	40%	4
New Jersey	38%	5
Washington	37%	6
Minnesota	37%	7
New Mexico	31%	8
VIRGINIA	31%	9
Illinois	30%	10
Iowa	28%	11
Indiana	28%	12
Wisconsin	27%	13
South Dakota	27%	14
New York	26%	15
Kentucky	26%	16
Georgia	24%	17
North Carolina	24%	18
Utah	24%	19
Nebraska	23%	20
Missouri	23%	21
Arkansas	22%	22
North Dakota	20% MEDIAN	23
Colorado	20%	24
Kansas	19%	25
Hawaii	19%	26
Nevada	19%	27
Oregon	19%	28
Washington, D.C.	19%	29
New Hampshire	18%	30
Montana	17%	31
Louisiana	15%	32
Michigan	15%	33
Delaware	15%	34
Wyoming	15%	35
Idaho	14%	36
Mississippi	14%	37
Ohio	14%	38
Alabama	9%	39
Vermont	6%	40
South Carolina	6%	41
Florida	3%	42
Oklahoma	3%	43
Alaska	2%	44
Connecticut	1%	45

Notes: The total confined inmate population for each state includes the number of felons who were in state or local correctional facilities on December 31, 1986, plus all new court commitments in 1987. Five states were not included in this analysis because they could not provide data on the number of state felons that were housed in local jails.

Source: JLARC staff analysis of data from *Correctional Populations in the United States, 1987*.

Virginia during 1987 as a proportion of the State's prison population was 31 percent. This ranks Virginia ninth among all states compared to 19th using the method reported by COPJO. In addition, this 31 percent rate is substantially higher than the national median of 20 percent.

Another example of how much of a difference the choice of this particular measure of parole can make is seen for the District of Columbia. Using COPJO's statistics, the District of Columbia appeared to have the highest parole rate in the country. However, when the total persons released as a percent of those incarcerated is used to measure its parole rate, the District's ranking drops to 29th because of its large prison population. A similar decline is observed for the state of Georgia which moves from seventh to 17th.

One reason for Virginia's high national ranking using this measure of parole is its two-tiered parole system. In 1987, Virginia was one of only 18 states that utilized both discretionary and mandatory parole. Under this system, inmates who are denied release by the Board can still receive mandatory parole when they are within six months of the end of their sentence, after their prison terms have been reduced by time off for good behavior. This provides an obvious advantage to Virginia when cross-state comparisons of parole rates are made. Without mandatory parole, inmates who are judged unsuitable for discretionary parole in other states serve most of their full sentence. In Virginia, similar types of inmates can and do eventually receive mandatory parole. For example, in 1987, slightly more than a third of the inmates paroled by the State were released through this mandatory provision.

The information presented in Table 3 underscores the effect of mandatory release laws on parole rankings. More than 70 percent of the states with total release rates that exceed the national norm offer some form of mandatory release.

Together, these findings do not support the conclusion that Virginia has a low total parole rate. Rather, they suggest that the State provision for mandatory parole release in conjunction with the discretionary practices of the Parole Board result in a release rate for state prisoners that exceeds the national norm.

A COMPARISON OF DISCRETIONARY PAROLE RATES

When conducting its analysis of Virginia's parole ranking, COPJO used data on the total number of persons paroled as a basis for measuring the rate at which the Parole Board grants discretionary releases. As noted, these data include persons who were released through both mandatory laws and the discretionary authority of the Parole Board. Also in conducting the cross-state analysis of parole rates, important differences in sentencing and parole systems which directly impact the discretionary powers and decisionmaking of parole authorities were not accounted for. Because of these factors, the reported parole rates do not accurately measure cross-state differences in the impact of parole board decisionmaking.

Table 3

**1987 Mandatory Parole Status and Total Persons
Paroled as a Percent of Each State's
Confined Inmate Population**

<u>State</u>	<u>Parole Rate</u>	<u>Mandatory Parole</u>
Texas	43%	YES
California	42%	YES
Tennessee	40%	YES
Massachusetts	40%	NO
New Jersey	38%	NO
Washington	37%	NO
Minnesota	37%	YES
New Mexico	31%	YES
VIRGINIA	31%	YES
Illinois	30%	YES
Iowa	28%	NO
Indiana	28%	YES
Wisconsin	27%	NO
South Dakota	27%	NO
New York	26%	YES
Kentucky	26%	YES
Georgia	24%	NO
North Carolina	24%	YES
Utah	24%	NO
Nebraska	23%	YES
Missouri	23%	YES
Arkansas	22%	NO
North Dakota	20%	NO
Colorado	20%	YES
Kansas	19%	YES
Hawaii	19%	NO
Nevada	19%	NO
Oregon	19%	NO
Washington D.C.	19%	YES
New Hampshire	18%	NO
Montana	17%	NO
Louisiana	15%	YES
Michigan	15%	NO
Delaware	15%	YES
Wyoming	15%	NO
Idaho	14%	NO
Mississippi	14%	NO
Ohio	14%	NO
Alabama	9%	NO
Vermont	6%	NO
South Carolina	6%	NO
Florida	3%	NO
Oklahoma	3%	NO
Alaska	2%	NO
Connecticut	1%	NO

Notes: The total confined inmate population for each state includes the number of felons who were in state or local correctional facilities on December 31, 1986, plus all new court commitments in 1987. Four states were not included in this analysis because they could not provide data on the number of state felons that were housed in local jails.

Source: JLARC staff analysis of data from *Correctional Populations in the United States, 1987*.

National Variation in Sentencing and Parole Systems

States typically use one of two types of sentencing and parole systems. The system used in a majority of states, including Virginia, is either completely or partially indeterminate. In a smaller number of states the sentencing and parole systems are partially or completely determinate. The differences in these two systems have a direct impact on observed parole rates. Therefore, any analysis of relative differences in the rates at which paroling authorities grant prison releases requires safeguards to ensure that these system differences have been accounted for.

Indeterminate Sentencing and Parole Systems. In states with indeterminate sentencing the court has primary control over the type of sentence imposed (e.g., prison, probation, fine) and the length of sentence prescribed for persons who are convicted of a crime. After persons are sentenced they must usually serve a minimum or "flat" term imposed by state laws, after which the paroling authorities can use their discretionary powers to grant a release. In Iowa, sentencing is almost completely indeterminate as paroling authorities, for the most part, are not constrained by mandatory imposed minimum sentence requirements and can release inmates at any point during their prison term. In Virginia, on the other hand, the Parole Board can provide for a discretionary release only after the inmate has served a minimum prison term as required by law.

Determinate Sentencing. Under determinate systems, the court specifies the type of punishment and imposes a fixed term of imprisonment. If sentencing is strictly determinate, as in the state of Maine, there is no discretionary parole release and prisoners must serve their entire sentences. In states in which sentencing is partially determinate, most prisoners are automatically paroled near the end of their sentence through mandatory release laws. A smaller portion of inmates can be considered for parole by authorities according to the amount of good time earned during their incarceration.

An example of partially determinate sentencing exists in California. Only a small portion of the inmates who receive parole through the state's good-time system must have a interview with the paroling authority before being released. Specifically, the California Board of Prison and Terms has jurisdiction over inmates who are sentenced to a term of life, or to a term of one year. For others, parole release is mandatory and is determined by the rate at which good time is accumulated.

To include states with partially determinate sentencing in an analysis of discretionary parole rate differences would bias the results. Obviously, the discretionary rate in a state like California would be substantially lower than Virginia's if the majority of the cases reviewed by the paroling authorities were persons serving life sentences. Conversely, if in a given year most of the cases heard were those inmates with one-year sentences, California's discretionary rate would be much higher.

Comparing Virginia to States with Similar Systems

A more cogent examination of state parole rate differences is possible when the Virginia Parole Board's performance is compared to other states that utilize parole systems that are somewhat similar. To address this issue of comparability, the following criteria were established to guide the selection of the comparison states:

- In 1987, the sentencing system used by the state had to be either completely or partially indeterminate.
- The parole board had to have the authority to free all felons who were eligible to receive a discretionary release from prison.
- The parole system could not have been presumptive. (In states with presumptive parole, inmates receive an interview and future release date from parole authorities shortly after they are incarcerated.)

With these criteria, JLARC staff identified 34 states with parole systems comparable to Virginia's. Each state was asked to provide information on the total number of inmates considered for discretionary parole in 1987 and the total number that were released. Three states that met the criteria could not be included in the comparison because they did not have the necessary data.

The results of this comparison of discretionary parole rates (Table 4) sharply contrast those produced from an examination of Virginia's total parole ranking. Virginia's discretionary parole rate is 36 percent compared to the median of 45 percent, placing the State near the bottom of the national rankings. Only five of the 31 states for which data are available reported a lower discretionary parole rate than Virginia.

To determine if this ranking was a part of a consistent trend, JLARC staff expanded the comparison for a four-year period for ten of the states that were a part of the original analysis. Eight of these states were selected because their 1987 rates were higher than Virginia's. The rates for the two remaining states were lower. The ten jurisdictions used in the comparison were:

Arkansas	Ohio
District of Columbia	South Carolina
Iowa	Tennessee
Massachusetts	Texas
Nebraska	Vermont

The four-year period for which discretionary parole data were collected was 1986 to 1989. Although some instability is observed in the rates, there is no indication that the differences reported for 1987 were unrepresentative of how Virginia typically compares to these states. Since 1986, Virginia's discretionary parole rate has increased from 33 to 42 percent (Figure 3). This represents an average annual increase of more than six percent.

Table 4

**Discretionary Release Rates of Parole Boards
in States with Completely or Partially
Indeterminate Sentencing**

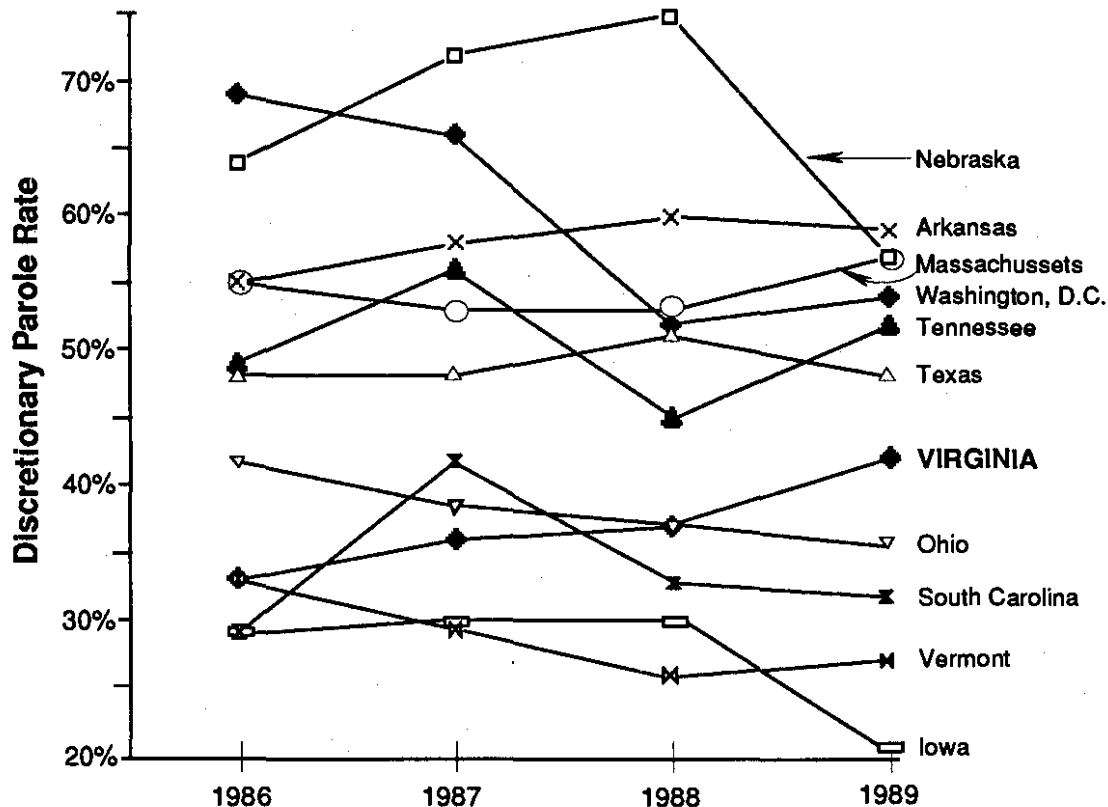
<u>State</u>	<u>Parole Rate</u>	<u>National Ranking</u>
Nebraska	72%	1
Hawaii	68%	2
Pennsylvania	66%	3
Washington D.C.	65%	4
New Jersey	59%	5
New York	58%	6
Arkansas	58%	7
Massachusetts	53%	8
Montana	51%	9
Tennessee	49%	10
Colorado	48%	11
Texas	47%	12
Mississippi	47%	13
West Virginia	46%	14
North Dakota	46%	15
Kentucky	45% MEDIAN	16
South Dakota	45%	17
Alabama	45%	18
Delaware	45%	19
Kansas	43%	20
Michigan	42%	21
Rhode Island	42%	22
Idaho	42%	23
Nevada	41%	24
Wyoming	41%	25
Ohio	38%	26
VIRGINIA	36%	27
Oklahoma	35%	28
Iowa	29%	29
Vermont	29%	30
South Carolina	28%	31

Notes: Parole rate was calculated by dividing the total number of persons released on discretionary parole in 1987, by the total number of persons considered for discretionary parole in 1987. Data were not available for three states. Also, states with presumptive parole systems were excluded from the analysis.

Source: JLARC staff analysis of data collected from telephone surveys of states that had indeterminate sentencing in 1987.

Figure 3

Comparison of States' Discretionary Parole Rates from 1986 to 1989



Source: JLARC staff analysis of discretionary parole data from eleven states.

Over this same period, the rates for seven of the eight states that had higher 1987 release rates fluctuated but never dropped below Virginia. For example, Tennessee's rate moved up and down in alternate years but was always at least eight percentage points larger than Virginia's. The 1986 discretionary rate for Texas (of 48 percent) exceeded Virginia's rate by three percentage points. Three years later the difference had narrowed, but it was still higher. The District of Columbia's rate dropped by 15 percentage points over this four-year period but remained above Virginia. The rates for Nebraska, Arkansas and Massachusetts were all consistently higher than Virginia's over this four-year period.

These findings suggest that the 1987 discretionary parole rate differences observed between Virginia and these states are typical of long-term patterns and not

due to any special circumstances that may have been prevalent in the year for which the data were originally reported.

PAROLE LAWS AND POLICIES IN THE CASE STUDY STATES

Although parole authorities in the ten states compared for this study have complete discretion in deciding which inmates will be released, there are factors which can influence parole rates, but are beyond the control of the various board members. Such external factors might include: use of emergency release laws or other policies to expedite parole for felons, parole exclusion laws, mandatory minimum time served requirements, consideration of misdemeanor offenses, and the case review policies of the paroling authorities. If there is substantial variation across the states in these factors, any conclusions that might otherwise be drawn from a comparison of discretionary release rates are weakened. To determine if the laws and practices governing parole do vary for States with similar systems, JLARC staff collected data on various external factors for the ten case study states. Table 5 summarizes results of this analysis.

Emergency Release Laws

Some states are required by court order to initiate emergency release actions when the state prison population reaches a certain threshold. In addition, all states can use the federal 1986 Emergency Powers Act (EPA) to implement similar actions. The Virginia Parole Board has not received any court orders requiring that inmates be released outside of the normal parole review process. Nor has the General Assembly authorized the use of EPA to relieve prison overcrowding problems. If other states have used such measures their parole rates may be somewhat inflated. This would make an accurate cross-state assessment of the impact of Board decisionmaking difficult.

Information collected from the telephone surveys of the case study states indicates that emergency release procedures were used in two of the six case study states that reported consistently high parole rates. Staff from the Tennessee Parole Board indicated that both court orders and EPA have resulted in much faster processing and release of inmates from the state's prisons. The only persons not eligible for parole when these type actions are taken in Tennessee are violent criminals and inmates who have a record of attempted escapes.

In addition, EPA has been in effect in Texas since 1985. When the prison population reaches a certain level, all inmates are automatically granted 180 days of good time by the Texas Department of Corrections. This shortens the prison time that inmates must serve before establishing parole eligibility and allows the Board to hear the cases sooner. According to one staff member for the Texas Parole Board, the effect of EPA for inmates has been to make parole easier to obtain.

Table 5

State Parole Laws and Policies in 1987

State	1987 Parole Rate	Expedite Parole Review and/or Release	Parole Exclusion Laws	Prison Time Served Requirements	Considers Misdemeanor Cases	Case Review Schedule
Nebraska	72%	No	Life Sentence Death Penalty Third Sexual Assault	Minimum Court Imposed or Statutory Sentence (whichever is greater)	Yes	Annual
DC	65%	Yes (Eligibility)	No	33%	Yes	Varies
Arkansas	58%	No	Life Sentence Two-Time Felons 1st Degree Murder Rape Aggravated Robbery Four-Time Felons	1st Felony 33% 2nd Felony 50% 3rd Felony 75%	No	Annual
Massachusetts	53%	No	1st Degree Murder	Non-Violent 33% Violent 66% Varies for Reformatory Sentences	Yes	Annual 2nd degree life sentences every 12 to 18 months
Tennessee	49%	Yes	Death Penalty	Mitigating 20% Standard 30% Aggravating 40% Habitual 50%	No	Annual
Texas	47%	Yes	No	25%	No	Varies 6 months to 3 years
Ohio	38%	No	Life Sentence	50%	No	Varies Use set-aside policy up to 10 years
VIRGINIA	36%	No	Three-Time Felons Murder Rape Robbery Drug Trafficking Death Penalty 2nd Life Sentence	1st Prison Commitment 25% 2nd Prison Commitment 33% 3rd Prison Commitment 50% 4th Prison Commitment 75%	Yes If sentence is greater than 12 months	Annual
Iowa	29%	No	No	Indeterminate	No	Annual
Vermont	29%	No	Life Sentence	Minimum Term Set by Judges	No	Every six months
South Carolina	28%	No	Death Penalty Repeat Violent Offenders Sentences Less Than 90 Days	Violent 33% Non-violent 25% Mandatory Minimums Armed Robbery Murder Drug Trafficking	No	Varies Non-violent cases reviewed annually Violent cases reviewed every two years

Source: JLARC staff telephone survey of other states' parole authorities, 1991.

Parole Exclusion Laws

The scope of a paroling authority's jurisdiction is determined by state laws that define the parole-eligible population. Generally these laws are designed to prevent boards from releasing persons who commit crimes for which the penalty is execution or, sometimes, life in prison. However, because of a growing public concern about the lack of a deterrent effect in the criminal justice system, legislators are beginning to broaden the number of crimes for which parole is prohibited. State laws that widen or narrow the jurisdiction of parole boards can appreciably alter the mix of the parole-eligible population and indirectly lead to an increase or decrease in state release rates. Wide-reaching exclusion laws can have a positive impact on state discretionary parole rates by reducing the number of high risk inmates that a Board has to consider for parole. Alternatively, narrowly defined laws can suppress parole rates because many inmates who are poor candidates for release must be considered by parole authorities.

In 1979, the Virginia General Assembly enacted several measures that increased the number of crimes for which parole could not be granted. Most notable among these was the "three time loser law." This law prohibits the Board from granting discretionary parole to persons convicted of three separate felony offenses of murder, rape, or armed robbery when the offenses were not a part of a common act. Also, individuals convicted of three separate felony drug trafficking or manufacturing offenses that were not a part of the same act can no longer be considered for parole. Already on the books were laws prohibiting the granting of parole to death row inmates, persons who escape from prison after being sentenced to life in prison, and persons who are sentenced to life in prison after being paroled from a previous life sentence.

While variation does exist in the parole exclusion laws of the case study states, the range is limited (Table 5). Almost without exception, legislatures in these states have reserved these exclusions for persons with the more serious prison sentences (i.e., death row inmates and persons with life sentences). Because these individuals usually constitute such a small portion of persons incarcerated, variation in these laws is not a likely explanation of the observed parole rate differences. For example, Texas and the District of Columbia, which have substantially higher parole rates than Virginia, do not restrict their most dangerous felons from parole consideration. However, Nebraska, Massachusetts, and Tennessee impose restrictions that are similar to Virginia's but still report higher rates. Conversely, South Carolina excludes death row inmates and all repeat violent offenders, yet it has one of the lowest parole rates among the states in the study.

Minimum Time Served Requirements

In most states with indeterminate sentencing, parole authorities are prevented from releasing inmates on discretionary parole until they satisfy some minimum time served requirements imposed by either law or court order. Inmates are

usually able to reduce these "flat" sentences through the accumulation of good time but these adjustments are often minor. While clear evidence is lacking, the Parole Board Chairman contends that in other states, inmates who face longer mandatory prison terms are more likely to be paroled when they first establish eligibility because they are viewed as having paid their debt to society. For example, in Arizona, some inmates must serve 50 percent of their sentence before they can be released at the discretion of the Parole Board. Under these circumstances, the Chairman contends that these inmates have a substantially higher probability of parole than some inmates in Virginia that establish eligibility after serving smaller proportions of their sentence.

Table 5 shows that states use a variety of strategies to structure minimum time served requirements. For example, in Virginia and Arkansas, the amount of a sentence that must be served increases based on different measures of inmate recidivism. However, the mandatory prison requirement in Arkansas is proportionally greater for each felony conviction. Massachusetts and South Carolina impose different mandatory terms for violent and non-violent offenders. In Nebraska, the mandatory minimum term is established by the court at sentencing or through state statute, whichever is greater. In the District of Columbia, the requirement is 33 percent of the sentence. Finally, in Iowa, the Parole Board determines the minimum sentence for all offenses except drug and firearm cases. These widespread differences and the uncertainty regarding the actual impact of mandatory minimum prison terms on Board decisionmaking hamper attempts to make valid cross-state comparisons of discretionary parole rates.

Consideration of Misdemeanor Cases

Parole authorities in some states have jurisdiction over both felons and misdemeanants. In Virginia, the Board only has jurisdiction over such cases when the sentence is more than twelve months. For obvious reasons, the parole rate for misdemeanor cases is likely to be extremely high. In some cases, the decision to grant parole may be virtually automatic. For this reason, parole boards that consider a large number of misdemeanor cases do not provide an appropriate comparison for boards that either have no, or limited jurisdiction over such cases.

Parole authorities in three of the case study states that reported higher parole rates — Nebraska, Massachusetts, and the District of Columbia — do consider misdemeanor cases. Data on the number of these cases considered by each of these states were not available. However, it is unlikely that Nebraska would have produced its extraordinarily high 1987 discretionary parole rate of 72 percent without including a sizable number of misdemeanor cases in the release rate calculation.

Parole Review Schedule

The parole review schedule may also have an impact on a state's discretionary release rate. In Virginia and some other states, parole authorities are required by

state law to annually reconsider cases for persons who are denied parole after the initial decision has been made. Other states are silent on this issue, choosing instead to allow parole boards to establish their own time frames for case review. In some of these jurisdictions the parole authorities may decide against conducting annual reviews for inmates who have been previously denied parole.

Parole Boards that review the cases of all eligible inmates each year will usually have caseloads that are comprised of a large proportion of inmates who have been denied parole in previous years. Though their cases are reviewed annually, many of these inmates have no real chance for parole. In any given year, this will obviously work against higher release rates. For example, in 1988, more than 40 percent of the inmates who were considered by the Virginia Parole Board were being reviewed for at least a second time (Table 6). Some inmates were being reviewed for a fifth time. As shown in Table 6, after the second review, the probability of being granted parole begins to decrease.

Boards that set aside cases, usually do so for those inmates with long sentences and low prospects for parole (e.g., those convicted of violent crimes). Therefore, the pool of parole candidates reviewed in any given year will not include as many persons who are unlikely to be released. This could result in release rates that are artificially high because they are calculated from the lowest risk segment of the parole eligible population. Alternatively, some boards with this type discretion may decide to conduct more frequent reviews, such as every six months. If each six month review is counted as a separate parole consideration, these states could show a very low parole rate.

Data from the case study states indicate that five of the ten states have different review schedules. Vermont, which has the lowest parole rate, reviews cases every six months. On the other hand, Texas and Ohio choose to set aside some cases for

Table 6

**Virginia's 1988 Discretionary Parole Rates
According to Number of Parole Interviews**

<u>Interviews</u>	<u>Total Considered</u>	<u>Total Granted</u>	<u>Parole Rate</u>
First	5,342	2,122	40%
Second	2,339	869	37%
Third	1,132	363	32%
Fourth	553	153	28%
Five or More	648	139	21%

Source: The Virginia Parole Board

three or more years after the initial review. In Ohio, some inmates can wait as long as 10 years before they are granted another interview. South Carolina grants parole reviews to inmates convicted of violent crimes every two years. All other cases are reviewed annually. Clearly these differences cloud attempts to develop comparable cross-state discretionary parole rate measures.

CONCLUSIONS

National comparisons of the rate at which Virginia releases inmates on both mandatory and discretionary parole do not support the view that the State has a low parole rate. When an alternative measure of parole is used the State's rate is substantially higher than the national norm. This relatively high ranking can be attributed to the fact that Virginia is one of 18 states that has provisions for both mandatory and discretionary parole release.

If state parole figures are disaggregated according to whether the release was granted by the board members or required by law, Virginia is placed near the bottom of the national rankings for discretionary releases. However, this finding does not justify the conclusion that Virginia's discretionary release rate is unnecessarily low. The information presented in this chapter underscores the difficulty associated with making valid cross-state comparisons of this measure. Even among states with similar sentencing and parole systems, disparities in release rates can be the result of a number of factors beyond the control of the Board. These include implementation of emergency release policies, mandatory prison term requirements, consideration of misdemeanor cases, and case review schedules. The cross-state variation observed for many of these factors works against attempts to quantify the influence they exert on parole rates.

For these reasons, conclusions about the adequacy of Virginia's discretionary parole system should be developed based on a further examination of the State's parole system and the actual decisionmaking practices of the Parole Board. For example, is the parole review process implemented in a timely and efficient manner? What type policies does the Parole Board use to ensure that its decisionmaking practices are consistent? Does the Board equitably decide what proportion of their court-imposed sentences that all parole-eligible inmates will serve prior to be granted a release? These questions are addressed in the remainder of this report.

III. Parole Eligibility Laws and Policies in Virginia

Before inmates can be granted discretionary release by the State's Parole Board, they must first establish eligibility according to the statutory requirements of the Code of Virginia. Under current law, inmates receive automatic credits towards their eligibility date in amounts which vary based on the number of commitments to a State prison facility. During the course of their imprisonment, inmates can earn additional credits according to a system of good conduct that is implemented by the Department of Corrections (DOC).

In effect, Virginia's parole eligibility laws define the State's criteria for the minimum punishment of convicted felons. However, because the credits for parole eligibility are tied to inmates' prior criminal records and to a lesser degree their institutional behavior, they tend to equalize the minimum time served requirements for crimes that are quite different. Data used in this analysis show that regardless of the crime committed, inmates typically establish eligibility for discretionary parole after serving only 20 percent of their sentence. This diverges from the Parole Board's general view of just punishment, which for many categories of crimes more directly links the length of imprisonment to the nature and circumstances of the crime.

As a result of these differences, inmates convicted of more serious crimes usually establish eligibility under State law before they have a realistic chance of being released on parole by the Board. One consequence of this is that Board members hear and decide the cases of these inmates numerous times before parole release is granted. This exacerbates the Board's problem with its increasing workload.

The State's good-time system, which is responsible for a portion of the credits that inmates earn towards parole eligibility was completely restructured in 1981 and again in 1990. This new system requires DOC to award good-time credits in amounts that vary based on inmates' behavior and their demonstrated desire for self improvement. The policies that DOC initially adopted to govern the implementation of this system fostered inconsistent and subjective evaluations of inmate progress. Although it is too soon to assess the impact of the latest policy changes made in this area, staff in the prisons and field units generally give the system high marks. Concern was expressed, however, that a lack of resources for treatment programs may undermine the rehabilitative goal of the good-time system.

The application of a good-time system for State felons housed in local jails appears to be problematic. Though many jails are conducting evaluations of the behavior and progress of State felons, there is little consistency in the methods used to perform the evaluations. Moreover, because of DOC's policy regarding the classification of felons in the jails, some of these inmates do not earn good time at the same rate as their counterparts in the State prison system. DOC attempted to address some of

these problems with the issuance of new operating procedures during 1990, but it appears that neither communication nor guidance from DOC regarding the implementation of these procedures has been sufficient.

ESTABLISHING PAROLE ELIGIBILITY

There are two primary factors that have a direct impact on the amount of time that felons are required to serve in prison or jail before they can be considered for discretionary parole. The first is the person's number of commitments to DOC. This is commonly referred to as the felony term indicator. Exhibit 1 outlines the State's parole eligibility criteria using this indicator. As shown, inmates with multiple commitments can be required to serve from 33 to 75 percent of their sentences before they can be considered for discretionary release by the Board. Regardless of their prior prison commitments, inmates who receive a sentence of life in prison must serve a "flat" prison term that can range from 15 to 30 years depending upon the class of felony for which they are sentenced.

The second factor that impacts parole eligibility dates is the behavior exhibited by the inmates after they are sentenced and incarcerated. Currently, for all persons sentenced after 1981, the Code of Virginia establishes credit rates that vary according to a good conduct allowance (GCA) level. Inmate GCA levels are determined by DOC based on an assessment of their behavior and progress towards rehabilitation.

Exhibit 1

Parole Eligibility Requirements According to Virginia's Felony Term Indicator

<u>Number of Prison Commitments to DOC</u>	<u>Amount of Time Served Required</u>
First	25 percent or maximum of 12 years
Second	33 percent or maximum of 13 years
Third	50 percent or maximum of 14 years
Fourth or more	75 percent or maximum of 15 years
One life sentence	15 to 25 years
Two life sentences	20 to 30 years

Notes: Persons sentenced to life in prison for the first time for a Class I felony must serve 25 years before establishing parole eligibility. Persons sentenced to two or more life sentences for a Class I felony must serve 30 years.

Source: *Code of Virginia*, Section 53.1-151.

The total credits, or "good time," earned by inmates under this system are applied to reduce the amount of their sentence they must serve before reaching a mandatory parole date. However, only one-half of these good-time credits can be applied to reduce the period of time inmates serve before establishing eligibility for discretionary parole. The actual rates for each GCA classification level are presented below:

- Inmates in GCA Class I receive 30 days of good time for every 30 days served.
- Inmates in GCA Class II receive 20 days of good time for every 30 days served.
- Inmates in GCA Class III receive 10 days of good time for every 30 days served.
- Inmates in GCA Class IV receive no good time.

The current parole eligibility laws have been attacked on several grounds. The criticism most frequently leveled against these laws is that they are too lenient. Some critics feel that the prison term reductions mandated by law and earned through the good-time system weaken the deterrent effects that might normally be associated with the specter of imprisonment.

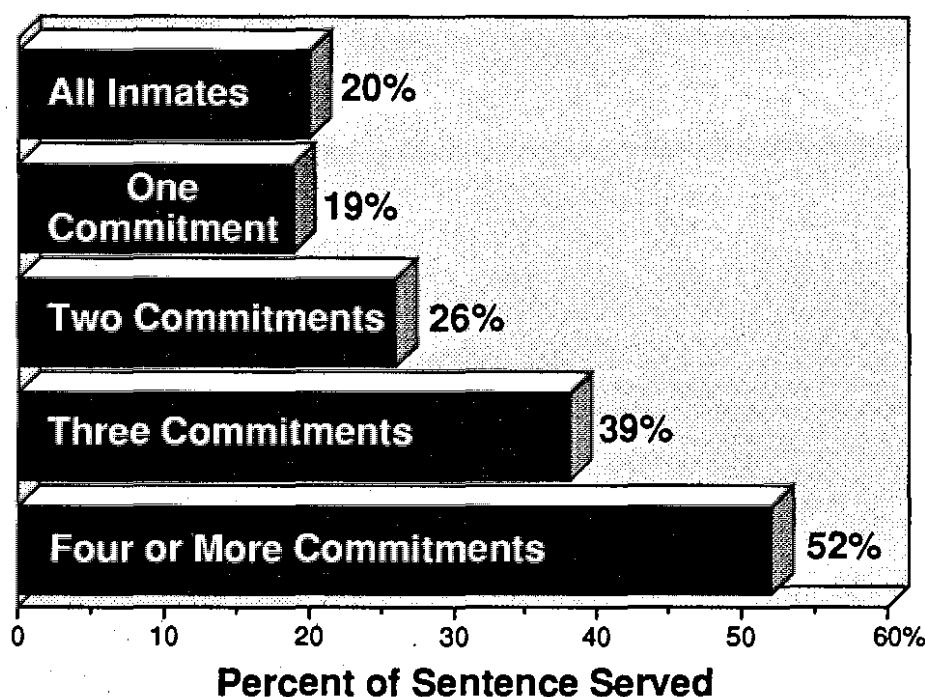
JLARC staff found in this analysis that inmates who commit more serious or violent crimes typically establish eligibility for parole much sooner than the Board is ready to release them. For these inmates, the Parole Board does not appear to equate parole eligibility with suitability for release. Instead, when making their determination regarding parole, members use other criteria, such as whether the amount of time served is sufficient based upon the nature and circumstances of the crime. This has the effect of increasing the Board's workload, as those inmates who establish eligibility before the Board is ready to release them are given annual reviews until they are granted parole. Because of this, some modification in parole eligibility laws is warranted.

The Impact of Virginia's Parole Eligibility Laws

To assess the extent to which Virginia's parole laws advance parole eligibility dates, JLARC staff first determined the number of days that inmates were incarcerated prior to their initial eligibility date. Then the number of days incarcerated was divided by each inmate's total sentence (in days) as a measure of the proportion of time served at eligibility. The results of this analysis (Figure 4) illustrate the magnitude of the credits that inmates receive towards their parole eligibility date. Regardless of the type of crime committed, inmates who were considered for parole in 1989 had typically served slightly less than 20 percent of their sentence when they first established eligibility for parole.

Figure 4

**Percent of Sentence Served
at Time of First Parole Eligibility According
to Number of Prison Commitments
(All Persons Considered for Parole in 1989)**



Source: JLARC staff analysis of data from the Department of Corrections.

Predictably, inmates with multiple prison commitments do serve a greater proportion of their sentences prior to eligibility. However, the data indicate that the time served for these inmates is proportionally less than specified by statute. For example, under State law persons with at least four prison commitments in Virginia may serve up to 75 percent of their sentence, but the actual time served for this group was 52 percent. Similarly, persons in prison for a third time typically served 38 percent of their sentences, not the 50 percent specified by the felony term indicator. The proportion of sentences served at eligibility for persons with two prison commitments was 26 percent rather than the 33 percent ceiling established for two-time recidivists.

These differences are primarily explained by the credits that accrue from the State good-time system. As noted earlier, after the felony term indicator is applied to advance parole eligibility dates, inmates earn additional good-time credits while they

are incarcerated. To determine the impact of the State's good-time policy, JLARC staff categorized the total amount of credits that inmates earned into two parts: the proportion due to the felony term indicator, and the proportion due to the good-time system (Figure 5). Typically, 93 percent of the credits inmates receive to advance their parole eligibility date are due to the felony term indicator.

When the number of prison commitments for the inmates is accounted for, the proportion of credits that inmates earn through the felony term indicator starts to decrease and the good-time system begins to have a larger impact. For example, nine percent of the credits earned by inmates with at least two commitments is due to the good-time system. For those with three separate periods of incarceration, the impact doubles to 19 percent. Finally, for persons with four prison commitments, almost 45 percent of their credits are generated through good time.

This is directly related to the longer time served requirements which are imposed on repeat offenders by the felony term indicator. By lengthening the mandatory minimum sentence requirement for each period of imprisonment, recidivists are forced to stay in prison longer and more time is allowed for good-time credits to accumulate.

The following hypothetical example illustrates how the felony term indicator and good-time credits are applied by DOC's Court and Legal Services staff. It is important to note that this case is straightforward and not typical of the cases for most inmates in Virginia's prisons and jails. Among other factors, it does not reflect the impact of judicial good time, jail credits, or jail good time that inmates can earn before being transferred to a State prison.

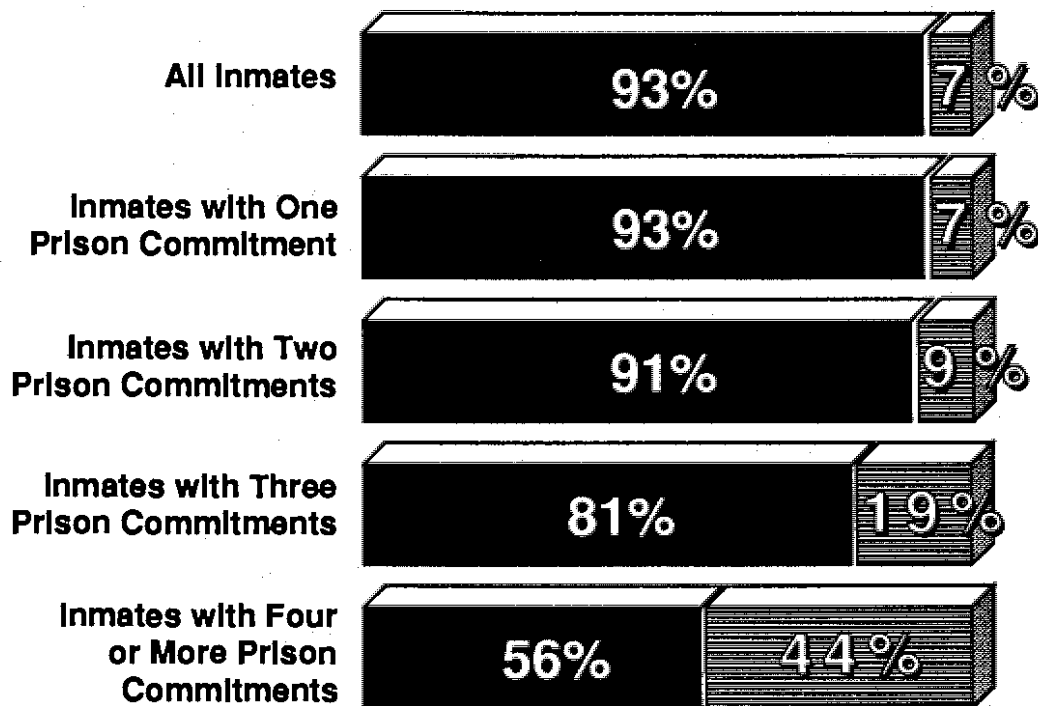
In January 1991, an inmate is sentenced to 20 years in prison for the crime of conspiracy to commit murder. This was his first offense so he must serve 25 percent of his sentence before being granted a parole review. Initially, this means that the inmate's discretionary parole eligibility date is in January 1996. After being classified and evaluated by DOC staff the inmate is placed in the highest GCA level — 30 days of good time for every 30 days served. For purposes of determining his discretionary parole date, this means that for every 30 days he serves, the inmate actually satisfies 45 days of his sentence for parole eligibility purposes (30 days + 1/2 of good-time earnings = 45 days). To determine his new parole eligibility date based on this GCA earnings level, DOC staff divide the number of days to the inmate's initial parole eligibility date by the number of days he will satisfy each month at this level of GCA earnings. This establishes a new but tentative parole eligibility date of April 1994 which amounts to approximately 16 percent of his court-imposed 20-year sentence.

The parole eligibility date cited in the above example would be tentative based on the inmate's GCA earnings level at the time of his most recent evaluation. If the inmate were to lose this high GCA ranking at any point during his incarceration,

Figure 5

Percent of Total Sentence Credits Earned Towards Parole Eligibility Due to the State's Felony Term Indicator and the Good-Time System

KEY:  Credits attributable to the Felony Term Indicator  Credits attributable to the Good-Time System



Note: Figures calculated for all persons considered for parole in 1989, based on their first date of parole eligibility.

Source: JLARC staff analysis of data from the Department of Corrections.

DOC's Court and Legal Services Unit would have to calculate a new parole eligibility date.

JLARC staff did not formally evaluate the work of DOC Court and Legal Services Section for this study. However, information obtained from the unit indicate staff must perform more than 52,000 annual recalculations of inmate time because of changing GCA levels and other factors.

Parole Eligibility and the Concept of "Just Deserts"

Virginia's current set of parole eligibility laws represent the General Assembly's view of the minimum punishment felons should receive before they are returned to society. As noted, distinctions among inmates for purposes of establishing minimum sentences are based primarily on prior criminal record and to a lesser degree their institutional behavior.

Developed incrementally over a period of more than 40 years, these eligibility laws are not congruent with the current perspective of most of the Parole Board members, especially concerning more serious crimes. The Parole Board has come to establish a more direct link between the minimum amount of time to be served by parole candidates and the nature and circumstances of the crime. This perspective, often referred to in criminal justice literature as a "just deserts" framework, is based on the theory that persons convicted of the same type crimes should receive similar punishment. This implies that inmates who commit the more serious crimes should be required to serve a larger proportion of their sentences before establishing parole eligibility. One Board member stated that the Board has the responsibility of determining what is an adequate amount of punishment in part because Virginia's parole eligibility laws are too lenient.

The result of these conflicting views regarding the issue of minimum punishment is illustrated in Figure 6. These data show that Virginia's parole laws allow inmates convicted of the more serious crimes to establish eligibility for parole much sooner than they are actually released by the Board. For example, persons convicted of murder were generally eligible for parole after serving 19 percent of their sentence. However, they were not released by the Board until they had served slightly more than 30 percent of their court-imposed sentence. Similar differences are observed for inmates convicted of kidnapping, sexual assault, robbery, and non-violent sexual offenses. For non-violent crimes, the data show that there is virtually no difference between the proportion of sentence served at the time of parole eligibility and at release.

Not all of the differences between time served at eligibility and time served at release are due to the use of varying criteria by the Board to set minimum punishment levels. In some cases, Board members point out that inmates establish eligibility before they have demonstrated a willingness to change the behaviors that may have put them in prison. Still, apart from the question of risk, the Board has indicated that it does consider whether the inmate has served a sufficient portion of his sentence at the time of eligibility. The following comments made by one Board member concerning the difficulty of making cross-state parole rate comparisons, illustrate the relationship between time served and probability of release in Virginia:

Virginia's multi-tiered parole eligibility scale requires that a minimum of one-fourth to a maximum of three-fourths of a sentence be served before an offender is even considered for parole. In contrast, other states require that one-half of any sentence be served before an

Figure 6

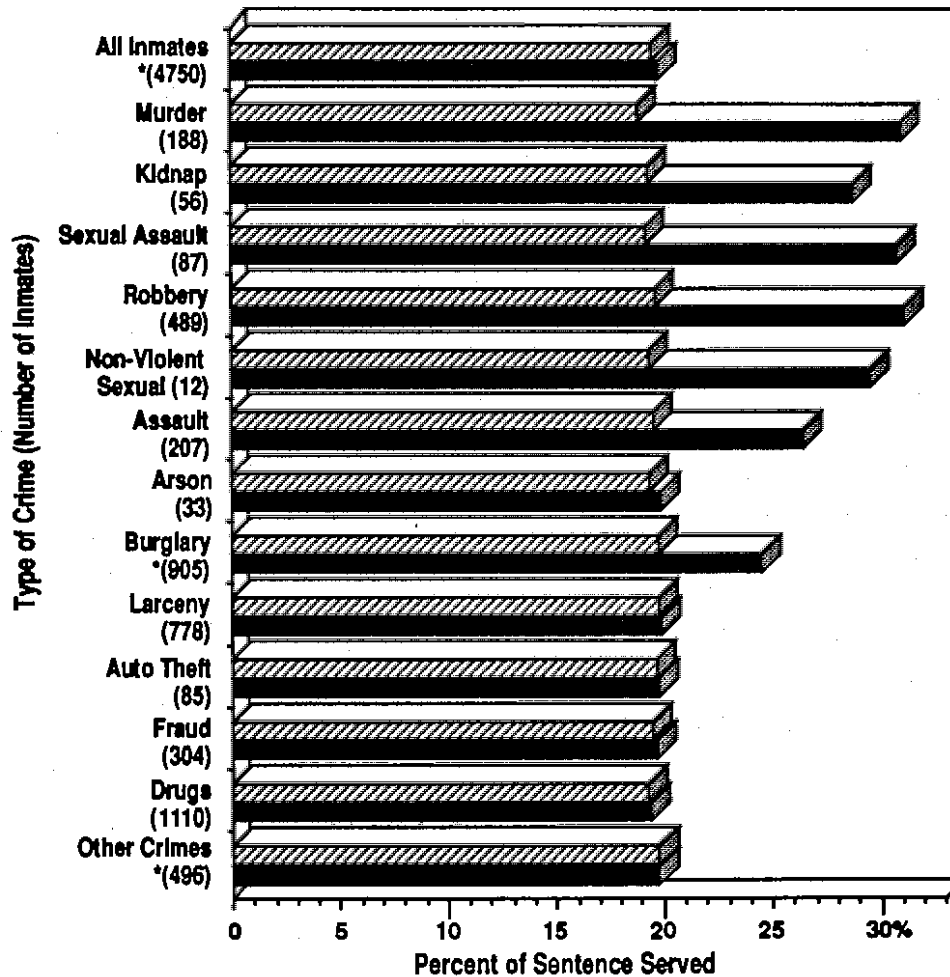
Median Percent of Sentence Served at Parole Eligibility and at Parole Release by Type of Crime

(All Persons Considered for Parole in 1989 Who Were Released)

Percent of sentence served
as of first parole eligibility



Percent of sentence served when
released on discretionary parole



* Due to missing data, there is a small difference (less than 5) between the number of inmates eligible for parole and the number of inmates released for these categories.

Note: The percentages shown in this graph are medians, which do not depict the skewness of the distributions. Therefore, a median value for "all inmates" is not the same as the average of the medians from the individual crime categories.

Source: JLARC staff analysis of data provided by the Department of Corrections.

offender is considered eligible for parole...Consequently, when they [inmates in these other states] are reviewed, their chances for grant would be much higher than a person who has only served one-fourth of his/her sentence, as in the case of Virginia.

This apparent difference between the Parole Board and the statutes related to the question of minimum punishment has important implications for the efficiency of the parole review process. Because the Board annually reconsiders the cases of all inmates who have been denied parole in prior years, more than 70 percent of the cases it now reviews are for inmates that have been previously considered. Inmates considered for parole in 1989 were typically being reviewed for the second time (Table 7). Persons convicted of murder were being reviewed for a fourth time. Current law does allow the Board to set aside certain cases for a minimum of three years but this option has not been used.

The impact of reconsiderations on the Parole Board's workload should not be understated. As illustrated in Figure 7, in no year since 1986 has the number of first time interviews as a proportion of the Board's total workload exceeded 55 percent. Thus, much of the Board's increased workload is due to its practice of reviewing cases on an annual basis. Given that the chance of being granted parole decreases as the number of previous parole reviews experienced by the inmate increases, this system of

Table 7

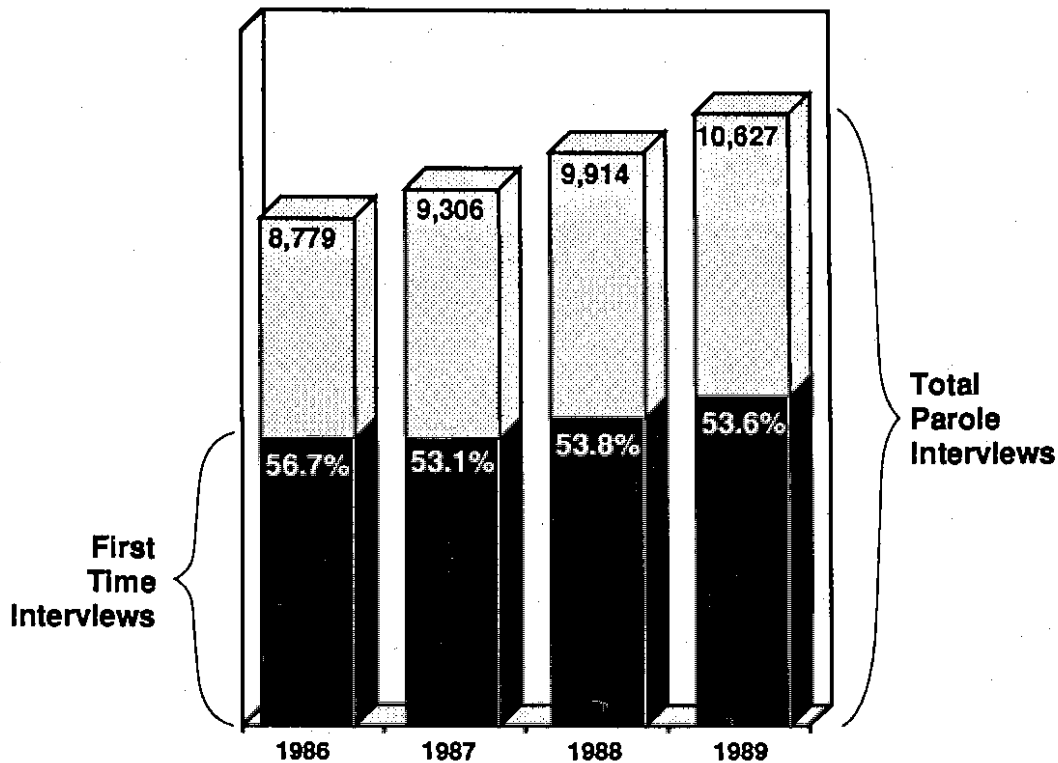
**Median Number of Parole Reviews
by Crime Type as of 1989**

<u>Type Crime</u>	<u>Number of Parole Reviews</u>
All Inmates	2.0
Murder	4.0
Kidnapping	3.0
Sexual Assault	3.0
Sexual Non-Violent	3.0
Robbery	3.0
Assault	2.0
Arson	2.0
Burglary	2.0
Larceny	2.0
Auto Theft	2.0
Fraud	1.0
Drugs	1.0

Source: JLARC staff analysis of Parole Board data.

Figure 7

Comparison of the Total Number of Parole Interviews and First Time Interviews 1986-1989



Source: Virginia Parole Board.

repeatedly reviewing the same cases is particularly inefficient. This underscores the need to incorporate the Board's view of just punishment into the criteria for parole eligibility.

Time Served Standard Should Replace Parole Eligibility Laws

The Board's view of just punishment could be used as the basis for parole eligibility by replacing the current laws with a time served standard. With this standard, all inmates who are eligible for parole would be required to serve a proportion of their prison term based on the percentage of the court-imposed sentence that inmates have typically served for committing the same crime.

By establishing a link between eligibility laws and previous Parole Board decisionmaking, the number of inmates granted parole on their first interview should increase because they would have satisfied the Board's "just deserts" criterion for their crime at the time of their first hearing. This, in turn, should decrease the number of cases that the Board has to rehear on an annual basis.

Development of Time Served Standard. The development of a time served standard would be a coordinated effort between the Parole Board and the Department of Criminal Justice Services (DCJS). These two agencies would be responsible for identifying the proportion of the court-imposed sentence that has typically been served for each crime type, prior to the inmate's release on discretionary parole.

This proportion would be based on actual decisionmaking practices of the Parole Board over a three-year period. This amount of time should provide a sufficient baseline for determining the Board's view of just punishment. The calculation should not include the time served for inmates who were mandatorily released because the Board found them unsuitable for discretionary parole. This is necessary to ensure that the standard is not biased by the prison terms of inmates who were judged unsuitable for discretionary release.

Appropriate statistical techniques should be employed to ensure that the time served standard used for each crime type is not skewed by cases in which inmates served disproportionately long or short sentences. In addition, the standard should be reviewed at five-year intervals by the Parole Board and DCJS to ensure that it accurately reflects current parole and sentencing policies.

Advantages of Using a Proportion as the Standard. By using a proportion to determine the minimum amount of time served prior to parole eligibility, the circumstances of the crime would be automatically factored into the parole eligibility date. This is important because it is not uncommon for inmates who are incarcerated for the same offense to receive very different sentences. This is due to the fact that judges, when establishing sentence length, consider such factors as the number of prior felonies committed and whether there were aggravating or mitigating circumstances. Therefore, because the time served standard would be a proportion of the inmate's sentence, it would impose different periods of incarceration according to the nature and circumstances of the crime.

For example, two inmates convicted of burglary may receive very different sentences due to their prior criminal history or actions taken at the time the crime was committed. The first inmate may be given a sentence of five years because it was his first felony and there were mitigating circumstances surrounding the offense. The second inmate, convicted of the same offense, may receive 10 years because of an extensive criminal history or aggravating circumstances surrounding his offense. Using the time served standard, the amount of time that these inmates would be required to serve before establishing parole eligibility would be directly proportional to the length of their sentences. Therefore, while the time served standard would be the same for both inmates, the second inmate would serve considerably more time than the

first. This speaks directly to the notion of fairness and equity in the justice system which holds that punishment should be commensurate with the seriousness and circumstances of the offense.

If an inmate has been convicted of two or more offenses and given concurrent sentences, the standard would be applied to the longer sentence. If the sentences are to be served consecutively — one after the other — the inmate would have to separately meet the time served requirements for each sentence.

As with the current system, the fairness of the proposed eligibility standard is directly linked to the sentencing practices of judges. Any unjustifiable disparities in sentencing could result in eligibility requirements that are disproportionate to an inmate's crime. Inconsistencies in sentencing practices have been a particular problem in the state of Virginia. However, based on results from a pilot test conducted by DCJS, sentencing guidelines introduced in January 1991 should alleviate these types of disparities.

Automation of Time Served Standard. Calculation of parole eligibility using the time served standard could be automated as is the current method of calculating parole eligibility. Accordingly, if the time served standard were adopted, the Parole Board would need to work with DOC's Court and Legal Services Unit to automate the standards. Once an inmate was sentenced, Court and Legal Services would determine the amount of time to be served before parole eligibility was established.

After the eligibility date had been calculated, the Parole Board could retrieve this information from DOC's automated file. This would allow the Board immediate access to the eligibility dates while allowing Court and Legal Services to retain access to the data to make any adjustments to the dates.

Difference from Parole Board's Proposed System. The Parole Board is proposing the use of a time served standard beginning in 1992 as a part of a structured parole guidelines system that the agency is currently testing. Under this system, the time served standard would be a secondary check which could not be applied until the inmate established eligibility according to the felony term indicator and the amount of good time accrued. Thus, many inmates would still establish parole eligibility and be reviewed by the Parole Board before they had a realistic chance for release according to the Board's time served standard.

Recommendation (1). The General Assembly may wish to amend section 53.1-151 of the *Code of Virginia* to eliminate the use of the felony term indicator to determine discretionary parole eligibility for inmates. In addition, the General Assembly may wish to amend section 53.1-198 of the *Code of Virginia* to eliminate the application of good-conduct allowance credits to discretionary parole eligibility for inmates. The combination of the felony term indicator and good conduct allowances should be replaced with a system that calculates discretionary parole eligibility for each inmate based on the proportion of the court-imposed sentence that has been typically

served by inmates according to the type of crime committed. Good-conduct allowance credits would continue to be used to reduce the time served for mandatory parole release.

Recommendation (2). If the General Assembly chooses to adopt a time-served standard for purposes of establishing parole eligibility, the Parole Board and the Department of Criminal Justice Services should work together to develop the standard. This standard should be reviewed by the agencies at five-year intervals to ensure that the norms in both sentencing and parole decisionmaking practices are reflected.

Recommendation (3). If the General Assembly chooses to adopt the time-served standard, the Parole Board should work with the Department of Corrections to automate the calculation of the standard.

ADMINISTRATION OF VIRGINIA'S GOOD-TIME SYSTEM

As noted in previous sections of this report, good time is a correctional policy that allows inmates to reduce the proportion of their sentence that must be served before establishing eligibility for both mandatory and discretionary parole. Depending on the number of times an inmate has been incarcerated, the good-time system will typically account for between seven and 44 percent of the credits earned towards the discretionary parole eligibility date. Under State laws governing the application of good time to mandatory release, inmates can earn good conduct allowances in amounts which reduce their time in prison by up to one-half of their court-imposed sentence.

In 1981, the State's good-time system was completely restructured by the General Assembly. This modification was made in response to shifting philosophies about the role and purpose of Virginia's penal system. Empirical evidence that established links between recidivism and such factors as low education levels, substance abuse, and inadequate job skills caused the General Assembly to consider rewarding inmates who worked to eliminate these problems during their incarceration. The changes that were made to the State's good-time laws in 1981 imposed requirements on the Department of Corrections (DOC) to develop administrative structures to accommodate the demands of the revised system.

There is concern among DOC staff in the prisons and field units that the lack of treatment programs undermines the effectiveness of the GCA system. While in the jails, the methods and procedures used to evaluate inmate behavior and allocate State good time vary considerably. Moreover, because of DOC policy regarding inmate transfers, State felons with sentences of greater than eight years who are housed in jails cannot earn more than one-half to two-thirds of the amount of good time that inmates in State prisons earn. Even if good-time credits are not applied to discretionary parole eligibility as recommended in this report, it is essential that the system be administered fairly and consistently because the credits would continue to apply to the mandatory parole release dates.

How Virginia's Good-Time System Has Changed

Prior to 1981, Virginia's good-time system was designed strictly to control inmate behavior. According to Section 53.1-196, all inmates sentenced after 1942 could earn a maximum of 10 days of good time for every 20 days served. Under a different set of statutes, inmates convicted prior to this period who did not have a record of previous felonies, pardon violations, or prison escape attempts could earn 30 days of good time for every 30 days served. The good-time earnings rate for inmates who did not meet this criterion was slightly less.

Data from the interviews JLARC staff conducted with DOC personnel indicate that there were significant problems with the effectiveness of this system. According to one DOC staff member, the system's sole objective was to minimize the number of infractions committed by the inmates. This, according to another staff member, eliminated the incentive for inmates to participate in programs designed to assist them with rehabilitation. As a result, inmates accumulated most all of their good-time credits by "lying in their beds and remaining infractions free."

Responding to these problems, the General Assembly redefined the role of good time in 1981 by passing Section 53.1-201 of the *Code of Virginia*. As noted earlier, this law establishes credit rates that vary according to the inmate's good conduct allowance (GCA) level. More importantly, the law expands its definition of good conduct by requiring DOC to determine inmates' GCA levels based on an objective, comprehensive assessment of their behavior and progress towards rehabilitation. Specifically, the law states that an inmate's GCA level should be based on "compliance with written prison rules or regulations; a demonstration of responsibility in the performance of assignments; and a demonstration of a desire for self improvement."

Implementation of the New GCA System

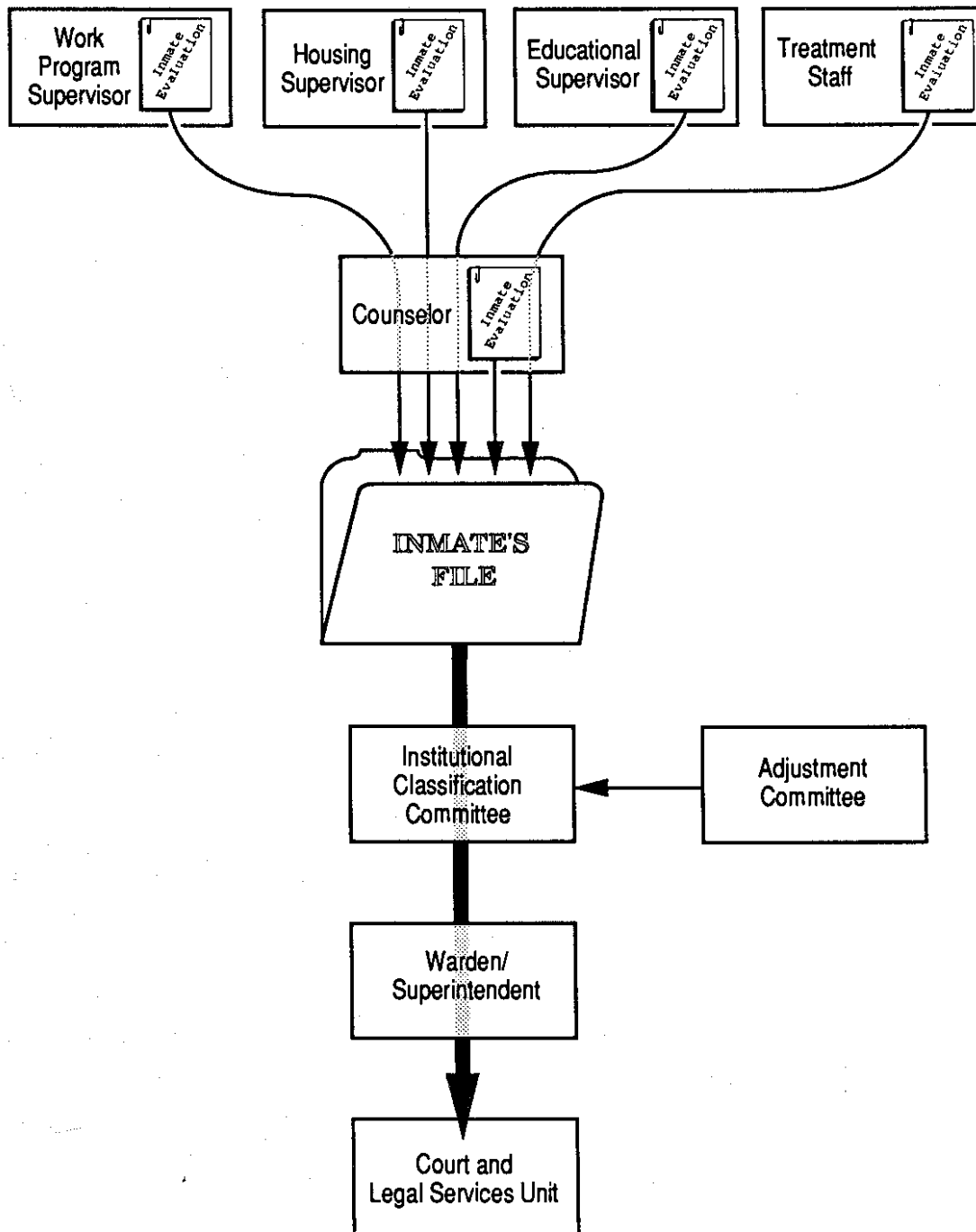
To implement the restructured good-time system, DOC developed new operational policies designed to "establish a system where rewards are earned as opposed to being granted in the absence of negative behavior." These policies require various counselors, inmate classification staff, a disciplinary committee and the wardens to become involved in the assessment of the progress inmates made towards rehabilitation.

Under the new GCA system, DOC's good-time policies for each correctional facility are implemented through the coordinated efforts of several personnel. These include an Institutional Classification Committee (usually consisting of an assistant warden or a member of the treatment staff, a non-security member of the staff, and a security officer); the treatment staff, consisting of program supervisors (usually in major institutions only) and counselors; the Adjustment Committee; and the warden or superintendent.

Figure 8 depicts the process through which inmates are evaluated for the purpose of determining their GCA level. The counselors are responsible for coordi-

Figure 8

The Good-Time Allowance System for State Felons



Source: JLARC staff graphic based on correctional facility site visits.

nating the comprehensive evaluations of inmates and communicating the results to the Institutional Classification Committee (ICC). In addition, counselors are encouraged to make recommendations to the ICC concerning changes to inmate GCA levels.

THE GOOD-TIME CREDIT ALLOWANCE SYSTEM FOR STATE FELONS

The ICC reviews the reports from the counselors or treatment staff and, at least once a year, recommends that inmate GCA levels be increased, decreased, or left the same. Wardens and superintendents are responsible for approving the ICC recommendations to change inmates' GCA levels. Once approved, the recommendation is sent to DOC's Court and Legal Services Unit where GCA earnings are calculated.

The influence of the Adjustment Committee on GCA levels is less direct. This committee is responsible for determining the outcome of institutional charges against inmates but generally does not specifically recommend changes to their good-time earnings level. The ICC can lower inmates' GCA scores if the Adjustment Committee finds them guilty of any charges filed against them. In addition, the Adjustment Committee may recommend that inmates' lose some or all of their accumulated good-time credits as punishment for institutional infractions.

Initial Implementation Problems

Initially, the GCA system was designed by DOC to assign good-time credits to inmates based on an evaluation of their behavior and performance in the following three areas: personal conduct, work or program performance, and motivation for self-improvement. Relying on input from the DOC staff that interacted with the inmates, counselors would rate each inmate's performance in these three areas using general guidance provided in DOC policy. This guidance, however, did not provide specific criteria with which to rate inmates. According to one ICC chairman, the counselors' assessments were based largely on perceptions that were often varied and poorly documented. As a result, according to this person, "any relationship between an inmate's GCA level and actual performance was purely accidental."

Staff in the prisons and field units indicated that there was a particular lack of consistency in both the purpose of evaluations and the frequency with which they were conducted. In one prison, a respondent noted that the objective was to get all inmates in the highest GCA class and leave them there, after which future evaluations would be conducted purely on a random basis. One prison warden stated that even with the changes in DOC policy, staff would award good time "almost automatically" based on very subjective assessments.

In May of 1990, DOC attempted to address these problems by establishing a structured evaluation instrument that incorporated a scoring system. Using a 100-point scale, the inmate's performance is rated in five areas: personal conduct (10

points), infractions (20 points), educational programs (30 points), treatment programs (20 points), and work or vocational programs (20 points). Evaluation forms for each inmate are completed by the counselor, housing supervisor, work supervisor, or educational instructor depending on the area of performance being evaluated. The counselor is responsible for coordinating these evaluations and compiling the scores to determine the inmate's overall ranking.

Staff Assessment of Revised GCA Policy

DOC's most recent policy changes for the GCA system have not been in place long enough to support a detailed assessment of their effectiveness. However, DOC staff in the prisons and field units generally give the Department's new policies high marks. The scoring instrument, which is designed to ensure that appropriate weight is given to each element of the evaluation, is considered the major improvement to the system. The problems that remain, according to DOC staff, are due to a lack of training for personnel responsible for conducting the actual ratings and a paucity of treatment programs for inmates.

Lack of Training. When asked to identify the major problems with the revised GCA system, the most frequently mentioned response was lack of training by DOC central staff. One member of the ICC at a large prison stated that no one at the facility has been trained to implement the new system. Without training, it is believed that interpretations about what type of behavior warrants a particular score may be very different across raters. DOC staff must make judgments regarding whether an inmate's behavior is "consistently, normally, or occasionally" above or below expected performance for some areas because there are no standards to guide the assessments. As noted by one DOC staff member, the scores which inmates receive in these areas are likely to be a reflection of "the individual rater's personality."

DOC central office personnel admit that there is an element of subjectivity in the ratings, but they believe the scoring system is a vast improvement over the previous system. They also stated that treatment staff from all prison and field units were given overall training on implementing the new scoring system when it was first adopted. In addition, all new treatment staff are required to undergo extensive training shortly after they are hired. A portion of this training addresses the GCA evaluation system.

DOC staff conceded that all prison officials who may have some input on an inmate's rating have not been formally trained, but stated that in order to do so, virtually all institutional staff would have to be trained. To date, DOC has relied on the treatment staff to instruct other raters on how to conduct the ratings. The Department also established a hotline shortly after the new policy was implemented so that prison and field unit staff could receive answers to any questions they might have.

Lack of Treatment Programs. Virtually all of the counselors interviewed in the prisons and field units complained about a lack of resources for treatment pro-

grams. One counselor noted that DOC requires alcohol, drug, and sex offender treatment programs, but does not provide the resources necessary to make such programs available. According to one counselor, one-third of the population at her facility needs substance abuse services. This far exceeds what the facility can provide. Another counselor noted that in field units, the basic objective is to ensure that inmates are on the road gangs and working. This limits the time the counselors can expect the inmates to devote to participation in counseling sessions.

Other counselors stated that they are often unable to implement treatment programs because of the demands of their caseload or the lack of therapeutic counseling experience. The majority of those interviewed stated that DOC emphasizes case management skills when hiring counselors. However, most of the inmates who would benefit from counseling need the intense structured therapeutic sessions which DOC counselors are not equipped to provide. Some of the counselors interviewed by JLARC staff indicated that they must rely on volunteers from the community to staff critical treatment programs for sex and drug offenders. "This makes it difficult to provide programs," said one counselor.

In some other prisons, space limitations impinge on the administration's ability to offer treatment programs to a large number of inmates. As a result, the waiting lists for the programs get longer.

Officials in DOC's central office told JLARC staff that the number of programs offered is dependent primarily on the number of treatment staff and amount of space available for programs. In a 1986 report on non-security staffing, JLARC recommended that DOC establish caseloads in the range of 45-55 inmates per counselor. Based upon that recommendation, the Department's goal has been to have one counselor for every 50 inmates. However, the rapid growth in the size of the State's prison population has outpaced increases in treatment positions. This, it was suggested, has resulted in higher than desirable inmate-to-counselor ratios for many facilities.

JLARC staff's analysis of data provided by DOC shows that in 68 percent of the State's correctional facilities the ratio of counselors to inmates did fall below the Department's goal. In three facilities — two field units and one major institution — ratios of at least one counselor for every 100 inmates were observed. These findings suggest that the lack of resources for hiring therapeutic counselors, excessive caseloads, and the priority counselors must give to administrative functions adversely impact the quality of DOC treatment programs.

Recommendation (4). The State Parole Board should work with the Department of Corrections and the Department of Criminal Justice Services to determine the extent to which any lack of treatment programs in State correctional facilities has an adverse effect on the release of parole eligible inmates. To address any deficiencies which may be identified, the Parole Board and the Department of Corrections should identify the types of programs needed and the resources required to provide them.

Impact of Custody Level on GCA Level

After reviewing the problem of prison overcrowding, the Commission on Prison and Jail Overcrowding (COPJO) expressed concern about the relationship between an inmate's GCA class and his custody classification. The custody classification system is designed to reflect the risk inmates pose to other inmates and to the institutions where they are incarcerated. Inmates are assigned to one of three custody levels when they are incarcerated: "A" custody applies to minimum security requirements, "B" to medium security, and "C" to maximum security. Inmates in the most restrictive "C" custody are placed in high security areas to minimize the possibility of escape and to prevent violent or assaultive behavior.

COPJO expressed concern that inmates in "C" custody were at a disadvantage in terms of earning maximum good-time credits because they did not have access to the same programs that inmates in lower custody levels had. This, it was argued, exacerbated problems of overcrowding by slowing the rate at which those inmates who were interested in rehabilitation could establish parole eligibility and possibly leave the system.

JLARC staff examined this issue by interviewing DOC personnel and analyzing data on inmate custody and GCA classification. DOC staff at both the central office and in the prisons indicated that custody level does not restrict access to programs and, therefore, does not prevent inmates in "C" custody level from being placed in the highest of GCA classes. With the exception of work programs that take place outside the facility, DOC officials contend that programs are available to inmates in all custody levels. While "C" custody inmates cannot participate in work programs outside the facility, they are allowed to take advantage of work opportunities inside the prison. Moreover, if a program is full or not offered at a particular facility, GCA policy allows for overrides of the scoring system so the inmate's score is not adversely affected.

JLARC staff's analysis of data on custody levels and GCA class appears to support this position. As shown in Table 8, almost 60 percent of all "C" custody inmates considered for parole in 1989 were in GCA Classes I or II. This suggests that the majority of parole eligible "C" custody inmates have access to and actually earn good time at the highest of GCA levels.

It is important to note, however, that many of the factors that determine an inmate's custody level also reflect behaviors that determine GCA class. Therefore, it is not unexpected to find a disproportionate number of "C" custody inmates in the lower GCA classes. Many of the factors that are used to justify placement in "C" custody, such as assaultive behavior, escapes or attempted escapes, and other disciplinary infractions, also negatively influence the inmate's GCA score. Nonetheless, once placed in "C" custody, it appears that these inmates have the same opportunities to advance their GCA level as inmates in other custody levels.

Table 8

**Percent of Inmates in GCA Class
by Custody Level**

<u>GCA Class</u>	<u>Custody Level</u>		
	<u>A</u>	<u>B</u>	<u>C</u>
I	79	43	16
II	18	48	43
II	2	7	17
IV	<u>1</u>	<u>2</u>	<u>24</u>
Totals	100	100	100

Source: JLARC staff analysis of automated data on inmates considered for parole in 1989, provided by the Department of Corrections and the Virginia Parole Board, 1990.

ADMINISTRATION OF GOOD TIME IN LOCAL JAILS

Due to prison overcrowding, State felons in Virginia are often forced to serve some portion of their sentences in local jails. Further, because of the credits available to State felons, many of these inmates can be released from jail without ever serving time in a State prison. DOC has indicated that State inmates with sentences of less than eight years who are housed in jails are likely to be paroled without being transferred to a State prison. On the other hand, inmates in the jails with sentences of more than eight years remain in the jail temporarily until bedspace is available in a State institution. If the needed bedspace cannot be immediately identified, these inmates can also earn substantial amounts of good time before they are actually transferred.

For these reasons, when State felons are housed in a jail because of prison overcrowding, DOC and the jail staff must work together to coordinate a system of good time. Current practices have led to questions about whether these inmates have the same opportunities to advance their parole eligibility date as inmates in State correctional facilities. In particular, there have been problems with getting these inmates into the GCA system in a timely manner so that they can begin accruing good time at the same rate as their counterparts in State prisons. In addition, once the inmates are placed in the GCA system, there is some question as to whether evaluations are conducted consistently throughout the jails to determine whether changes in good-time status are warranted.

Establishing Initial Good-time Rates for Felons in Jails

Until inmates are formally brought into DOC's GCA system, they earn jail good time at a rate of 15 days for every 30 days served. Because this is only half of what could be earned at the highest GCA level, for equity considerations, it is important that the inmate be brought into the GCA system in a timely manner.

Prior to December 1990, inmates in local jails were not brought into the GCA system until they were officially classified by DOC. At classification, the inmate was interviewed, fingerprinted, and photographed, and an initial parole plan was established. Also at this time, the inmate was assigned to GCA class level II—20 days of good time for every 30 days served. While DOC policy requires that inmates be classified within 90 days of sentencing, both DOC and jail staff indicated that it was not unusual for it to take up to five months to classify an inmate.

Recognizing that the delay in classification was preventing many State inmates in local jails from accruing a significant amount of good time, DOC revised its policy in December 1990. Local jail inmates can now be placed in the GCA system once they receive their State inmate number. This occurs as soon as DOC receives sentencing information from the courts. DOC staff indicated that the courts take from a few days to a few weeks after sentencing to send this information, but this is still far in advance of when the inmate would normally be classified.

While this new policy alleviates the problem with delays in GCA assignments for inmates with sentences of less than eight years, many inmates with sentences of more than eight years can still experience significant delays in GCA placement. In July 1989, there were 6,435 state felons housed in local jails. Of the 5,591 inmates for whom sentencing data were available, 16 percent had sentences of eight years or more.

Present DOC policy precludes classifying these inmates as long as they remain in the jail. Because they will eventually be transferred to State facilities, DOC waits until this time so that a more comprehensive classification procedure can be conducted. According to local jail officials, some inmates in this category remain in the jail for as long as two years before they are transferred. In cases for which sentencing information was available, reports from DOC show that the average amount of time served for inmates with sentences of at least eight years as of July 1989, was five months. Further, in two jails the average amount of time served by this group was almost two years.

This creates obvious inequities in the allocation of good time because of the lower credit rates for inmates who have not been moved into the State's GCA system. DOC officials maintain that these discrepancies are offset by the ability of the sheriff to award extraordinary good time to inmates that have not been classified. At their discretion, sheriffs are authorized by statute to award extraordinary good time at a maximum rate of five days for every 30 days served in which the prisoner has not violated the rules of the jail. However, even with the addition of five days of extraordi-

nary good time, inmates that have not been classified cannot earn more than the equivalent of GCA level II.

Moreover, the rate at which sheriffs choose to award extraordinary good time to the State felons in their jails varies substantially. Of the 21 randomly selected jails contacted by JLARC staff, only seven indicated that they regularly award good time to State felons. Another seven indicated that they never award extraordinary good time to State felons and the remaining seven indicated that it is occasionally awarded or awarded only under special circumstances.

Recommendation (5). The Department of Corrections should ensure that all State custody inmates housed in local jails and awaiting transfer to State correctional facilities receive a GCA class assignment within 90 days of their incarceration.

Evaluating GCA Status in Local Jails

Once inmates with sentences of less than eight years have been classified and assigned to GCA level II, they remain in that class until the jail administrator or sheriff initiates a change. Prior to May 1990, DOC had no formal policy on how or when jail staff were to determine whether an inmate's GCA level should be changed. As a result, both the structure of the GCA evaluation system and the frequency with which the evaluations were conducted varied a great deal. Moreover, many jail officials interviewed by JLARC staff were unaware that they could change an inmate's GCA level. Inmates in those jails did not advance beyond GCA level II.

Structure of Evaluations. Without any formal criteria for assessing inmate behavior, the structure of the evaluations conducted by the jails varied. Four of the 13 jails that evaluated inmate performance indicated that evaluations were based strictly on the absence of negative behavior. This means that if an inmate did not violate the rules of the jail, he would not have his good time reduced. However exemplary conduct or performance was not rewarded.

Another jail official indicated that evaluations were based on the inmate's work performance. Staff at the remaining seven jails indicated that they looked at a combination of factors including the inmate's personal conduct and program participation.

Frequency of Evaluations. The frequency with which evaluations are conducted also varied greatly among the jails contacted by JLARC staff. Of the 21 jails surveyed, only seven had been conducting regular evaluations of inmate behavior. Among these seven, the frequency of evaluations ranged from every 30 days to once a year. Other jails indicated that evaluations were triggered by specific incidents or at the request of the inmate. Eight jails indicated that they did not conduct any evaluations.

To address the lack of consistency in evaluations, DOC implemented a policy in May of 1990 that provided jail staff with a checklist to use when requesting changes to an inmate's GCA level. The checklist focuses on the same five areas of behavior that inmates in State facilities are rated on. While the policy is specific about the number of infractions that can be tolerated for each GCA level, there is still a great deal of room for interpretation about how to rate inmates in other areas. Raters are instructed only to rate the inmate as exhibiting exemplary, average, marginal, or poor behavior. Beyond this, no description is provided about what type of behavior must be exhibited to warrant a particular rating.

The new policy also does not ensure that evaluations are conducted at regular intervals. It states that while evaluations are normally conducted annually, interim reviews may be conducted if deemed appropriate by the local jail staff. DOC personnel responsible for establishing the policy indicated that they cannot impose requirements for more frequent evaluations on jails because DOC does not have direct authority over sheriffs. Accordingly, the policy is designed to serve strictly as guidance.

Despite this view, the Department could be given some leverage to ensure that the GCA evaluations are conducted in a consistent fashion for State felons in the jail. The Department is authorized to pay local jail facilities a per diem rate of as much as \$14.00 for each State felon awaiting transfer to a State correctional facility. DOC could be given the authority to withhold this per diem if local sheriffs failed to comply with a departmental request to annually evaluate inmate behavior for GCA purposes.

Recommendation (6). The Department of Corrections should require that all State felons housed in local jail facilities be evaluated annually for GCA purposes. In addition, the Department should ensure that local jail personnel conducting these evaluations attain a working knowledge of DOC policies regarding GCA evaluations.

CONCLUSIONS

Virginia's parole eligibility laws are designed to provide inmates with credits towards their parole eligibility date which vary based on their prior criminal record and institutional behavior. This departs from the criteria imposed by the Parole Board which links the minimum amount of time that inmates are to serve in prison to the nature and circumstances of their crime. As a result, many inmates are able to establish parole eligibility under the law before the Board is ready to grant them parole. Because persons who are denied parole are reconsidered annually, the Board repeatedly reviews some cases before the inmates are finally released.

The good-time system, which was revised in 1981, now provides inmates with an opportunity to advance their parole eligibility dates by both conforming to the rules of the institution and participating in programs designed to assist them with rehabili-

tation. However, the policies DOC initially put in place to administer this system fostered inconsistent and subjective staff evaluations of inmate progress. These policies have since been revised, and they appear to address most of the problems that plagued initial implementation of the new system in State prisons and field units. Concern remains among DOC staff in the prisons and field units that the lack of treatment programs undermines the effectiveness of the GCA system.

In addition, there are still problems with the implementation of good time in local jails. The methods and procedures used to evaluate inmate behavior and allocate State good time vary considerably across jails. Moreover, because of DOC policy regarding inmate transfers, State felons with sentences of greater than eight years who are housed in jails cannot earn more than one-half to two-thirds of the amount of good time that inmates in State prisons earn. Recent DOC policy issuances either do not address or are too vague to eliminate these problems.

IV. Virginia's Discretionary Parole System

In 1989, Virginia's discretionary parole system accounted for almost 60 percent of the inmates who were released from prison prior to the completion of their court-imposed sentence. The authority to grant discretionary parole is completely vested in the State's five-member Parole Board.

In an effort to enhance its ability to effectively manage an increasing workload, the Parole Board has made major improvements to the information system it employs for scheduling and reviewing cases. However, the benefits from this automation have not been completely realized because staff at the Department of Corrections (DOC) have been unable to provide the Board with timely access to important inmate files. This is one key factor that delays the review process for more than one-third of the cases considered by the Board.

After inmates are granted parole, DOC's Parole Release Unit and the Parole Board must work together to ensure that the parolee is released from prison in a timely manner. Because of coordination problems between these two agencies, about one-quarter of parolees typically remain in prison for three weeks after they are granted an early release. By administering the parole release function more efficiently, critically needed bedspace could be made available sooner for incoming prisoners.

In recent years, the process used by the Parole Board to determine whether eligible inmates will be granted or denied parole has come under considerable scrutiny. The major criticisms have been that Board decisionmaking practices are inconsistent and lack the capacity to incorporate a formal assessment of an inmate's risk to society. Results from this study show that the Parole Board has identified the factors that are to be considered when assessing an inmate's readiness for parole. However, the methods for the case-specific application of these factors are left to the complete discretion of the examiners and Board members. Without explicit policy to guide individual decisions, inconsistencies have surfaced both in the ways parole examiners view cases and the ways Board members decide them.

A similar problem affects the Board's attempts to distinguish among parole candidates according to their likelihood of recidivating. Current Board policy provides for the assessment of the inmate's risk as a part of the decisionmaking process but provides no objective means for doing so. This has produced parole decisions that appear to be inconsistent.

In order to address these problems, the Board has proposed the use of structured decisionmaking guidelines. If implemented, this strategy will require, among other things, a formal assessment of each inmate's risk of committing another felony before a parole decision is rendered. Data from this study show that a strict application of risk criteria could increase the State's discretionary parole rate by as much as six percentage points.

However, this should not be viewed as a panacea for the State's current problems with prison overcrowding. In practice, the uniqueness of many parole cases requires the Board to consider some factors in addition to inmate risk. When this is done, the actual increases are likely to be smaller.

TIMELINESS OF THE DISCRETIONARY PAROLE PROCESS

Once an inmate establishes eligibility for discretionary parole, the Virginia Parole Board and its staff must implement the following activities: (1) develop a schedule of inmate interviews and send these dockets to the correctional facilities where the parole candidates are housed; (2) conduct interviews with each inmate on the docket; (3) review the inmate's file; and (4) decide the case. If the Board decides to grant parole, the inmate's file is forwarded to DOC's Parole Release Unit (PRU) which completes the work required to legally release the parolee from prison.

To ensure that this process is implemented as expeditiously as possible, Section 53.1-154 of the *Code of Virginia* requires the Board to divide the calendar year into equal parts and "review and decide the case of each prisoner no later than the part of the calendar year in which he becomes eligible for parole." For this reason, the Board schedules its interviews on a quarterly basis. Further, in an attempt to shorten the period of time that inmates have to wait for a decision after being interviewed, Board policy requires the voting members to decide each case within 30 days after the parole examiners complete the interviews.

Compliance with Timely Review Requirements in State Statute

To determine the Board's rate of compliance with the *Code of Virginia's* requirements for timely parole reviews, JLARC staff identified the number of days that elapsed from the date inmates established parole eligibility to the date their cases were decided. All cases that were decided within 91 days (or three months) were considered in compliance with the statute. This analysis indicated that the Parole Board was able to implement the parole process within the time period allowed under law for 83 percent of the inmates that received their first parole review in 1989. The fact that the Board now has complete control over the scheduling and docketing process is a key reason that it is able to achieve this compliance rating in the face of its increasing workload.

Prior to 1989, Board members were responsible for establishing interview dates while each correctional facility was responsible for setting the parole interview rosters for their facility. According to staff at the Parole Board, this arrangement created a problem that worked against the effective scheduling of the parole reviews. Board members, who were still conducting some of the inmate interviews during this period, often pushed to have the docket set according to their personal schedules. As a result, valuable blocks of interview time during the early part of the quarter were often

wasted. This began to pose more of a threat to the efficiency of the process as the Board's workload increased.

In response to this problem, the Parole Board centralized and automated the docketing process, allowing it to establish and implement its own criteria for setting up cases. The overall objective is to schedule, as early in the quarter as possible, those inmates who have the greatest chance of parole according to historical data. This has led to the development and use of the following scheduling criteria: (1) inmates housed in the jails receive first priority; (2) inmates located at DOC field units or on work release receive second priority; and (3) inmates who are having their first review but are housed in major institutions receive third priority.

Under this new system the docketing process is implemented as follows:

- The Parole Board's Management Information Systems (MIS) Unit electronically accesses a DOC file containing the parole eligibility dates for all inmates in the system. This unit then downloads to its system the records for all inmates who will be eligible for parole in the next quarter.
- Using the previously discussed criteria, the MIS unit rank orders the file for the purpose of establishing tentative interview schedules.
- Fifteen days prior to the beginning of the upcoming quarter, a tentative docket is sent to each institution with the exception of the DOC Inmate Reception Centers.
- Ten working days prior to the scheduled interview, the tentative dockets are finalized and sent to the institutions.

One problem with the Board's new scheduling strategy is that it creates logistical problems for the counselors in the DOC facilities. When the major institutions set the dockets, interviews were arranged according to the counselors' schedules. This allowed them to prepare progress reports for each of their clients, and make plans to attend the parole interviews. DOC counselors complain that the current system often results in last minute changes to the docket which makes it difficult to prepare progress reports and attend the interviews. This has created the perception, according to two persons interviewed, that the counselors are being removed from the parole review process.

Staff at the Parole Board acknowledge the "scheduling pains" created by the new system, but they feel the new process is the only way to efficiently schedule parole interviews. Regarding the issue of having counselors present at the interviews, one member of the Parole Board staff commented, "The progress reports tell the examiners all they need to know, and if these reports are not adequate, the counselor probably does not know the inmate well enough to assist the examiner." This same staff member feels the problem is that DOC has no policy regarding this issue. As a result, some institutions require counselors to attend the interviews while others do not. This

pattern of inconsistency was observed by JLARC staff during its observations of parole interviews.

Recommendation (7): To ensure that the input of institutional counselors is adequately incorporated in the parole review process, the Department of Corrections should establish a policy requiring all counselors to attend the parole interviews for each inmate under their supervision.

Internal Standard for Timely Disposition of Parole Cases

As noted earlier, once the parole examiners complete the inmate interviews, Board policy requires that voting members decide the case within 30 days. This policy was put in place to prevent parole candidates from having to wait long periods of time before they receive notification of the Board's decision. To determine whether the Board was able to meet this policy objective, JLARC staff identified the number of days that elapsed from the date of the inmate interviews to the date of case disposition. All cases that were decided within 30 days were counted as in compliance with Board policy.

Board Compliance With Standard. It appears from this analysis that the Board was able to achieve the policy objective for about 67 percent of the 11,362 cases it considered in 1989. When asked why case disposition took longer than 30 days for the remaining 33 percent of the cases considered, the responses were varied. Increasing workload was cited as an impediment to timely reviews by several Board members and support staff. The Parole Board Chairman expressed concern about this issue and noted that to make decisions without undermining the quality of the process, members were working 10-hour days. Another member estimated that based on a 40-hour work week, in a typical year Board members have approximately eight minutes to spend viewing each case.

Some staff feel that the methods used by the Board to incorporate the input of victims in the process are cumbersome and add unnecessarily to the time needed for case review. Other staff cited the Board members' insistence on duplicating the file review activities conducted by the examiners. "They will spend time reviewing the same information the examiners used instead of relying on the examiners' reports." Board members admit that a duplication of effort can occur at this stage of the parole process, but feel it is their responsibility to conduct a thorough review of the inmates' files. One member stated that detailed file reviews were necessary because examiners did not always gather all of the pertinent information.

Primary Reason for Delays in Case Review. Almost without exception, Parole Board staff suggested that the primary reason for case delay is the inability of DOC to provide the Parole Board with timely access to one of the most important inmate files — the pre- and post-sentence investigative reports (PSI). Section 53.1-155 of the *Code of Virginia* states, "No person shall be released by the Board until a thorough investigation has been made into the prisoner's history, physical and mental condition and

character, and his conduct, employment and attitude while in prison." With the exception of the information collected by the parole examiners during the inmate interviews, the Parole Board is completely reliant upon DOC to provide the information necessary to support this type of investigation.

The PSI report, which is often requested by the courts prior to the sentencing phase of a trial, is a comprehensive document developed by probation and parole officers. Among other data, it contains information on the nature and circumstances of the person's crime, prior record, family and social background, history of drug or alcohol abuse, educational attainment level, and employment history. When the court does not request a pre-sentence report, the *Code of Virginia* requires DOC to prepare a simplified version, known as the post-sentence report.

After the probation and parole officers prepare the report, it is typed and sent to DOC's Parole Release Unit (PRU). Staff in this unit check the report for errors and inconsistencies before sending the file to the MIS unit to be automated.

When the PSI report is not available, the parole process is delayed at two stages. Initial delays occur when parole examiners must spend time in the interviews gathering information from the inmates that would have been contained in the PSI. In addition to increasing the time it takes to complete the interview, a further problem is that information provided solely by the inmates is routinely labeled as unreliable. As a result, examiners do not make parole recommendations when the PSI is not available.

The second delay occurs at the case review stage. Once the examiners inform staff at the Board that PSIs are not available for certain inmates, those files are categorized as deferred. Parole Board staff will hold these files until the PSIs can be physically retrieved from the Parole Release Unit. According to PRU staff, this could take from one day to a week if the report has been done. If the report has not been completed in the parole district, probation officers have 90 days from the time they are notified to complete the report.

JLARC's review of this issue confirms that the unavailability of PSI reports is a problem of considerable magnitude. At the time of this study, approximately 40 percent of the inmates that were considered for parole in 1989 did not have an automated PSI. One DOC official feels this is mostly a "manpower" problem that does not have the priority of other issues in the Department. This official stated, "Our fundamental statutory charge is to supervise clients. Scrubbing data [to prepare it for automation] is not a priority."

Lack of emphasis in the Department also appears to be the problem in cases in which reports are not completed on time in the local parole districts. If a report is not requested by the court, its development, according to two DOC officials, is not always a priority. Probation officers have been instructed to focus their efforts on the post-sentence reports for inmates who are in the jails and are likely to be paroled shortly after they are incarcerated. However, the development of post-sentence

reports for other inmates is a low priority. This decision to give less attention to these reports is a function of the mistaken belief by some in DOC that the Department is not legally required to complete them. One official commented that the reports were done as a favor to the Board. Another stated that the Department "theoretically could quit doing them."

Now that the Parole Board's system is almost completely automated, its effectiveness is substantially undermined when important inmate files cannot be electronically retrieved from DOC. This new system is illustrated in Figure 9 and each major step in this data retrieval and transfer process is described below.

- **Step One.** The Board's Management Information System (MIS) staff electronically reads four different DOC files and constructs its own computerized file containing information on the current offense, sentence length, institutional behavior, and criminal history for each inmate scheduled for a interview.
- **Step Two.** This newly created file is loaded on the portable computers that examiners carry with them to the various correctional facilities throughout the State to interview the inmates on their docket.
- **Step Three.** The examiners question the inmates and enter their interview results and parole recommendations on the portable computers.
- **Step Four.** The Board's MIS staff electronically reads the examiners' updated files and transfers this information back to the agency's central computer.
- **Step Five.** Data processing specialists at the Board prepare a formatted report from these files for the Board members, who then review this information and render a decision.

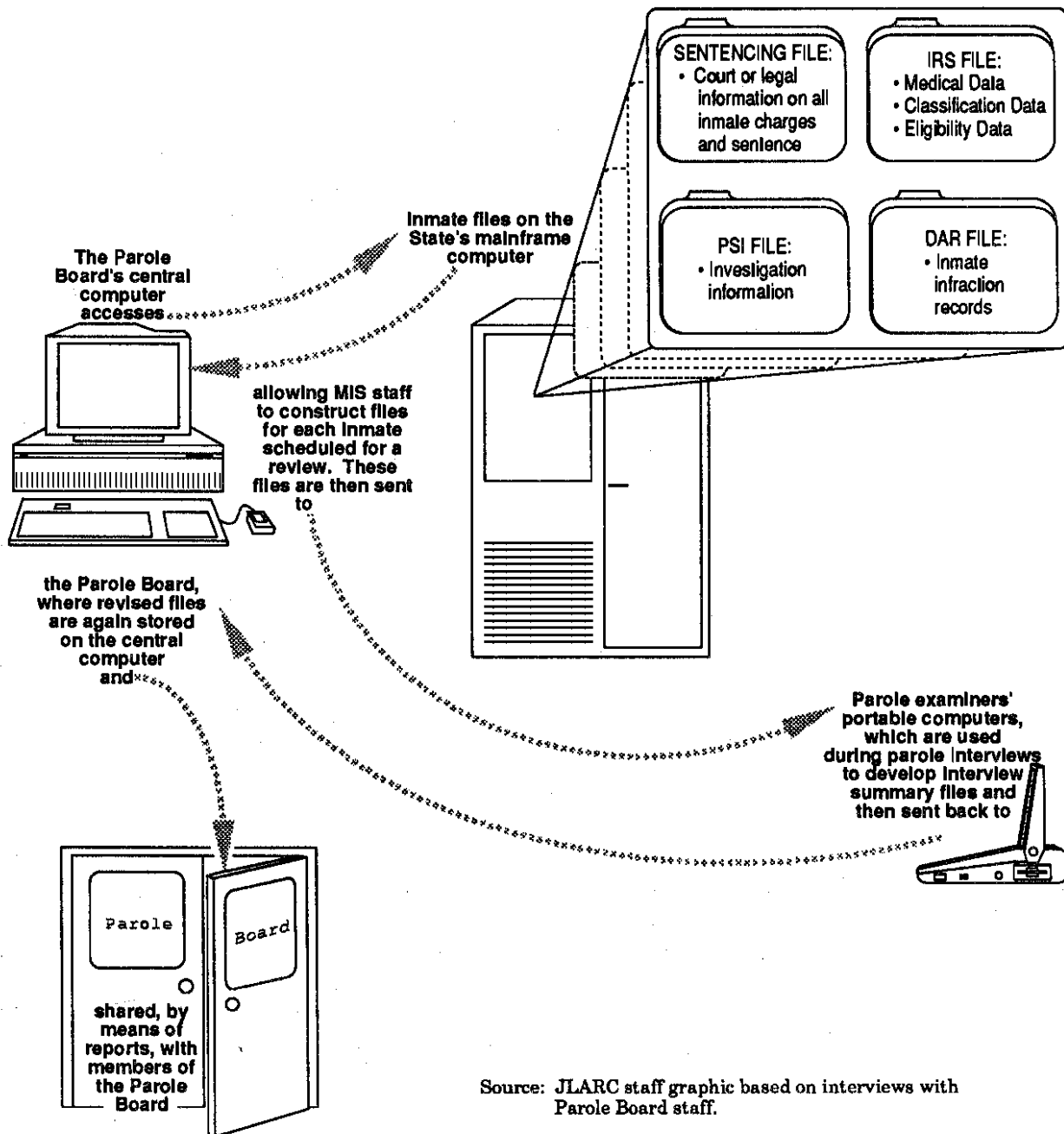
Identifying Parole-Eligible Inmates in Jails. The problems experienced by the Parole Board in retrieving information for parole candidates are heightened when the inmates are housed in local jails. According to Parole Board staff, the review process is delayed for a substantial number of these inmates because the Board does not always receive prompt notification of their eligibility dates. Because of these delays, staff contend that some inmates in the jail are never scheduled for a parole hearing and must therefore wait until they reach their mandatory release date to leave the system.

An analysis of data from DOC's automated files suggests that this is a problem. Although most inmates in the jails have short sentences and are typically viewed as good candidates for discretionary parole, Virginia's mandatory release law was responsible for 61 percent of all inmates paroled from the jails in 1989. This compares to a 43 percent rate for inmates released from a DOC facility.

One staff member at DOC who is responsible for calculating parole eligibility dates acknowledged that this is a problem. This staff person stated that before

Figure 9

The Parole Board's Data Management System



sentencing information can be entered into the system and a parole eligibility date determined, the following steps must be performed:

- DOC receives court orders and jail credit data from the courts and local sheriffs;
- DOC staff investigate the inmate's criminal background to determine the number of prior prison commitments;
- Information from this investigation is sent to the warrants section where a decision is made to keep the inmate in a jail or send him to a reception unit; and
- Staff in the warrants section classifies the inmate and issues a State inmate number.

Once these steps are completed, a time clerk in DOC's Court and Legal Services Unit enters the sentencing information and a quality control check is initiated. At this point, a parole eligibility date can be computed.

Because of increases in the number of new felony commitments, DOC staff indicate that backlogs have developed in entering sentencing information. In order to avoid the delay in release of parole eligible inmates, the Court and Legal Services Unit has tried to prioritize the input of sentencing information. The first priority is for inmates who are approaching their mandatory release dates. The second is for inmates who are approaching their discretionary parole eligibility dates. DOC staff concede, however, that even with this prioritization, it is impossible to avoid delays for some inmates. In the past, Court and Legal Services staff have dealt with the backlog in cases by working overtime. However, recent budget cuts have precluded the continuation of this practice.

In order to ensure the efficiency of the parole review process, it is necessary that DOC work with the Parole Board to provide timely access to the files needed to schedule and conduct a comprehensive review of each inmate's case.

Recommendation (8). The Department of Corrections should ensure that pre- and post-sentence investigative reports are prepared in a timely fashion as required by law and the Department should ensure that these reports are automated at least six months prior to inmates' parole eligibility dates. In addition, the Department should take the necessary steps to ensure that the Parole Board is promptly notified of the pending discretionary parole eligibility dates for inmates housed in the local jails.

Implementation of Parole Release Activities

Although the Parole Board is responsible for managing the discretionary parole system, it is the responsibility of the Parole Release Unit (PRU) to ensure that

parolees are legally released from prison. This unit has 19 positions, most of which are exclusively funded to provide support to the Board by implementing its orders of release (Figure 10). This is a unique organizational arrangement because it divides the functions of one system across two different agencies. Consequently, a premium is placed on the need for these agencies to develop the necessary communication to ensure that policies formulated in one agency are effectively implemented through the other. Any coordination problems or operational inefficiencies that delay the release of parolees have important implications because of the State's problem with prison and jail overcrowding.

JLARC staff analysis of the parole release activities indicate that many inmates are not released from prison in a timely manner. Moreover, for a number of these parolees, JLARC staff could not identify any special circumstances surrounding the release to justify the observed delays.

Processing Release Orders. When an order of release is obtained from the Parole Board, a PRU docket clerk calls up the file of the inmate for whom the order has been issued. Once the file is obtained, the docketing clerk assigns it to one of the unit's probation counselors. This officer examines the file to ensure that the inmate is legally eligible for parole.

If inconsistencies regarding sentencing information are discovered, the counselor will select the file for a recalculation of the inmate's eligibility date. Checks will also be made to determine if the inmate has pending charges, detainers, and an adequate parole plan. Once this review is completed, the file is passed on to the probation supervisor for a quality control review. This person checks to ensure that the counselor has accurately completed the file review before requesting a secretary to type the conditions for the release order. Once this document is typed, PRU sends it to the facility where the inmate is being housed.

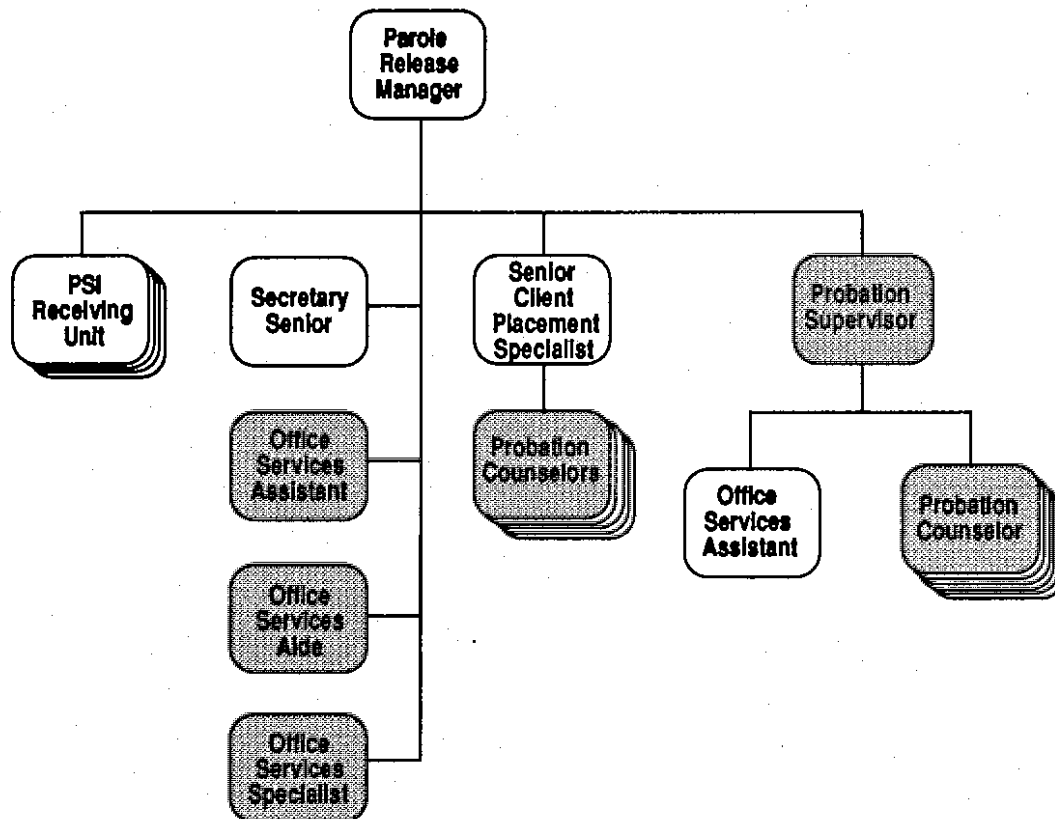
If the Parole Board decides to make early release conditional on the placement of the inmate in a treatment program, PRU must ensure that this can be arranged before processing the order of release. If a residential placement cannot be secured, the inmate's file is returned to the Parole Board for reconsideration.

Timeliness of the Parole Release Process. In a 1987 study of Virginia's parole system, the Department of Information Technology found that PRU took an average of 21 days to release inmates from prison when there was no reason for delay. The study further recommended that this time period be reduced to 10 days. According to the manager of PRU, it is unit policy to process the release of parolees in 10 days provided there are no legitimate reasons for investigating the file. An analysis of the data from both the Board and PRU for this study indicate that the efficiency of the release process has been improved, but problems do remain.

In 1989, the Parole Board granted early release to 4,872 inmates. For 56 percent of the inmates paroled, PRU was able to process the paperwork required for a legal release within 10 working days. However, for those not released within 10

Figure 10

Organization of the Parole Release Unit in the Department of Corrections



Note: The shaded positions are funded exclusively to support the Parole Board.

Source: JLARC redraft of the organizational chart for the Parole Release Unit.

working days (44 percent), it typically took PRU almost one month to complete the necessary paperwork. PRU staff indicated that there are a number of factors over which they have no control that often delay the release of a parolee. These include the following:

- **Out-of-State Parole Plan.** Some inmates indicate on their parole plan that they would prefer to be released to another state. This, according to some PRU staff, takes a minimum of 55 days to coordinate with the parole authorities in the relevant states.

- Residential Treatment Programs. The Parole Board will often grant parole on the condition that the inmate be placed in a treatment program. PRU staff state that the process of finding a program that will accept some parolees can delay the release considerably.
- Pending Charges. If a parolee has pending charges within the state, they must be adjudicated and added to his current sentence. If the inmate's case against the pending charges has not been adjudicated, PRU will hold the file until the case is settled.
- Detainers. If a detainer has been filed against a parolee, the authorities in other jurisdictions have 21 days to take the offender into custody.

To determine the actual reasons for the observed delays, JLARC staff reviewed a randomly drawn sample of the PRU files for which parole release took longer than 10 working days. The results of this analysis are shown in Figure 11. Legitimate reasons for delay were identified for about half of the cases that were delayed. The nature of some of these reasons and the frequency with which they occurred included out-of-state parole plans (15 percent), detainers (nine percent), pending charges (eight percent), and residential placement difficulties (five percent).

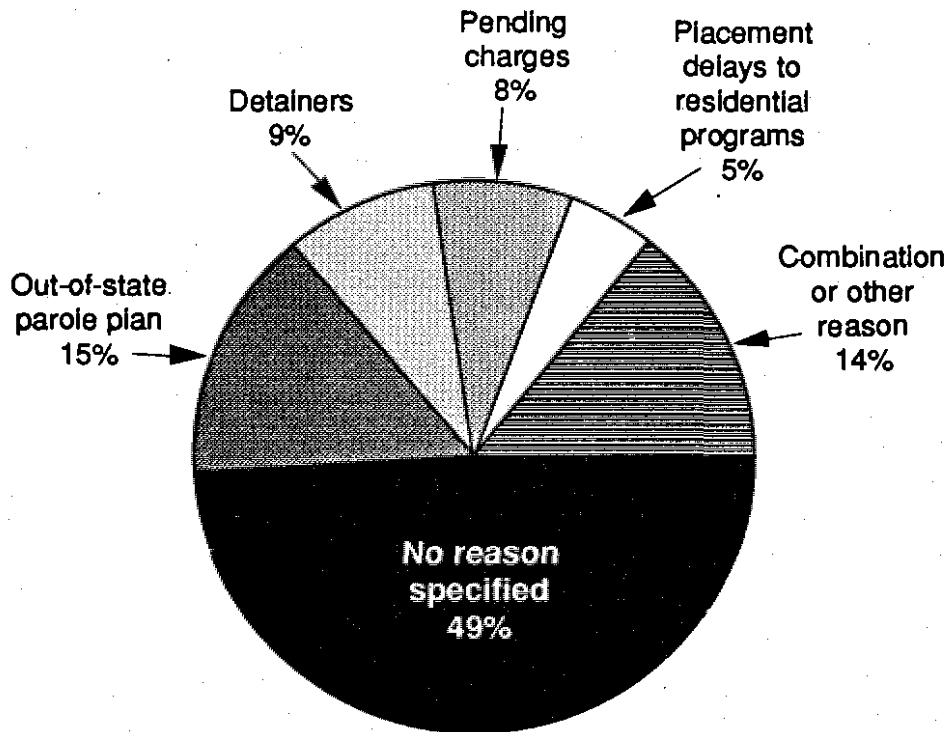
For 49 percent of the cases, however, JLARC staff could find no reason to justify the delays observed. A closer look at the files suggests that the Parole Board and PRU staff are experiencing difficulty coordinating the transfer of release orders. Once the order of release was signed by the Parole Board, five working days typically passed before the case was assigned to a PRU staff member. The following case study illustrates how this problem impacts the release date for parolees.

On November 17, 1989 the Board issued an order of release to have an inmate paroled to the Marion Parole District. On December 4th — 10 working days later — the case was assigned to a probation officer in PRU. That same day the probation officer completed the review of the file and set the case up for review by a quality control officer. On December 11th, three weeks after the order of release was signed, the inmate was released.

According to PRU staff, this problem is created by the Board's failure to send the inmate's order of release to the unit in a timely fashion. One staff member stated, "In 1989 to early 1990 it could take as long as 30 days [after an order of release has been approved by the Board] before the file comes down." The staff at the Parole Board who are responsible for writing the orders of release after the deciding vote is cast concede that some delays could take place before the case is sent to the PRU. However, each of four staff members interviewed stated that any delays would typically be no more than one to two days. This problem is indicative of the difficulties that are often created when responsibilities for one system are divided across two agencies.

Figure 11

Reasons Inmate Releases Were Delayed in 1989



Source: JLARC analysis of Parole Release Unit files.

Recommendation (9): The General Assembly may wish to shift to the Parole Board those resources in the Department of Corrections' Parole Release Unit which are devoted to parole support functions.

Recommendation (10): When possible, the Parole Board should schedule all interviews six months prior to the inmate's parole eligibility date to allow sufficient time to plan for the release of all inmates who are granted discretionary parole.

Organization of DOC Parole Supervision and Support Units Needs Review

As discussed earlier in this report, the Parole Board receives support services from two other casework divisions within DOC — the Post Release Unit and Interstate

Compact. Further, parole supervision services for inmates released on both mandatory and discretionary parole are provided by DOC through local probation and parole field offices.

The Post Release Unit coordinates the Board's warrants process for persons who are experiencing difficulty with parole supervision. The Interstate Compact Unit manages the casework of all persons on probation or parole in Virginia who wish to live in another state and those in other states who express the desire to live in the Commonwealth.

These divisions were removed from the direct supervision of the Parole Board in 1984 when the Board was established as a separate agency. Since that time, a number of questions have been raised about the operational efficiency of this realignment. Though the study mandate did not direct JLARC to review this issue, Parole Board staff discussed problems related to this organizational arrangement during the course of the study.

According to Board staff, the central problem is that the Parole Board has the authority to establish policies governing the activities of DOC's parole support units and the probation and parole offices, but has no control over whether these policies are properly implemented. As an example of this, the Parole Board Chairman notes that he serves as the administrator for DOC's Interstate Compact Unit but has no direct authority over staff in the unit who are responsible for implementing any policy that he might develop. The following comments from a Board member illustrate the concern regarding this organizational arrangement:

While DOC and the Parole Board are autonomous, DOC nevertheless manages a number of distinct parole-related responsibilities and duties, including parole release, parole supervision, and interstate compact agreements. While the Parole Board has sole authority for mandating the policies that govern these three areas, DOC currently is responsible for disseminating the Parole Board's policies through their guidelines. The subsequent lack of continuity between the Parole Board policy and actual operational practices on the part of DOC is administratively and operationally inefficient.

Board members feel that their lack of authority over staff in the probation and parole offices creates similar problems. One staff member noted that because of this arrangement, the Board has no way of determining how its policies will impact the workload of probation and parole staff or whether the policies will be implemented. Further, this same staff member indicated that the Parole Board has faced resistance from field staff because of the perception that the Board was establishing its policies in a vacuum.

DOC staff who were interviewed regarding this issue believe that problems which occur as a result of this administrative fragmentation are infrequent and have little impact. One DOC official noted, "Our role is to serve the Parole Board. Whatever

the need is, there is no problem unless their request creates more work than can be accomplished by existing manpower." Another staff member noted that with this type of administrative structure, "there are bound to be points where conflicts arise, but it has never prevented the work from being done."

In its study of this issue in 1987, the Department of Information Technology (Management Consulting Division) recommended that DOC's three parole support units — parole release, post-release, and interstate compact — be organizationally placed with the Parole Board. In addition, the study cited the "logical and close working relationships" between the Parole Board, the courts, and probation and parole staff as one reason for a study of the alignment, management, and supervision of probation and parole services.

Recommendation (11): The Secretary of Public Safety should examine the current organizational placement of post-release, interstate compact, and probation and parole functions within the Department of Corrections for possible transfer to the Parole Board. The Secretary should report the findings and recommendations from this assessment to the State Crime Commission prior to the 1993 session of the General Assembly.

THE DECISIONMAKING PROCESS OF THE PAROLE BOARD

Based in part on work conducted by the Commission on Prison and Jail Overcrowding (COPJO), there is a concern that the Parole Board's decisionmaking process is largely guesswork with little capacity for objectively considering the actual risk an inmate poses to society if released. Underpinning this complaint is the notion that without guidelines, the Board tends to be overly restrictive in deciding which inmates should be paroled. These perceived inadequacies are believed to have suppressed the State's parole rate by lengthening the prison stay of felons who pose little risk to society.

The Board recognizes the need to have a parole system that is consistent and equitable and is presently developing a structured guidelines system to promote these objectives. This section of the report discusses the role of the parole examiners in the process, describes the decisionmaking practices of the Parole Board, and determines whether a formal assessment of inmate risk could result in a higher State parole rate.

The Role of Parole Examiners

As a precursor to reviewing and deciding cases, the Parole Board employs 10 examiners who travel to various correctional facilities across the State and interview eligible inmates. The information collected during these interviews, along with data from the original inmate files, is used by Board members to develop a profile of the parole candidate.

The basic responsibility of the examiners during a parole interview is to get a clear and concise picture of the inmates and determine if they are good parole risks. To assist them with this task, the Board has adopted a systematic data gathering process to ensure that each examiner's recommendations will be based on similar types of information. Once the interviews have been completed, each examiner must evaluate this information and make a recommendation to the Board to either grant or deny parole.

Developing an Inmate Profile. Before June of 1990, the examiners were required to develop interview summary reports as a means for establishing a profile of each parole candidate. In most cases, the information on which the inmates were questioned was provided in a series of DOC files. The examiners used these interviews to check the veracity of the inmates' responses to their questions, and to gather additional details about the parole candidates that may not have been reported in the files. Some of the issues addressed in the interviews and subsequently discussed in the report summaries developed for the Board are listed below:

- *Nature and Circumstances of the Crime.* Was it a violent offense? Was a weapon involved? Was anyone injured? Were drugs or alcohol a factor in the crime? Were there any co-defendants?
- *Prior Criminal Record.* The focus in this area was on the extensiveness of the inmate's prior juvenile and adult criminal history. Examiners identified both the number and type of previous offenses. Particular attention was given to whether the inmate had ever violated the terms and conditions of probation or parole.
- *Social History.* The purpose of the questions on social history were to provide a picture of the inmates' past and present family environment. Was it stable? Was the inmate ever abused? Does the inmate have a stable family environment to return to if paroled?
- *Institutional Progress.* To complete this section of the interview summary, examiners would question inmates on their adjustment to incarceration. Did they generally follow the rules of the institution? Did they take advantage of available education, counseling, or job training programs? If DOC counselors provided a progress report, examiners usually submitted the report with the interview summary.
- *Inmate's Statement.* It was a general practice of each examiner to solicit and then report any comments the inmates made for the benefit of the Parole Board.
- *Reasons For/Against Parole.* Once all the information was obtained, examiners were then required to list those factors that would either support or work against a decision to grant parole.

With the Board's recently implemented automated data management system, much of the information previously summarized in the examiners' reports is computerized on what the Board refers to as "parole screens." The examiners use the information on the screens when interviewing inmates before developing their parole recommendations. Instead of dictating an interview summary to be transcribed for the Board, the examiners now use the parole screen shown in Exhibit 2 to report the results of the interview.

Making the Parole Recommendation. The format developed by the Board to guide the initial evaluation of the inmates' suitability for parole is designed to ensure that these assessments are uniform. However, once this information is summarized by the examiners, the Board allows them complete discretion in deciding how the various cases should be interpreted. As a result, there are both variations and contradictions in the way examiners apply the factors shown in Exhibit 2 to support their parole recommendations.

Exhibit 2

Example of Parole Interview Screen

Date:

Location:

Recorder:

Recorder Comments:

Reasons For Parole:

- (1) Non-violent offender
- (2) Mitigating Circumstances
- (3) Status offense involving
no criminal intent
- (4) No significant prior record
- (5) Positive institutional
adjustment
- (6) Successful program completion
- (7) Marketable vocational skills
- (8) Stable Release Plan

Reasons Against Parole

- (1) Violent offense
- (2) Violent offense history
- (3) Assaultive offense history
- (4) Similar offense history
- (5) Parole failure
- (6) Probation failure
- (7) Poor institutional adjustment
- (8) Substance abuser
- (9) No marketable/vocational skills
- (10) Inadequate LIP participation
- (11) Unstable/no parole plan

Notes: LIP represents the Literary Incentive Program.

Source: JLARC redraft of Parole Board format used for the parole interviews.

When asked what criteria they use to make a recommendation after identifying factors for and against parole, the responses were varied. For one examiner, whether or not the inmate shows concern for the victim is one of several key criteria considered before making a recommendation. Another stated that he looks for the inmate's insight into "why he behaves the way he does" as one of a number of indicators of parole readiness. This, according to a third examiner, is inappropriate. "It's not my job to psychoanalyze. My job is to recommend whether parole should be granted. Is the inmate a good candidate?"

Of the nine examiners interviewed, eight generally agreed with the criticism that the process was inconsistent and subjective. At least three of these examiners felt that the subjectivity was either necessary or not entirely negative. Several examiners stated that personal views and values do influence their recommendations. An example of how this can influence attempts to objectively assess an inmate's parole readiness is illustrated in an examiner's comments regarding one case.

Crime type is used differently [by examiners] when making parole recommendations. Sometimes the focus is on the impact of the crime and sometimes it is on risk. I, personally, could never recommend parole for some types of crimes. For some cases my personal prejudices do come into play. I once conducted an interview with a man convicted of accidentally killing an 11 year old boy while drunk driving. The man's prison record was exemplary; one of the best I had ever seen. However, I could only think about my own child so I noted that it was a wanton and reckless crime and I did not recommend parole.

In a review of over 320 inmate files, JLARC staff found further evidence that the examiners' assessments of inmates can be a subjective and at times visceral process. The result is that some factors are inconsistently given more weight than others. The following case studies illustrate this point.

An inmate being considered for parole was serving a three-year sentence for attempted murder. The man had attempted to enter a nightclub in Petersburg but was told by the manager that the party in the club was private. He began to scuffle with the manager, who subsequently shut the door in his face. The man responded by firing two shots through the door barely missing the manager's head. No injuries were sustained in the incident. The inmate had no prior felonies, but had several misdemeanor assault charges, two destruction of public property charges, and one disorderly conduct. At the time of his parole interview, the inmate was earning the maximum amount of good-time, was classified in medium custody, and had served 21 percent of his sentence. The examiner cited five factors in favor of parole and two against. Among the positive factors were no prior felonies, no substance abuse history, a stable living arrangement, and age (the inmate was 35 years old). However, the recom-

mendation was to deny parole because of the serious nature of the crime and his prior misdemeanor assaults.

* * *

An inmate being considered for parole was serving a 18-year sentence for murder. He had been in a bar in Appomattox County with his girlfriend, who decided to dance with other patrons. He informed his girlfriend that he wanted to leave but the man she was about to dance with at the time said no. These two men began fighting and the inmate pulled out a gun and shot and killed the victim. The inmate had no prior felonies, was earning the highest level of good-time, was classified by DOC as a minimum security inmate, and at the time of his parole interview had served 16 percent of his sentence. The examiner cited six different factors supporting release. They included: strong family support, stable release plans, and overall institutional adjustment. The recommendation was to grant parole based on these factors.

* * *

An inmate being considered for parole was serving a four-year and eight month sentence for the involuntary manslaughter of a police officer. Two police officers were called to her house to apprehend an intoxicated man who was knocking at her back door. The officers arrived and caught the man knocking on the door. As the first officer was taking the man to the police car he heard a shot then a scream from his partner. The officer returned to the back of the house and witnessed the woman standing in the door with a gun in her hand. She claimed the wind blew the door against her hand causing the gun to fire and fatally wound the officer. Her prior record included concealing merchandise, reckless driving, assault and battery on a police officer, and probation violations. At the time of review, she had served 29 percent of her sentence, was earning next to the highest level of good-time, and was classified as a minimum custody inmate. The examiner recommended parole based on her positive institutional adjustment, positive release plan, and letters of support from different persons in the community, including the sentencing judge.

In these three cases, it is clear that the serious nature of the crime is being treated differently in terms of its impact on the examiners' recommendations. In the first case, although no one was even injured, the examiner thought the crime was too serious to recommend parole despite a number of recognized factors supporting a decision to grant parole. In the second and third cases, which involved homicides, the examiners felt the other positive factors overshadowed the seriousness of the crime.

In some instances, the examiners' "gut feelings" seem to override the facts in the case. The following case examples illustrate this point.

An inmate was serving 24 years for three robbery convictions, one attempted robbery, and a weapons offense. At the time of his parole interview in 1989, the inmate had served 17 percent of his sentence. In his report to the Board, the examiner reviewing the case noted the following positive factors: exemplary adjustment to prison, no prior criminal record, no history of violent behavior, a positive release plan, positive program participation, and no substance abuse problems. On the negative side, the examiner cited the multiple robbery convictions, the weapons offense, and the inmate's poor judgment. Further, the psychological report was quite negative, concluding that the inmate was mentally deficient, immature, and exhibited poor judgment due to impaired intellect. The examiner's recommendation to the Board was to grant parole.

In another case, the same examiner took a different view that was based mostly on his intuition.

An inmate was convicted of robbery and given a 20-year sentence with 15 years suspended. At the time of his parole interview in 1989, the inmate had served 34 percent of this sentence. The examiner pointed out that, "this is his first serious felony conviction, he was 33 years old when he committed it, seems to have been alcohol related, doesn't seem to be a propensity for this kind of behavior... and has educational and vocational skills." On the negative side, the examiner cited the serious nature of the crime, an unaddressed substance abuse problem and the inmate's "general evasiveness" in the interview. In making his recommendation to the Board to deny this inmate parole the examiner stated, "I just feel a gut level of something uneasy about this man. The reason [for denial], however, should reflect the serious nature and circumstances of the offense."

According to one staff member at the Parole Board, some subjectivity is to be expected in a discretionary parole process where judgment is a paramount feature. Some of the subjectiveness, it was noted, is a reflection of the different goals examiners will pursue when deciding a case. "An examiner that is concerned with the risk an inmate poses is likely to take a different view of a case than one who takes a just deserts perspective." Nonetheless, the Board staff member agreed that it is not acceptable to have divergent opinions about cases that are basically similar. This staff member noted that the structured decisionmaking guidelines presently being tested by the Board may reduce the magnitude of this problem in the future.

HOW THE PAROLE BOARD DECIDES CASES

After the examiners have completed their interviews with the inmates, the members of the Board who have been assigned to the case review the files and make a

decision. It is the present policy of the Parole Board to consider as many as 15 different factors when reviewing cases. These factors are:

- Inmate's current offense;
- Inmate's prior criminal record;
- Inmate's development during incarceration;
- Institutional discipline;
- Information received from friends and adversaries;
- Type and length of inmate's sentence;
- Inmate's personal and social history;
- Inmate's institutional adjustment;
- Changes in motivation and behavior;
- Inmate's release plans;
- Availability of community resources;
- Results of psychological and other type tests;
- Results of parole interviews;
- Involvement in literacy program; and
- Compatibility of release.

The policies governing case review activities for the Board are silent on the issue of how these factors are to be applied, thus leaving each member with complete discretion when deciding a case. With such a wide range of factors to consider and no explicit policy to guide this process, two major questions emerge: (1) What are the most important factors used by the Parole Board to decide cases? (2) Are these factors applied in a consistent fashion?

The JLARC staff analysis of these issues found that in making parole decisions, Board members generally give substantial consideration to the nature and circumstances that surrounded the inmates' crimes, the length of their sentences, and the inmates' institutional conduct. However, due to the lack of policy to guide the case-specific application of these and other decisionmaking factors, inconsistencies were found in some of the Board's parole decisions. For similar cases, Board members will sometimes place a different emphasis on the same factors, which produces decisions that appear inconsistent.

Important Factors Used to Decide Cases

It can generally be expected that certain factors about the parole candidate (e.g., nature of crime, extensiveness of criminal record, behavior while in prison) will influence the Board to either grant or deny parole. However, when the decisionmaking criteria are numerous and without guidelines to govern their application, legitimate questions surface concerning the relative importance of one factor versus another in the parole process. To address this question, JLARC staff used multivariate statistical techniques to identify the key predictors of discretionary parole release in Virginia.

Identifying Key Predictors of Parole. To conduct the analysis, JLARC staff interviewed members of the Parole Board to identify all of the factors they consider

when reviewing a case. Next, measures were developed for as many of these factors as possible using automated data on the parole process that is maintained by the Department of Corrections (DOC). The data set used for this study included information on the demographics, criminal records, institutional experiences, and parole status of all inmates who were considered for parole in 1989.

This initial analysis was conducted by using the bivariate statistical technique referred to as crosstabulation. The objective of this approach was to measure how, for a given factor (i.e., seriousness of crime), the degree of that factor (i.e., forgery, assault, murder) related to inmates' chances of being paroled. Relationships were examined between the parole status for each inmate considered in 1989 and 23 variables used by the Board when deciding cases. Some of the variables used in this analysis were:

- *Most serious criminal offense.* Indicates the most serious crime for which the inmate was incarcerated.
- *Sentence length.* A measure of the total sentence imposed by the court for the inmate's most recent crime.
- *Prior felonies.* Indicates whether persons considered for parole in 1989 had a record of any previous felonies.
- *Probation violations.* A measure of whether the inmate had any probation failures prior to the most recent period of incarceration.
- *Parole violations.* Indicates whether the Board had ever revoked the inmate's parole privileges prior to the most recent period of incarceration.
- *Custody level.* A measure of the inmate's security risk at the time of his parole review in 1989.
- *GCA level.* A measure of the level of good-time the inmate was earning at the time of the 1989 parole review. Because this measure accounts for the inmate's conduct, participation in treatment programs, and prison employment, it can provide a reasonable measure of the progress made towards rehabilitation.

Other predictors of parole that were examined included whether the inmates reported a drug or alcohol problem, the type of previous crimes committed for those inmates with a criminal record, whether the inmates had a juvenile record, the amount of prison time served by the inmates as of their 1989 review, and whether the inmates were being heard by the Board for the first time.

For this analysis, if the numbers of positive versus negative parole decisions were found to differ by ten percent or more in relation to the degree of a given variable, that variable was characterized as "strong" by JLARC staff. If the difference was less than ten but at least five percent, the relationship to parole was treated as "moderate."

All variables for which the difference in parole rates was less than five percent were labeled as "weak." If the observed relationship was not consistent with a pattern suggested by members of the Parole Board, it was considered counterintuitive.

Exhibit 3 reports the results of this analysis. As shown, for 14 of the 23 variables tested, there was a strong relationship to being granted parole. Not surprisingly, Board members appeared more likely to parole inmates who had the following characteristics: (1) committed non-violent crimes; (2) received short sentences; (3) had no record of prior felonies or violent criminal history; (4) did not break the law as juveniles; (5) were medium to low security risk in prison; (6) had a good record of institutional behavior and rehabilitation; and (7) were having their first parole review.

Attempts to Model Parole Decisionmaking. It is important to note that the relationships reported in Exhibit 3 are uncontrolled. That is, in assessing the relationship between parole status and, for example, number of prior reviews, the effects of other variables have not been simultaneously considered. In an attempt to determine which of these variables have the strongest impact on Board decisionmaking, the effects for each of these indicators were isolated in a decisionmaking model.

A multiple regression analysis approach was used to examine, in an exploratory way, the separate impact of each of these factors. JLARC staff tested 23 factors in a regression model for the more than 11,000 cases considered by the Board in 1989.

In the final model developed by JLARC staff (which is explained in more detail in a technical appendix), only one-third of the total amount of variation in Parole Board decisionmaking could be accounted for. After reviewing more than 320 parole files and interviewing Board members regarding their decisionmaking, it was clear that members often base their decisions on many factors which cannot be realistically modeled. For example, in some cases inmates who committed similar crimes, had comparable backgrounds, and demonstrated good behavior while in prison still had different parole outcomes. However, a review of the files sometimes indicated that information from the victim of the offender or others familiar with the case had a direct impact on Board decisionmaking. In other cases, the circumstances of the crime committed by some inmates were considered too disturbing by the Board to allow parole.

The JLARC model, which only captures the most serious offense and does not include a measure of factors like victim input and the general circumstances surrounding the crime, could not account for these influences. Without the capability to identify these underlying factors that impact parole decisionmaking, the effect of any particular variable explicitly considered in the regression may be overstated. Because of this, it was concluded that the regression model, while useful for exploring relationships between some factors, did not include a sufficient number of these other factors for the findings of the analysis to be considered conclusive. Therefore, results from two separate interviews with each Board member, and the JLARC staff review of parole files were used to evaluate the current decisionmaking process.

Exhibit 3

Summary of Factors Used to Assess Parole Decisionmaking					
Factors	Relationship to Parole Decisions				
	Strong	Moderate	Weak	None	Counter Intuitive
Crime Type	✓				
Sentence Length	✓				
Prior Felonies	✓				
Prior Violent Crimes	✓				
Prior Property Crimes		✓			
Prior Drug Crimes				✓	
Prior Other Type Crimes		✓			
Probation Violator		✓			
Parole Revoked	✓				
Alcohol Abuse		✓			
Drug Abuse					✓
Mental Patient		✓			
Juvenile Record	✓				
Weapon Used in Crime	✓				
Felons in Family			✓		
Employment History	✓				
Custody Level	✓				
GCA Level	✓				
Previous Parole Hearings	✓				
Prison Time Served	✓				
Education Level					✓
Race	✓				
Sex	✓				

Source: JLARC analysis of parole data.

Inconsistency in the Parole Board's Decisionmaking

The Parole Board's stated goal for decisionmaking — "to release on parole at the earliest possible time, those eligible offenders deemed suitable for release and whose release will be compatible with the welfare of society and the offender" — embraces a number of different purposes. Implicit in this goal statement are the requirements that inmates show evidence of rehabilitation and be a low risk to society in order to secure an early release from prison.

The central problem with the current process is that the Board does not use an explicit set of policies to ensure that this overall agency goal will be met. While generally acknowledging that they try to serve this goal when deciding cases, members admit that their practices are not uniform. As a result, similar cases may be decided quite differently based on the personal goals or values of each Board member. One member noted, "The application of the 15 criteria [for parole decisionmaking] is totally subjective, solely at the discretion of Board members."

An example of this problem is illustrated by how the different Board members treat the issue of time served in prison. One member stated that the amount of time served in prison by the inmate is never a factor in his decisionmaking. In this member's view, if a person has established eligibility and is otherwise suitable for parole, then "he should be released." This, however, appears to be the minority opinion of the Parole Board. At least two other members feel that the Board has some responsibility to ensure that inmates serve a prison term that is commensurate with the seriousness of the crime regardless of other factors that may support a decision to release.

However, the lack of a structured instrument to determine time served has forced the Board to decide whether an inmate has served an amount of time appropriate for the crime on a case-by-case basis. This practice has resulted in inconsistencies in the amount of time that inmates convicted of similar crimes are required to serve before being released on parole. As illustrated in the following case studies, JLARC staff's analysis of Parole Board decisionmaking has shown that it is not uncommon for inmates with similar crimes and sentences, and comparable prison records, to serve significantly different proportions of their sentences prior to being granted parole.

Two inmates were serving similar sentences for murder. The first inmate was incarcerated for shooting his estranged girlfriend outside a bar after she ridiculed his attempts to reconcile. He was given a 20-year sentence for murder with 12 years suspended, and a two-year sentence for use of a weapon. The second inmate stabbed a man during a fight on a military base outside a non-commissioned officers club. He was given a ten-year sentence for murder. Both inmates had no prior record, received exemplary progress reports throughout their periods of incarceration, had no institutional infractions, and had recognized family support. The Board denied parole to both of these inmates on their first review because of the serious nature of their

crimes. The first inmate was released on his second interview after serving 25 percent of his sentence. The second inmate was not released until his third parole interview when he had served 34 percent of his sentence.

* * *

Two inmates were serving sentences for similar violent crimes. In the first case, the subject was assisting a friend in burglarizing the home of a man who the friend claimed owed him some money. In the process, they were confronted by the man whose home was being burglarized and the man was killed. The inmate received a 40-year sentence for first degree murder, burglary, and attempted robbery. In the second case, the subject, with two codefendants, robbed a cashier at a pizza restaurant. Two security guards from another restaurant tried to prevent the men from escaping and both guards were shot. This inmate received a 41-year sentence for two counts of attempted murder, robbery, and use of a firearm.

Both inmates had no prior felonies, received favorable progress reports throughout their prison stays, had no institutional infractions at the time of their interview, and had noted support from both family members and prison officials. Previous decisions by the board to deny parole to these individuals were based on the serious nature of their crimes. The first inmate was granted parole on his second interview after serving 20 percent of his sentence. The second inmate was not granted parole until his fourth interview after having served 25 percent of his sentence.

The lack of a time-served standard has also led to differing opinions among Parole Board members about whether an inmate has received his "just deserts." This is evident in the following case study.

An inmate was serving a 26-year sentence for murder, robbery, and use of a firearm. The man, with two other individuals, attempted to lure their victim away from his car so that they could rob him. When the victim refused to move, the man shot him eight times. While the Parole Board voted to release the inmate in 1989 after his sixth parole interview, in previous years there was some disagreement among Board members over whether the inmate had served an appropriate amount of time. In one year, the Board member who interviewed the inmate noted that the man's exemplary institutional conduct outweighed the serious nature of the crime and recommended that the inmate be released. The Board, however, ultimately voted to deny parole. In a letter to the inmate, the Parole Board stated, "The Board recognizes your exemplary institutional performance, but remains guided by the enormity of your crime."

Another problem with the current decisionmaking process is that Board members do not always apply equal weight to factors considered during case reviews. One Board member stated that the serious nature of the crime was the most important factor to consider when deciding a case. Under this approach, an inmate's record of institutional behavior and program participation will often have little impact on his parole chances. Yet others point out that while the serious nature of the crime is certainly important, other factors like the inmate's criminal past, institutional adjustment, and level of future risk must be given considerable attention.

The inconsistencies that result from this rather invisible use of discretion are illustrated in the following three case studies involving sexual assault. In all three cases, the inmates were serving their first prison term in Virginia and this was their initial parole interview.

An inmate was given a 22-year sentence for six counts of contributing to the delinquency of minors, one count of forcible sodomy, one count of aggravated sexual battery, and four counts of misdemeanor sexual battery. At the time of his 1989 interview, the inmate was earning the highest level of good time and was a B-custody inmate. In his progress report, the counselor concluded that the inmate was a "sexually maladjusted man who fits the profile of a pedophile. Although he attributes his offense to substance abuse, he displays a high probability of committing an offense of this nature independent of alcohol." The examiner recommended that parole be denied because of the serious nature of the crime, prior history, and the inmate's substance abuse problem. The subject was granted parole by the Board.

* * *

An inmate was a 69-year old man who received a five-year sentence for fondling his five-year old granddaughter. The victim's mother noted how the crime had caused her daughter to become withdrawn around men. The inmate's file showed that he did not have any significant prior felonies. The progress report from the jail indicated that the inmate had earned the position of trustee. The Parole Board denied him an early release.

* * *

An inmate pleaded guilty to the charges of rape and sodomy and was given a four-year sentence. The inmate is a veteran of the Vietnam conflict from which he suffered injuries that paralyzed him from the waist down. Since serving in the Vietnam conflict, the subject had accumulated a significant prior record including petty larceny, burglary, sexual battery, writing worthless checks, and failure to appear. He had two prior suicide attempts which were not given much consideration in the DOC psychological assessment. At the time of his

parole interview, the inmate was earning next to the highest rate of good-time and was a B-custody inmate. The examiner recommended that parole not be granted because of the serious nature of the crime, prior criminal history, and the inmate's propensity for "making a lot of excuses." The Board decided to grant parole.

In the second case study, the Board obviously felt that the sexual assault crime committed by the inmate overshadowed the man's lack of a significant prior record and his accomplishments in earning the position of trustee in the jail. However, in the other case studies, the inmates' good institutional behavior appeared to be the basis for the Board's decisions to grant parole despite the serious nature of the inmates' crimes and their extensive prior criminal records.

Assessing Inmate Risk

The ability to reasonably determine the level of risk a parole candidate poses to society if released is an essential requirement of any Parole Board whose goal is to protect public safety and to reduce recidivism. Risk prediction can be implemented with either of two basic approaches. The first is through the experience and intuition of each member. This strategy is currently used by Virginia's Parole Board. Board members often look closely at the serious nature of the offense and the circumstances surrounding the crime as an indicator of an inmate's risk of recidivating. One member seemed to link the level of acceptable risk to whether the crime was violent. This member stated, "Every parole board tries to release inmates that pose a minimal risk. The public will tolerate recidivism among non-violent offenders more so than violent offenders. Thus the Board must scrutinize violent offenders carefully."

The second approach for considering risk is on the basis of empirical research that identifies the type of offenders that have the highest probability of recidivating if paroled. The paroling authorities then use this information as a guideline to decide whether similar types of inmates will be granted parole upon establishing eligibility.

The Board has proposed using an instrument that was developed by a consultant who tracked the post-release experiences of persons who were paroled in FY 1985. With this instrument the Board is able to distinguish among offenders according to whether their risk of recidivating is low, medium-low, medium-high, or high. Parole Board staff are presently working with the consultant to refine the instrument for implementation in January of 1992 as a part of the Board's structured guidelines. For this study, the Parole Board provided JLARC staff with its preliminary risk scale but pointed out that the future research would likely alter the factors used to predict an inmate's likelihood for recidivating.

There are two major questions regarding the issue of risk assessment in Virginia: (1) Will a formal assessment of inmate risk lead to better decisions than those based on Board member experience? (2) Is the State's discretionary parole rate likely to increase if the Virginia Parole Board incorporates an objective assessment of inmate risk in its decisionmaking process?

Formal Risk Assessment Versus Board Judgment. To determine if risk assessment has the potential to lead to improved, more objective decisionmaking, JLARC staff asked the Parole Board to use its preliminary instrument to calculate a risk score for each inmate considered for parole in 1989. Next, more than 320 case studies were selected using the purposeful case study selection strategy described below:

- First, to exert some control for prior criminal behavior, inmates were grouped according to their number of commitments to the Department of Corrections.
- Second, the inmate records in this file were then grouped according to their assessed level of risk.
- Third, the file was stratified according to one of six different crimes — murder, kidnapping, sexual assault, robbery, assault, burglary, and fraud.
- Fourth, within each of these strata, a number of cases were randomly selected for those inmates who were granted parole but were characterized as medium-high or high risk, and those denied parole but regarded by the prediction tool as being a low risk. For some other cases, inmates with the same risk status but different parole outcomes were also selected.

The results from these case studies suggest that the risk scale will sometimes challenge the traditional views that some Board members have about an inmate's suitability for parole. Some of the case studies provide clear evidence of inconsistency in the decisions of the Board with regard to risk. Some inmates with low risk scores, good progress reports, minimum security DOC custody classifications, and no other countering risk factors in their file were nonetheless denied parole. Still other inmates that had medium-high or high risk scores and had prison records that were either comparable or less favorable than their counterparts who did not receive parole, were released at the discretion of the Parole Board. The following provides a discussion of three such cases. The inmates discussed in these case studies were serving their first prison term in a DOC facility, and this was their initial parole review.

An inmate in this case was given a two-year sentence for involuntary manslaughter. After becoming intoxicated at a wedding reception, the subject chose to drive home with his fiancée. Before reaching their destination the subject lost control of the car and it hit a curb. In an attempt to correct the steering, the subject swerved and hit a tree killing his fiancée. There were no prior felonies on his record. At the time of his interview in 1989, DOC had him classified as B-custody and he was earning next to the highest level of good-time. The subject's progress report indicated that he was not a security problem, was involved in an Alcoholics Anonymous Program, and had enrolled in a GED program. The counselor noted that the subject showed extreme remorse for his crime and was always polite. The examiner

recommended parole, citing the subject's good release plan, the absence of a prior record, and the damaging impact of his fiancée's death. According to the Board's risk scale, the subject would have been classified as low risk for committing another felony if released. Parole was denied by the Board.

* * *

For another case, an inmate was given a seven-year sentence for homicide. Before the crime was committed, the subject had decided to carry a gun because he was afraid of an "old enemy." On the night of the crime, he was intoxicated and entered a restaurant. His "enemy" was in the restaurant and they began to fight. The subject was subsequently chased from the restaurant by another man. When this man caught him outside the restaurant they fought, and the subject pulled out a gun and killed him. The subject had two prior offenses — one for carrying a concealed weapon (switchblade) and possession of marijuana. At the time of his parole interview in 1989, the inmate was classified by DOC as B-custody and was earning next to the highest level of good time. His progress report indicated that he had no major infractions. The counselor noted that he was quiet and scared of prison but also stated that it was too soon to tell if he had developed a resolve to remain free from alcohol. The examiner was impressed with the inmate's remorse and truthfulness but recommended against parole because of the serious nature of the crime. According to the risk scale, the subject would have been classified as a potential recidivist. The Parole Board decided to grant parole.

* * *

In a third case, an inmate received a three-year sentence for involuntary manslaughter. After becoming intoxicated, he decided to race his car against a friend's through a residential neighborhood. His friend turned a corner at excessive speed and hit and killed an eleven year old boy. Both the subject and the man who killed the child left the scene. After he was apprehended, the subject pleaded guilty. During the course of his imprisonment, he became a trustee in the jail and participated in an alcohol rehabilitation program. The sheriff wrote a letter to the Parole Board strongly supporting an early release for the inmate but there was tremendous opposition from the community. According to the risk scale this individual has a low likelihood of recidivating. The Board denied him parole because of his serious disregard for the safety of others.

These findings point to the need for the Parole Board to incorporate risk assessment tools in their decisionmaking. Table 9, which reports the parole status for persons considered in 1989 according to their recently determined level of risk, helps to

Table 9

**Parole Status for Various Levels
of Inmate Risk**

<u>Risk Status</u>	<u>Parole Granted</u>	<u>Parole Not Granted</u>
High Risk	15%	34%
Medium-High	26%	29%
Medium-Low	13%	7%
Low	<u>46%</u>	<u>30%</u>
TOTAL	100%	100%

Notes: Figures are based on the 8,310 inmates considered for parole in 1989 for which a risk score could be calculated. As this is not a randomly selected sample, caution must be exercised when interpreting these numbers.

Source: JLARC staff analysis of data from the Virginia Parole Board.

further illustrate this. Thirty-seven percent of the inmates who were denied parole in 1989, would have been considered medium-low (seven percent) to low risk (30 percent) using the Board's newly developed assessment tool. With this same instrument, 41 percent of the inmates granted parole in this year were later classified as either medium-high (26 percent) or high risk (15 percent).

At the same time, it must be recognized that no risk-based instrument is capable of capturing the uniqueness of some cases that can often justify a complete departure from decisionmaking policy. Many qualitative factors that Board members consider when deciding parole cases — inmate's attitude, quality of program participation, expressions of remorse about crime — are largely ignored in the development of risk instruments.

Nor do these instruments completely reflect the different goals paroling authorities will pursue when deciding cases. For example, based on additional information in the files, the Parole Board appeared to have justifiably denied parole to some inmates that were categorized as low risk. This was typically the case for inmates who did not participate in the treatment programs recommended by their institutional counselors. Conversely, some of the Parole Board's decisions to grant parole to inmates with a high risk score could be explained by the inmates' exemplary institutional adjustment or program participation. Because of this, the Parole Board must maintain the required discretionary authority to respond to such cases. The challenge for the Board in this regard is to establish decisionmaking policies which include guidelines that define appropriate reasons for departing from those policies, and ensure that such departures are consistently implemented.

Recommendation (12): The General Assembly may wish to consider requiring the Parole Board to adopt a structured instrument for use in determining an inmate's risk and a set of policies governing the use of this tool.

Impact of Risk Assessment On Virginia's Parole Rate

In its report to the General Assembly, COPJO reported that the State's problems with prison overcrowding are exacerbated by unnecessarily restrictive decisionmaking practices by Virginia's Parole Board. In its report, COPJO suggested that an increase in the State's discretionary parole rate could be safely accomplished with the use of empirically developed criteria that would presumably allow for better identification of low-risk inmates.

Data from this study do indicate that 37 percent of the inmates denied parole in 1989 were relatively low risk based on recent research. If Board decisions to grant parole were targeted exclusively to these inmates, a small statewide increase in the discretionary parole rate of approximately six percent could possibly have been realized. However, for reasons previously stated, a rigid application of risk assessment would not be an adequate substitute for the discretion that is appropriately applied when deciding cases. Under such a system, inmates who are low risk but consistently demonstrate incorrigible behavior or eschew participation in programs designed to rehabilitate them would be nonetheless paroled. Conversely, inmates who are high risk, but demonstrate a concerted effort to reform would be routinely denied parole. This approach to parole decisionmaking would likely undermine some of the laudable goals of incarceration.

Using Community Resources To Lower Risk

One way in which the parole rate could be increased is through an allocation of more resources for community treatment of parolees considered to be high risk. More than 60 percent of the inmates who were not granted parole in 1989 could be classified this way. Rather than deny some of these high risk inmates parole, the Board presently has the option to release them on the condition that they be placed in a residential treatment facility. However, most private treatment facilities either do not accept or are beyond the financial reach of most inmates. The State has attempted to counter this by providing resources for a pre-release program to purchase bed space in those residential facilities that will accept offenders.

Department of Corrections staff who are responsible for identifying the pre-release treatment needs of inmates and facilitating residential placements indicate that this program is funded at levels insufficient to have an impact on the State's parole rate. Originally funded at \$50,000 in 1986 for inmates on work release, the program's budget has only increased to \$129,000 since that time. Although the program is now serving mostly parolees instead of work release inmates, it can usually purchase services for no more than 125 inmates at any given time.

The Chairman of the Parole Board stated that only about ten percent of the Board's conditional release decisions require treatment beds. However, he indicated that these type decisions will be increasing in the future and he does not feel there are sufficient beds available to handle this increase.

Recommendation (13): The General Assembly may wish to require the Parole Board in conjunction with the Department of Corrections to determine what level of community resources would be necessary to accommodate the Board's future plans to release more inmates to residential treatment programs.

IMPROVING THE PROPOSED RISK ASSESSMENT INSTRUMENT

As noted earlier, a key element of the Parole Board's structured guidelines system presently under study is a component to predict inmate risk. This instrument, which is currently being tested by the Board, is specifically designed to aid decision-making by identifying which candidates for parole have the highest risk of recidivating. As a part of this study, JLARC staff reviewed the research that was conducted to develop this instrument. This section of the report discusses those activities and provides a recommendation pertaining to future research to refine this component of the guidelines system.

Research Conducted to Determine Risk Scale. In 1988, the Parole Board contracted with a consulting firm to assist with the development of a tool that would predict each inmate's risk for recidivating if granted parole. To develop this component, the consulting firm tracked the post release experiences of persons who were paroled in 1985 over a two-year period. In a telephone interview with JLARC staff, one of the researchers for the project provided the following chronology of research activities conducted to determine the best predictors of inmate risk:

- First, crosstabulation analysis was used to identify variables that were associated with parolees committing another felony after being paroled. From this analysis, 58 different factors were determined to be at least moderately related to whether the inmate committed another felony.
- Second, correlation analysis, which measures the strength and direction of a relationship between two variables, was performed to identify and eliminate all predictors of recidivism that were correlated with race and sex.
- Third, in order to prevent redundancies in the data that inappropriately lower or raise an inmate's risk score, correlation analysis was again used to group certain factors. For example, if two factors demonstrated equally strong relationships with recidivism, but were highly correlated, only one of these factors was used to calculate the inmate's risk score. If these same fac-

tors did not have a statistical correlation that was greater than .20, each were treated as separate predictors of risk. This analysis resulted in the selection of 11 groups of factors to predict an inmate's new felony risk.

- Finally, weights were assigned to each of those factors in the 11 groups that exhibited either a very strong, strong, or moderate relationship to committing a new felony. The following weighting scheme was used for these categories: very strong indicators were assigned a maximum weight of 40 points; strong indicators were assigned a maximum of 30 points; and moderate indicators were assigned a maximum of 25 points. Other possible responses were assigned points according to the researcher's interpretation of their relative strength as predictors of recidivism. If the value for a particular variable was missing for some inmates, a default score based on the average value for the response in the entire data set was used.

The following example illustrates how the risk score would be determined for an inmate with the following characteristics: (1) most serious offense is robbery; (2) total court-imposed sentence of 15 years; (3) four infractions while incarcerated; (4) two prior felony convictions; (5) one year of juvenile probation; and (6) two prior parole grants.

$$\begin{aligned} &\text{Robbery (40 pts.)} + \text{15 year sentence (30 pts.)} + \text{Four infractions (28 pts.)} \\ &+ \text{Two felonies (20 pts.)} + \text{One juvenile probation (30 pts.)} \\ &+ \text{Two prior paroles (30 pts.)} + \text{Default for parole type (30 pts.)} \\ &= \text{Risk Score (208 pts.)} \end{aligned}$$

For testing purposes, once this risk score was determined, the Parole Board used the following scale to categorize each inmate's risk:

- low risk is 95 to 179;
- medium-low risk is 180 to 209;
- medium-high risk is 210 to 259; and
- high risk is 260 to 435;

Based on these risk categories the inmate in the illustrated case would be considered a medium-low risk for parole.

Use of Multiple Regression to Improve the Risk Tool

There are several shortcomings in the methodology that was used to develop the risk prediction instrument. After reviewing the research and conducting a telephone interview with one of the consultants who developed the risk scale, JLARC staff concluded that additional work needs to be completed to enhance the accuracy of the prediction instrument.

Problems with the Use of Bivariate Statistical Techniques. In identifying the factors to predict risk, the methodology relies heavily on two bivariate statistical techniques — crosstabulation and correlation analysis. One limitation of these methods is that they are not capable of identifying redundant measures of the same phenomenon. For example, it is possible that both sentence length and crime type are separate predictors of recidivism. However, after accounting for one of these factors in a multiple regression model, it may be discovered that the second factor adds very little to the explanation of the observed variation in recidivism. When redundant measures are treated separately as predictors of risk, they will artificially raise or lower the inmate's risk score.

The research consultant who developed the methodology feels that any redundancies have been accounted for through a check of the statistical intercorrelations between the factors regarded as predictors of recidivism. Still, the threshold of acceptable intercorrelation established using this technique (.20) is generally arbitrary and does not ensure that all redundancies are removed. With multiple regression analysis, the effect of many variables on recidivism can be simultaneously accounted for. This permits an assessment of how much additional variation in the dependent variable is explained by adding each factor to the model used in the analysis.

Developing Objective Weights. The procedures used by the researcher to assign weights to the various factors appear to be based on an interpretation of the relative strength between each predictor and whether a new felony was committed. Weights assigned in this fashion are subjective and will not always accurately represent the relationship between the dependent and independent variables.

When multiple regression analysis is used to model relationships, the equation produces a constant value. This represents the value of the dependent variable (in this case whether a new felony was committed) when all of the other factors have a value of zero. This equation also produces coefficients for each factor explicitly considered in the model which represents the average weight that these factors have in causing the dependent variable to increase or decrease. By quantifying the relationship between each independent variable and whether a new felony was committed, a predicted risk score can be produced for each inmate based on the actual associations calculated by the model. This would be accomplished by multiplying the weight for each coefficient by the inmate's value for that factor. The sum of all these factors, including the constant produced by the model would represent each inmate's risk score.

The consultant for this project cited a number of reasons why multiple regression analysis, though considered, was not used. The first was that there is too

much missing data for some factors. JLARC staff believe that this problem can be overcome by creating an indicator to capture and model the impact of missing information. If the research shows that the associations observed for cases for which the data are missing are insignificant, then it can be concluded that the lack of data for certain cases is not a problem and the average relationships observed for the other observations could be treated as the standard for all inmates. Moreover, since the original research was conducted, the Parole Board reports that it now has access to a more complete automated data set for some of the key factors used in the analysis to predict risk. This should substantially reduce the problems with missing data.

Another major reason that the consultant decided against using multiple regression analysis was because of its tendency to "overfit" the data when a large number of independent variables are used. This can happen when there are not enough observations in the sample being studied to produce reliable unbiased estimates for each factor in the model. As noted, 58 factors were found to have at least a "moderate" association to committing a new felony using crosstabulation analysis. JLARC staff recognize that even with a data set sufficiently large to accommodate a regression model with 58 variables, the results would be difficult to comprehend.

To avoid this problem, any number of variable reduction techniques can be used to isolate the set of factors that best predict whether a new felony was committed. Once this reduced set of variables has been identified, they can be included in a regression model to determine a more precise measure of their impact on the dependent variable.

Recommendation (14): The Parole Board should refine the instrument used to predict risk by conducting a multivariate analysis of the impact of certain inmate characteristics on the likelihood of committing new felonies.

MEASURING THE PAROLE BOARD'S EFFECTIVENESS

Ultimately, the Parole Board must be evaluated according to its success in achieving the agency's stated goal of paroling only those offenders "whose release is compatible with the welfare of society and the offender." The Parole Board's performance in this regard is best evaluated through an examination of the rate at which persons released on discretionary parole receive new felony convictions because of continued criminal activity.

The mandate for this study did not authorize an examination of this issue and the Parole Board does not systematically collect information on recidivism among persons released on only discretionary parole. In 1988, the Board began collecting data on the number of persons whose parole was revoked because of a new felony conviction. Since that time, the Board reports that 1,617 parolees have been reincarcerated for committing new felonies.

Alone, this information does not provide a basis for assessing whether recidivism among persons released on discretionary parole is a problem in Virginia. As reported, these figures represent annual counts of parolees who committed new felonies. The data do not provide any evidence on the proportion of persons released by the Parole Board in any given year who violated the conditions of their release.

As noted earlier, the Parole Board did fund such a study of recidivism among all persons released on parole in 1985. However, the length of the follow-up period — two years — is not sufficient to produce reliable estimates of recidivism. With such a short period of follow-up, the Board is unable to determine if many of those included in the study will recidivate prior to completing a substantial portion of the mandated period of parole supervision.

Recommendation (15): The General Assembly may wish to mandate a study of recidivism among persons released on discretionary parole to determine the magnitude of the problem, the factors contributing to the problem, and possible strategies for lowering recidivism among persons released at the discretion of the Parole Board. This study could incorporate a review of the adequacy of community services to support persons released.

CONCLUSIONS

The authority to grant inmates discretionary parole in Virginia is completely vested in the Parole Board. Each year, the five-member Board and its staff must review and decide cases for more than 11,000 inmates a year. Presently, Board policy requires that each case be decided within 30 days after the inmate is interviewed by a parole examiner. However, due to its increasing workload and the inability of DOC to provide the Board with timely access to key inmate files, this objective is not being met for a third of all cases.

Once inmates are granted parole, it is the responsibility of DOC's Parole Release Unit to ensure that these inmates are released in a timely manner. Coordination problems between this unit and the Board have slowed the release process for more than one quarter of the inmates who are granted discretionary parole. By administering the parole process more efficiently, critically needed bed space could be made available sooner for incoming inmates.

The methods used by the Parole Board's five members to decide which inmates will be released have received considerable attention in recent years. Current agency policy identifies the factors that should be considered by both the examiners and members when reviewing a case but is silent on the issue of how these factors should be applied. This absence of policy to guide the use of discretion has produced inconsistencies in both the ways that parole examiners view cases and the ways that Board members decide them. This appears to be a particular problem with regard to the assessment of inmate risk.

In order to address these problems, the Board has proposed that a structured guidelines system, which will incorporate an assessment of inmate risk, be implemented in 1992. While additional research is required to refine the risk component of this system, the evidence does suggest that the Board will be forced to rethink their views about the risk associated with paroling some inmates. Nonetheless, without an increase in the availability of community treatment programs, proposed changes to the parole process should not be expected to produce significant increases in Virginia's discretionary parole rate.

V. Improving the Efficiency of Virginia's Parole Process

The results presented in this study point to numerous inefficiencies in the discretionary parole review process. Hampered by steadily expanding caseloads, the Parole Board is finding it increasingly difficult to hear and decide cases in a timely fashion. JLARC staff have proposed a number of changes to parole laws and policies that are designed to diminish the workload of the five-member Board by reducing the likelihood that annual reconsiderations of parole cases would be necessary. However, if the persistent rise in the number of new felony commitments to the Department of Corrections (DOC) does not subside, the changes recommended in the previous chapters of this report may not be sufficient to ensure the long-term efficiency of the parole process.

This chapter outlines a number of options the State could consider to ensure that further increases in the State's prison population do not prevent the timely disposition of future parole cases. The proposed alternatives represent different strategies for dealing with the efficiency issue. The first two options are designed to reduce the Board's workload by minimizing the need for any one inmate to receive multiple reviews before being paroled. The third option does not have a direct impact on the number of cases that are reviewed annually; rather, it seeks to eliminate inefficiencies by decreasing the number of cases each Board member is required to review.

A PRESUMPTIVE SYSTEM

A presumptive parole system that incorporates the use of structured decision-making instruments is one of the most direct means of controlling the Board's workload while maintaining the integrity of the discretionary parole process. With this type of system, the Board can use a risk prediction instrument to make a parole decision shortly after an inmate is incarcerated. Once this decision has been made, the Parole Board can establish a presumptive release date using a time-served standard which is based on the proportion of the court-imposed sentence that other inmates have typically served for committing the same crime.

Through the imposition of release conditions, the Board retains its ability under this system to adjust its parole decision based on the inmate's institutional behavior. If the inmate does not meet these conditions, the release date can be delayed or the Board can rescind its decision to grant parole.

The presumptive nature of this system eliminates the need for the Board to reconsider annually the cases of inmates denied parole, thereby significantly reducing

the Board's annual workload. In addition, because decisions are made early in an inmate's sentence, sufficient time is allowed to plan for the inmate's release.

How Presumptive Parole Works in Other States

In 1989, three states operated under presumptive parole systems: Georgia, Oregon, and Utah. While Oregon has since shifted to determinate sentencing, thus effectively eliminating the parole process, the other two states continue to operate under this presumptive system. JLARC staff interviewed Parole Board officials in each of the three states to gain insight into how such systems are implemented. Although parole policies differ slightly among these states, the major features of the three parole systems are the same. Each state utilized a form of parole guidelines which are said to be the centerpiece of the system. Using the guidelines, the Parole Board is able to decide if and when inmates will be released, shortly after they are incarcerated. In most cases, this constitutes the inmate's only formal parole review.

In these three states, parole decisions are generally made within a year after the inmate has been sentenced. In Georgia, inmates are interviewed for parole within a few weeks of incarceration, and the Parole Board will make a parole decision within four to six months. In Utah, the severity of the felony and the length of the inmate's sentence dictates when the inmate will be reviewed. Inmates committing less serious felonies with shorter sentences are reviewed within three months of incarceration. Inmates committing the most serious felonies, with sentences ranging from five years to life, are reviewed three years after incarceration. Finally, before the discretionary parole process was eliminated in Oregon, each inmate was reviewed within six months of sentencing, unless the inmate had a life sentence. In this case, the review was conducted within 12 months of incarceration.

Case review activities prior to the inmate's actual release are handled differently by these states. Georgia allows the hearing examiners to conduct the reviews. These examiners can delay the release of inmates for 30 to 120 days if the institutional record is unsatisfactory. In Utah, the Corrections' officials can request that a case be reconsidered prior to the inmate's release date. In Oregon, Board members conducted "desk" reviews of the Department of Corrections' reports on the inmate's institutional behavior.

How Presumptive Parole Might Work in Virginia

Based on information obtained from the states using presumptive parole and on an analysis of Virginia's parole process, JLARC staff developed the following description of how a presumptive parole system could be implemented in Virginia:

- (1) **Eligibility Determination.** As proposed in Chapter III of this report, current eligibility laws could be replaced by a time-served standard. All inmates who are eligible for parole would be required to serve a portion of

their court-imposed sentence that would be based on the amount of time that inmates have typically served for committing the same crime.

- (2) **Review Process.** Soon after they are processed into a correctional facility or jail, the inmates would receive a parole interview conducted by a parole examiner, and their cases would be reviewed by the Board. For most inmates, this would constitute their only parole interview. At this time, the Parole Board would make a decision to either deny parole or grant release at a specified date in the future, determined by the time-served standard. Inmates who are denied discretionary parole would still be released at a later date according to the current provisions in the Code of Virginia for mandatory parole.
- (3) **Structured Guidelines and Risk Assessment.** To ensure that its decisions are consistent, fair, and account for the inmate's risk to society, the presumptive parole system should incorporate structured decision-making guidelines. This would include an empirically-based instrument to help members measure the inmate's risk of committing another felony if released.
- (4) **Major Infractions.** If, during the course of their incarceration, these inmates commit major infractions, their pre-determined release date would be delayed according to a formula developed by the Parole Board.
- (5) **Parole Release.** If the Parole Board's decision to release the inmate was conditional, an examiner would be required to review the inmate's progress report to determine if those conditions were met before the inmate was released. If the progress report was unsatisfactory in this regard, the inmate's release could be delayed for a pre-determined period by the Board, or the case could be referred back to the members for reconsideration of the presumptive decision.

This method for reviewing and deciding cases speaks directly to efficiency problems that plague the current system. The current requirement that the Parole Board review annually the cases of inmates denied parole in previous years has added considerably to the Board's annual workload. One significant advantage of the presumptive feature of the proposed system is that the Parole Board's workload would be substantially reduced. Because an inmate is interviewed only once, the number of parole reviews in a given year would be roughly equal to the number of new felony commitments in that year. Had a presumptive system been in place, the proportion of the Board's workload that could have been eliminated over the past five years ranges from 30 to 49 percent, as shown in Table 10.

As noted in the U.S. Department of Justice's *Handbook for New Parole Board Members*, due to increasing caseloads, jurisdictions are giving more attention to the option of scheduling the parole hearing earlier in an inmate's sentence. In discussing the scheduling of the release hearing, the handbook states:

Table 10

**Number of Reviews Eliminated
Under Presumptive Parole System**

<u>Fiscal Year</u>	<u>Total Considerations</u>	<u>New Commitments</u>	<u>Reviews Eliminated</u>	<u>Percent of Workload Eliminated</u>
1985	7,434	3,793	3,641	49
1986	8,779	5,162	3,617	41
1987	9,306	5,523	3,783	41
1988	9,914	5,868	4,046	41
1989	10,627	7,400	3,227	30

Source: JLARC staff analysis of Parole Board data.

[The] traditional practice of scheduling release hearings so close to eligibility has its basis in the original rehabilitative intent of parole and incarceration. The board wanted as much time as possible to observe a prisoner's progress in prison and to judge the success of his or her rehabilitation. This practice is changing in many jurisdictions for a number of reasons. The press of increased hearing loads and the demand for prison beds have caused some boards to initiate hearings earlier in prisoners' terms. This permits more adequate preparation time for each case and the timely release of inmates once parole is granted. In some states, the shift in emphasis from rehabilitation to an incapacitative or a just deserts purpose has obviated the need to hold hearings late in the prisoners' terms: Boards usually have the information they need for decisionmaking well in advance of the eligibility date.

This latter change is most obvious in those states which by law or by policy have implemented parole guidelines. In states like Oregon and Georgia, the guidelines permit the parole board to establish a presumptive term of incarceration and a tentative release date. This information is given to inmates soon after their admission to prison, along with the factors that may change that presumption.

A presumptive system would also alleviate problems with delays in the release of inmates who have been granted parole. Because inmates would be given a parole release date shortly after sentencing, arrangements could be made for the inmate's release significantly in advance of this date. As noted in Chapter IV, half of

the inmates granted parole are released weeks after their case is decided. For most of these inmates, delays can be attributed to the lack of sufficient time between the date of case disposition and the date of scheduled release to make arrangements for any special conditions.

How Presumptive Parole Would Affect Rehabilitation and Inmate Conduct

While presumptive parole is an outgrowth of the movement away from rehabilitation as a primary goal of incarceration, the rehabilitative aspect of incarceration does not have to be ignored. The presumptive system could give the Board the option of requiring inmates to participate in special programs during the course of their imprisonment according to the objectives in their institutional treatment plan. As the inmate's release date approaches, his institutional progress report would be reviewed by a parole examiner to ensure that the conditions the Board had imposed were met. If the programs were available and the inmate had chosen not to participate in them, the release could be delayed for an amount of time predetermined by the Parole Board.

Specifying what the inmate needs to do to be granted parole can potentially enhance the rehabilitative aspect of incarceration. During interviews with DOC staff, JLARC staff were told that inmates find the parole process frustrating because they are uncertain what they need to do to exhibit to the Board that they are ready to be paroled. Because some inmates are repeatedly denied parole based on "the serious nature and circumstances of the crime," many begin to believe that their institutional adjustment is not a key factor in the parole decision. Under a presumptive parole system, inmates would know up front the conditions they must meet to ensure parole release.

The presumptive system could also be used to encourage inmates to comply with institutional rules and regulations. To avoid rewarding incorrigible inmates, the Parole Board would postpone the inmate's release by a pre-determined amount of time for each institutional infraction incurred. This extension would be automatic and would be applied to an inmate's release date by the Department of Corrections at the time an inmate is found guilty of the charges. It would be the responsibility of the Parole Board, however, to establish policies regarding the type of infractions that would be used to delay an inmate's release and the amount of time the release will be delayed.

In addition to making an inmate's release contingent upon behavior in prison, the Board could choose to place post-incarceration conditions on an inmate's release. The Board could, for example, require that an inmate be placed in a residential substance abuse treatment program for a certain period of time following release. As under the current system, the inmate's progress towards meeting post-incarceration conditions would be monitored by a parole officer. Violations of parole would result in automatic reincarceration for an amount of time determined by the Board during the revocation hearing. These inmates would not need to be reconsidered for parole.

Use of Structured Guidelines in Decisionmaking

Structured decisionmaking instruments are the key to the success of a presumptive parole system. These instruments ensure that the Parole Board incorporates the same factors into its parole decisions in a consistent and non-arbitrary fashion. The majority of the information provided by the guidelines would be available at the time of the parole review. Because of the presumptive nature of this system, however, several factors used in the Board's current risk instrument could not be considered at the time the parole decision was made. These would include, for example, disciplinary infractions incurred while incarcerated, and escape attempts. However, these factors could be used as incentives for inmates to avoid such behaviors to prevent a change in, or loss of their presumptive release dates.

DELAYING RECONSIDERATIONS

Another alternative for alleviating the problem of the Parole Board's burgeoning caseload is to give the Board the option of setting off the future reviews of inmates who are denied parole on their first date of eligibility. This would decrease the Board's overall caseload by reducing the proportion of its cases that had to be reconsidered in any given year.

As previously noted, the Parole Board is required by statute to annually review the cases of inmates denied parole. While the Board has been given the authority to set off for three years the cases of inmates with sentences of greater than 10 years, it has not utilized this prerogative. With this option, the Parole Board could use its discretion to determine whether to delay reconsidering the case regardless of the inmate's sentence length.

Delaying the reconsideration of inmates denied parole would reduce, in the short run, the proportion of the Board's workload that is devoted to reconsiderations. However, from an efficiency standpoint, this alternative would not have the same long-term effects on caseload reductions as the presumptive system. As the Parole Board began to hear the cases it had set off in previous years, its workload might begin to approximate what it had been prior to the implementation of the policy of delaying the review of cases.

To maximize the benefit of setting off cases, the Parole Board would have to stagger the lengths of time between parole reviews for all cases that it chose to set off. This could be done, for example, based on the inmate's sentence length. Inmates with longer sentences would be set off for longer periods of time. By taking this approach, the Parole Board would not be faced with reviewing, at one time, all of the cases it had set off in a given year.

EXPANDING THE PAROLE BOARD

A final option that should be explored to improve the efficiency of the parole process is the expansion of the Parole Board. While this would not have a direct impact on the total number of cases that had to be considered in a year, as would the previous options, it would decrease the number of cases that each Board member was required to hear. This would prevent backlogs in the review process and allow Board members more time to review cases.

By increasing the number of Board members from five to nine, for example, the Board could be split into two panels for purposes of reviewing inmates for parole. Each inmate would be reviewed by only one of the two panels. The parole decision would be based on the vote of a majority of panel members. If a majority vote could not be obtained, the Parole Board chairman would cast the deciding vote.

The impact this panel review process would have on the Board's workload is significant. The number of cases each Board member was required to review would be reduced by 50 percent. This would allow the Board members more time to review each case. Accordingly, delays in the disposition of cases that are attributable to the actual review of cases by Board members could be significantly reduced.

Recommendation (16): To ensure that future increases in the State's prison population do not hamper the efficiency of the discretionary parole review process, the Secretary of Public Safety should study the following options: (1) adoption of a presumptive parole process, (2) delaying the reconsideration of cases for inmates who are initially denied parole, and (3) expansion of the Parole Board. The Secretary should report the findings of the review with recommendations to the Virginia State Crime Commission prior to the 1992 Session of the General Assembly.

Appendixes

	<u>Page</u>
Appendix A: Study Mandate	101
Appendix B: Sampling Strategy Used for Analysis of Good-Time Policies	103
Appendix C: Agency Responses	107

Appendix A

SENATE JOINT RESOLUTION NO. 26

Requesting the Joint Legislative Audit and Review Commission to study parole review in Virginia.

Agreed to by the Senate, February 8, 1990

Agreed to by the House of Delegates, March 7, 1990

WHEREAS, in 1987 Virginia was reported to have an average of 141.5 adults on parole per 100,000 adults in its general population, as opposed to a national average of 196.4, thus giving Virginia one of the lowest parole rates in the country; and

WHEREAS, the reasons for Virginia's low parole rate are not easily identified and may be affected by such factors as the characteristics of Virginia's prison population, its statutes and policies governing parole, and a lack of community resources; and

WHEREAS, the length of time that inmates stay in prison has a greater impact on the need for increased prison capacity than the number of inmates entering the system each year; and

WHEREAS, an analysis conducted for the Commission on Prison and Jail Overcrowding demonstrated that a five percent increase in the parole rate for persons convicted of certain nonviolent crimes would reduce the prison population by 678 beds by 1994, therefore significantly relieving crowding; and

WHEREAS, empirically developed, objective parole criteria could allow more accurate prediction of success on parole, improve forecasting and planning, and enhance inmate management; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Joint Legislative Audit and Review Commission is requested to study parole review in Virginia in an effort to determine the specific reasons for Virginia's low parole rate, to suggest changes to law, policy, or practice that may be desirable based on these reasons, and to provide meaningful comparisons with other states. The study should include a review of Virginia's and other states' statutes governing parole and a review of policies and practices of all agencies involved in the parole process, including the Department of Corrections and the Virginia Parole Board. Such agencies shall cooperate with the Commission as requested to facilitate its study.

The Commission shall reports its findings and recommendations to the Governor and the General Assembly by December 1, 1991, as provided in the procedures of the Division of Legislative Automated Systems for processing legislative documents.

Appendix B

Sampling Strategy Used for Analysis of Good-Time Policies

Sentence credits earned by inmates through the State's good-time system can substantially advance their parole eligibility date. These good-time credits can be earned by felons housed in State correctional facilities as well as those who must serve their time in a local jail. The Department of Corrections (DOC) has established agency policies to govern the implementation of good-time in the State correctional facilities.

In the local jails, the sheriffs are responsible for the implementation of good-time. While local jail staff must adhere to State policy when requesting changes to the good-time status of State felons, DOC officials have exercised little control over how its system of good-time is implemented in the local jails. This fact required JLARC staff to select separate samples of State correctional facilities and local jails to evaluate the consistency with which the good-time system is implemented for State felons. This allowed an assessment of whether the parole eligibility status of inmates is affected differently based on where they are incarcerated.

Sampling Strategy To Evaluate Good-time System In State Facilities

A universe of 44 prisons and field units was used to select the sample of State correctional facilities. A sample of seven major prisons and five field units was selected using a sampling procedure that stratified the universe of facilities according to the type of prison. The purpose of using a stratified sampling procedure was to ensure that JLARC staff would capture any variation in good-time implementation practices that might be due to differences in the type of facility. For example, one key question concerning the good-time system was whether inmates in the highest custody class were prevented from earning the maximum amount of good-time. Therefore, the sampling technique was designed to ensure that prisons which housed all three security classes of inmates (A, B, and C custody) were represented in the study.

Using this approach, the data were stratified according to the following three groups: (1) major institutions (which are primarily large prisons that usually include inmates at all three security levels), (2) field units (which are smaller than the major prisons and are used to house minimum security inmates), and (3) major institutions with unique missions (e.g. Youthful Offender Center).

Table B-1 lists the correctional facilities from each of the three strata. The first stratum contained 14 institutions. As of July 1990, the smallest prison in this stratum housed 104 inmates. The largest had a confined population of 1,055 inmates. The second stratum contained 27 correctional field units. The smallest facility housed 27 inmates and the largest 337 inmates. The final stratum — special mission facilities

Table B.1

Correctional Facilities in Virginia

Major Institutions

Augusta Correctional Center
Bland Correctional Center
Brunswick Correctional Center
Buckingham Correctional Center
Deep Meadow Correctional Center
Deerfield Correctional Center
James River Correctional Center
Mecklenburg Correctional Center
Nottoway Correctional Center
Powhatan Correctional Center
Powhatan Reception and
Classification Center
Southampton Correctional Center
Southampton Reception and
Classification Center
St. Brides Correctional Center
**Virginia Correctional Center for
Women**
Virginia State Penitentiary

Special Mission Major Institutions

Marion Correctional Center
Southampton Youthful Offender
Center
Staunton Correctional Center

Correctional Field Units

Appalachian Correctional Unit
Baskerville Correctional Unit
Botetourt Correctional Unit
Capron Correctional Unit
Caroline Correctional Unit
Chatham Correctional Unit
Chesterfield Correctional Unit
Cold Spring Correctional Unit
Culpeper Correctional Unit
Dinwiddie Correctional Unit
Fairfax Correctional Unit
Fluvanna Correctional Unit
Halifax Correctional Unit
Harrisonburg Correctional Unit
Haymarket Correctional Unit
Haynesville Correctional Unit
Nansemond Correctional Unit
New Kent Correctional Unit
Patrick Henry Correctional Unit
Pocahontas Correctional Unit
Pulaski Correctional Unit
Rustburg Correctional Unit
Smith Mtn. Lake Correctional Unit
Stafford Correctional Unit
Tazewell Correctional Unit
Tidewater Correctional Unit
White Post Correctional Unit
Wise Correctional Unit

Note: Facilities in bold print were in the sample visited by JLARC staff.

— contained only three prisons that housed a minimum of 84 to a maximum of 675 inmates.

To select the sample from within these strata, the team used the SYSTAT statistical software package to generate random numbers which were then applied to two of the three strata. Since the third stratum — facilities with special missions —

contained only three units, the random selection process was not used to select the one facility that was included from this stratum. Instead, Parole Board officials were questioned regarding the procedures for determining parole eligibility for inmates at these facilities. Based on these discussions, the Youthful Offender Center was selected as a sample site.

Selecting Additional Facilities

After the random selection process was used to select the sample, JLARC staff checked to determine if there were a sufficient number of facilities that housed a mix of inmates in each of the major custody levels. One major institution (St. Brides) was added to the sample to ensure that facilities with a majority of inmates in "B" custody were adequately represented in the sample. In addition, one field unit (Nansemond) was added to the sample to ensure that facilities with a majority of inmates in "A" custody were adequately represented in the sample.

Sampling Strategy To Evaluate Good-time Practices In Local Jails

A universe of 91 local facilities was used to select a sample of local jails. A sample of 20 jails was selected using a sampling procedure that stratified the universe of facilities according to average daily population. JLARC staff chose jail size as the stratifying variable based on the assumption that the methods for implementing DOC's good-time system might vary according to the size of the facility.

Using this approach, the data were stratified into four groups according to the 1988 average daily population of each facility. These groups were: one to 22; 23 to 44; 45 to 150; and more than 150.

Table B-2 lists the local jails from each of the four strata. The first and second strata contained 24 facilities, while the third stratum contained 26 facilities and the fourth stratum contained 17 facilities. To select the sample of local jails for the telephone survey, the JLARC staff again used the SYSTAT statistical software package to generate random numbers that were then applied to each of the four strata.

Selecting Additional Facilities

After the random selection process was used to select the sample, JLARC staff checked to determine if there was a sufficient geographical representation of local jails across the State. The Washington County jail was added to the sample because jails in the western portion of the state were under-represented in the sample. In addition, to increase the number of large jails in the sample, the Alexandria and Richmond City jails were added to the sample.

Local Jail Facilities in Virginia

Stratum 1

Alleghany
Appomattox
Bath
Bland
Charlotte
Clarke
Clifton Forge
Floyd
Giles
Grayson
Highland
Lancaster
Louisa
Martinsville
Nelson
Northumberland
Orange
Patrick
Radford
Rappahannock
Richmond
Scott
Westmoreland
Wythe

Stratum 2

Amherst
Botetourt
Buchanan
Caroline
Carroll
Culpeper
Dickenson
Dinwiddie
Gloucester
Greensville
Lee
Middle Peninsula
Montgomery
Northampton
Page
Rockbridge
Russell
Shenandoah
Smyth
Sussex
Tazewell
Warren
Wise
York-Poquoson

Stratum 3

Accomack
Albemarle
Augusta
Bedford
Bristol
Campbell
Danville
Fauquier
Franklin
Frederick
Halifax
Hanover
Henry
Hopewell
Loudoun
Lynchburg
Mecklenburg
Piedmont
Pittsylvania
Pulaski
Roanoke
Rockingham
Southampton
Stafford
Washington
Williamsburg

Stratum 4

Alexandria
Arlington
Chesapeake
Chesterfield
Fairfax
Hampton
Henrico
Newport News
Norfolk
Petersburg
Portsmouth
Prince William/Manassas
Rappahannock
Richmond City
Roanoke City
Suffolk
Virginia Beach

Note: Facilities in bold print were in the sample surveyed by JLARC staff.

Appendix C

Agency Responses

As part of an extensive data validation process, each State agency involved in a JLARC assessment effort is given the opportunity to comment on an exposure draft of the report. This appendix contains the response by the Virginia Parole Board and the Secretary of Public Safety.

Appropriate technical corrections resulting from the written comments have been made in this version of the report. Page references in the agency response relate to an earlier exposure draft and may not correspond to page numbers in this version of the report.



COMMONWEALTH of VIRGINIA

Virginia Parole Board

6900 Atmore Drive

Richmond, Virginia 23225

(804) 674-3081

V/TDD

CLARENCE L. JACKSON, JR.
CHAIRPERSON

LEWIS W. HURST
VICE-CHAIRPERSON

JOHN D. PARKER
EXECUTIVE DIRECTOR

BOARD MEMBERS

JOHN A. BROWN
GAIL Y. BROWNE, Ph.D.
JACQUELINE F. FRASER
LEWIS W. HURST
CLARENCE L. JACKSON, JR.

May 23, 1991

Mr. Philip A. Leone, Director
Joint Legislative Audit and Review Commission
Suite 1100
910 Capitol Street
Richmond, Virginia 23219

Dear Phil:

On behalf of the members and staff of the Virginia Parole Board I wish to extend our appreciation for the opportunity to comment on the exposure draft of the Joint Legislative Audit and Review Commission's report, A Review of Virginia's Parole Process. As a result of our review, I offer the following comments about the report's findings and recommendations.

Generally speaking, the report's recommendations and findings provide a basis to improve the operations of the Parole Board and the parole process. I would like to point out that in many instances the Parole Board is already in the process of initiating some of the recommendations, or is taking steps for future implementation, and will plan to carry out those recommendations approved and directed by the General Assembly. With regard to areas referred to the State Crime Commission for further study, the Parole Board is prepared to offer our full assistance and support.

In particular we felt much gratification that JLARC's report substantiates the Parole Board's position that it is difficult, if not impossible, to compare grant rates among states. When the Commission's staff on Prison and Jail Overcrowding (COPJO) conducted its' study, we cautioned that to make such a comparison would provide a distorted analysis of grant rates. They nevertheless proceeded with the comparison and published their findings. Naturally, we always questioned statistics and recommendations based on those findings.

Also of particular significance was JLARC's finding that the Parole Board's discretionary authority to make parole decisions should be preserved, irrespective of what decision-making structure is employed. I would like to point out that the Parole Board has spent the last five years revising our parole release criteria in order to improve the quality of our decisions. In addition, the point should be emphasized that the quality of parole decisions should be of primary importance, rather than focusing solely on the number of offenders released. What impact our new system will have on overcrowding remains to be seen; however, I would again emphasize that reducing overcrowding has never been one of our objectives. Our effort will, however, insure that our decision-making process is more objective, accountable, and uniform.

In addition to these general comments we felt the following recommendations required amplification on our part.

Recommendations 1, 2, & 3: Time Computations and Parole Eligibility: When developing our Parole Guidelines, the Parole Board incorporated time served as a basis for assessing the average time persons convicted of similar crimes served. The data base for this component is well established within our information systems framework, which was designed to allow for periodic updates.

Recommendations 4, 13 & 15: The impact of treatment programs on the parole grant rate and recidivism: Since 1989, the Parole Board has been working closely with representatives from the Department of Corrections, the Department of Criminal Justice Services, and the Department of Mental Health, Mental Retardation and Substance Abuse Services in response to the very issues JLARC staff raised. As a result of these collaborative efforts, reports were presented last year to the Governor, the Senate Finance and House Appropriations Committees, and the State Crime Commission that made specific recommendations addressing these and related issues, including a recommendation to study the impact treatment has on recidivism. The bottom line remains, however, that there are simply not enough treatment or educational programs in the prisons or in the community to assess adequately the impact treatment has on recidivism.

Recommendation 7: Mandatory attendance of institutional counselors at parole interviews: The Board values the information Correctional Rehabilitation counselors provide regarding an inmate's progress while incarcerated, and thus considers the progress reports they prepare to be key source documents. And while counselors' attendance at all parole interviews is preferable, we understand the constraints the Department of Corrections faces regarding staffing needs.

Recommendation 8: Automation of PSI Reports: The PSI report is a crucial source document for parole decision-making. Subsequently, our process is severely hampered when PSI's are unavailable. For example, at any given time, approximately 200 cases ready for parole review lack a PSI, which can take an additional two weeks to three months to obtain. We estimate that automation of PSI's would increase our processing efficiency by forty percent.

Recommendation 10: Conducting parole interviews six months in advance of parole eligibility: The Parole Board currently attempts to meet this recommendation's requirements whenever possible. However, because the Courts and the Department of Corrections determine parole eligibility dates, very often, especially for short term offenders, the Parole Board will not receive notification of an offender's discretionary parole eligibility date until this date is near or has passed.

Moreover, to grant offenders parole, and then require them to remain incarcerated, maybe up to six months, can lead to management problems for the Department of Corrections. Furthermore, it would require a significant increase in Parole Board staff to accommodate the logistics of visiting institutions and jails on the prescribed schedule.

Recommendation 12 & 14: Risk Assessments and discretionary decisions: The Parole Board also recognizes the need to balance objective assessments against subjective judgement in making our decisions. Our new Guidelines Model attempts to accomplish this by providing us with an advisory recommendation deduced from a model that combines quantitative and qualitative data including a risk assessment that measures an offender's potential to commit a new felony, the time an offender has served, institutional behavior patterns, treatment needs, and victim and community input. Strictly advisory in nature, a Board member may choose to vote contrary to the Guidelines' recommendation.

One component of the multifaceted configuration is the risk assessment tool based on quantitative factors that measure whether an offender is likely to commit a new felony. While we considered using a multivariate analysis as the report suggested, because quantitative factors indicative of risk can and do change, we chose to employ a different approach, which we felt was more conducive to our need to assess an offender's potential to commit a new felony, as our consultant explained in his report prepared at our request. JLARC's staff has been provided a copy of the consultant's report, and a copy of the consultant's full response is available upon request.

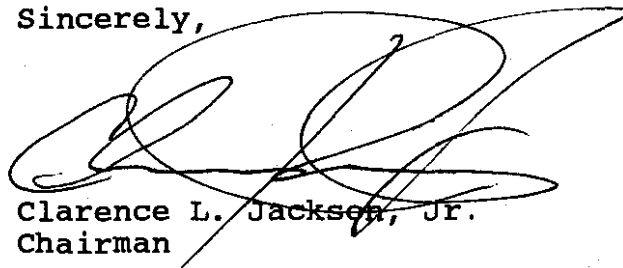
Mr. Philip A. Leone
Virginia Parole Board's Response to JLARC Report
Page 4

Recommendation 16: Delaying Annual Reviews: We again concur with staff's recommendation. With the advent of Guidelines, which will provide a means to assess and to compare risk and other qualitative factors, we are already exploring several options related to annual reviews, including the alternative of deferring annual reviews for up to three years for certain types of offenders once they have initially been denied parole.

In conclusion, I want to commend the JLARC study team for the professional manner in which they conducted the study, and again, to thank you for the opportunity to express the viewpoints of the members and staff of the Parole Board. We look forward to reviewing the final report.

With kind regards, I am

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'CL Jackson, Jr.', is written over the typed name and title.

Clarence L. Jackson, Jr.
Chairman

cc: The Honorable Robert L. Suthard
Secretary of Public Safety
T. Twitty, Deputy Secretary of
Public Safety
Parole Board Members



MAY 28 1991

COMMONWEALTH of VIRGINIA

Robert L. Suthard
Secretary of Public Safety

Office of the Governor
Richmond 23219

(804) 786-5351
TDD (804) 786-7765

May 24, 1991

Mr. Philip A. Leone
Director
Joint Legislative Review and Audit Commission
Suite 1100
910 Capital Street
Richmond, Virginia 23219

Dear Phil:


This letter is in response to your letter to me dated April 26, 1991, concerning a JLARC draft report of Virginia's parole process. In response to your request, please find Attachments A through C which provide comments from the Department of Corrections to the issues raised by your report. Additionally, the Virginia Parole Board has been asked to provide their written comments directly to your agency.

I applaud your efforts for a very comprehensive review of the Virginia parole process. I hope that you will incorporate our agencies' comments into your final report on this subject.

Your Recommendation #16 suggests that this office study several options. They are 1) the adoption of a presumptive parole process, 2) delaying the reconsideration of cases for inmates who are initially denied parole and 3) the expansion of the Parole Board. Your study suggests that a report of these findings should be made to the Virginia State Crime Commission prior to the 1992 Session of the General Assembly. While I do not agree that these areas would necessarily improve the efficiency of the discretionary parole review process, I would agree that it may be worth some review by this office. These issues will be addressed by the Virginia Parole Board during your meeting of June 10, 1991.

I wish to commend your staff for the work that they have done and pledge my Secretariat's support in looking for ways to improve Virginia's parole process.

Sincerely,


Robert L. Suthard

RLS/dla

Attachment A

RECOMMENDATION 1: The General Assembly may wish to amend section 53.1-151 of the Code of Virginia to eliminate the use of the felony term indicator to determine discretionary parole eligibility for inmates. In addition, the General Assembly may wish to amend section 53.1-198 of the Code of Virginia to eliminate the application of good-conduct allowance credits to discretionary parole eligibility for inmates. The combination of the felony term indicator and good conduct allowances should be replaced with a system that calculates discretionary parole eligibility for each inmate based on the proportion of the court-imposed sentence that has been typically served by inmates according to the type of crime committed. Good-conduct allowance credits would continue to be used to reduce the time served for mandatory parole release.

RECOMMENDATION 2: If the General Assembly chooses to adopt a time-served standard for purposes of establishing parole eligibility, the Parole Board and the Department of Criminal Justice Services should work together to develop the standard. This standard should be reviewed by the agencies at five-year intervals to ensure that the norms in both sentencing and parole decision-making practices are reflected.

RECOMMENDATION 3: If the General Assembly chooses to adopt the time served standard, the Parole Board should work with the Department of Corrections to automate the calculation of the standard.

Most correctional systems rely on some method which allows them to reduce a prisoner's time to be served based on good behavior. Virginia's system of Good Conduct Allowance (GCA) and Good Conduct Time (GCT) were developed as a tool for providing incentives for inmates to: maintain good institutional adjustment, participate in treatment programs, seek institutional work assignments, and take advantage of educational opportunities.

Elimination of GCA credits to discretionary parole eligibility may have far reaching implications to the security and orderly operation of correctional facilities. Prisoners would have less incentive to change negative behaviors and follow institutional rules. Further, use of GCA credits to reduce only mandatory parole eligibility would have the effect of mainly limiting good time credits to the system's most serious offenders since other offenders are generally released on discretionary parole.

Changing to a time served standard would be an expensive, long term option to implement. A complete cost-benefit analysis for implementing such a change should be conducted as part of any recommendation made for adopting such a standard. Significant costs would be associated automating the calculations, training DOC and Parole Board personnel, and educating inmates.

If the DOC is to be given the responsibility for automating and calculating a time served standard, DOC staff should be involved in the development of those standards. It would be difficult to either explain or defend a process without considerable involvement in its development.



MAY 28 1991

COMMONWEALTH of VIRGINIA

Robert L. Suthard
Secretary of Public Safety

Office of the Governor
Richmond 23219

(804) 786-5351
TDD (804) 786-7765

May 24, 1991

Mr. Philip A. Leone
Director
Joint Legislative Review and Audit Commission
Suite 1100
910 Capital Street
Richmond, Virginia 23219

Dear Phil:


This letter is in response to your letter to me dated April 26, 1991, concerning a JLARC draft report of Virginia's parole process. In response to your request, please find Attachments A through C which provide comments from the Department of Corrections to the issues raised by your report. Additionally, the Virginia Parole Board has been asked to provide their written comments directly to your agency.

I applaud your efforts for a very comprehensive review of the Virginia parole process. I hope that you will incorporate our agencies' comments into your final report on this subject.

Your Recommendation #16 suggests that this office study several options. They are 1) the adoption of a presumptive parole process, 2) delaying the reconsideration of cases for inmates who are initially denied parole and 3) the expansion of the Parole Board. Your study suggests that a report of these findings should be made to the Virginia State Crime Commission prior to the 1992 Session of the General Assembly. While I do not agree that these areas would necessarily improve the efficiency of the discretionary parole review process, I would agree that it may be worth some review by this office. These issues will be addressed by the Virginia Parole Board during your meeting of June 10, 1991.

I wish to commend your staff for the work that they have done and pledge my Secretariat's support in looking for ways to improve Virginia's parole process.

Sincerely,


Robert L. Suthard

RLS/dla

Attachment A

RECOMMENDATION 1: The General Assembly may wish to amend section 53.1-151 of the Code of Virginia to eliminate the use of the felony term indicator to determine discretionary parole eligibility for inmates. In addition, the General Assembly may wish to amend section 53.1-198 of the Code of Virginia to eliminate the application of good-conduct allowance credits to discretionary parole eligibility for inmates. The combination of the felony term indicator and good conduct allowances should be replaced with a system that calculates discretionary parole eligibility for each inmate based on the proportion of the court-imposed sentence that has been typically served by inmates according to the type of crime committed. Good-conduct allowance credits would continue to be used to reduce the time served for mandatory parole release.

RECOMMENDATION 2: If the General Assembly chooses to adopt a time-served standard for purposes of establishing parole eligibility, the Parole Board and the Department of Criminal Justice Services should work together to develop the standard. This standard should be reviewed by the agencies at five-year intervals to ensure that the norms in both sentencing and parole decision-making practices are reflected.

RECOMMENDATION 3: If the General Assembly chooses to adopt the time served standard, the Parole Board should work with the Department of Corrections to automate the calculation of the standard.

Most correctional systems rely on some method which allows them to reduce a prisoner's time to be served based on good behavior. Virginia's system of Good Conduct Allowance (GCA) and Good Conduct Time (GCT) were developed as a tool for providing incentives for inmates to: maintain good institutional adjustment, participate in treatment programs, seek institutional work assignments, and take advantage of educational opportunities.

Elimination of GCA credits to discretionary parole eligibility may have far reaching implications to the security and orderly operation of correctional facilities. Prisoners would have less incentive to change negative behaviors and follow institutional rules. Further, use of GCA credits to reduce only mandatory parole eligibility would have the effect of mainly limiting good time credits to the system's most serious offenders since other offenders are generally released on discretionary parole.

Changing to a time served standard would be an expensive, long term option to implement. A complete cost-benefit analysis for implementing such a change should be conducted as part of any recommendation made for adopting such a standard. Significant costs would be associated automating the calculations, training DOC and Parole Board personnel, and educating inmates.

If the DOC is to be given the responsibility for automating and calculating a time served standard, DOC staff should be involved in the development of those standards. It would be difficult to either explain or defend a process without considerable involvement in its development.

RECOMMENDATION 4: The State Parole Board should work with the Department of Corrections and the Department of Criminal Justice Services to determine the extent to which any lack of treatment programs in State correctional facilities has an adverse effect on the early release of eligible inmates. To address any deficiencies which may be identified, the Parole Board and the Department of Corrections should identify the types of programs needed and the resources required to provide them.

I have no objection to this recommendation.

RECOMMENDATION 5: The Department of Corrections should ensure that all State custody inmates housed in local jails and awaiting transfer to state correctional facilities receive a GCA class assignment within 90 days of their incarceration.

Currently inmates receive their initial GCA assignment effective the date that they are received in corrections (either physically received or assigned a state inmate number while in a local jail). The DOC can amend procedures to make GCA assignments effective 90 days after the inmate has been sentenced.

RECOMMENDATION 6: The Department of Corrections should require that all State felons housed in local jail facilities be evaluated annually for GCA purposes. In addition, the Department should ensure that local jail personnel conducting these evaluations attain a working knowledge of DOC policies regarding GCA evaluations.

The Department has no objection to this recommendation. However, increased staff and resources would be required by both the DOC and local jail facilities for monitoring and enforcement of GCA reviews by local jails. Further, the DOC would incur additional costs associated with providing on-going training to local jail facilities regarding GCA policies. While the DOC would support evaluation of State Felons in local jails for GCA on an annual basis the Department has no authority in impacting payments to the local jails. Withholding payment of jail per diem for inmates who have not been evaluated would be a politically charged issue and may significantly impact the State Compensation Board.

RECOMMENDATION 7: To ensure that the input of institutional counselors is adequately incorporated in the parole review process, the Department of Corrections should establish a policy requiring all counselors to attend the parole hearings for each inmate under their supervision.

Progress Reports were designed with input from the Parole Board and provide the Board with necessary, current information about the inmate. Existing Department policy allows counselors to attend parole hearings as needed or if requested by the Board. The amount of time counselors are required to spend on paperwork and other duties is already a problem that limits available counseling time. Requiring attendance at parole hearings based on a policy decision rather than need would further reduce the already limited time counselors have to actually work with the prisoners. The Department believes the current policy of encouraging counselors to attend hearings as needed, efficiently meets the needs of the facility, the inmate, and the Parole Board.

RECOMMENDATION 8: The Department of Corrections should ensure that pre- and post-sentence investigative reports are prepared in a timely fashion as required by law. In addition, the Department should ensure that the reports are automated at least six months prior to inmates' parole eligibility dates.

We agree that the DOC should prepare pre and postsentence reports in a timely fashion as required by law and it is our current goal and practice to do so. The primary goal of probation and parole is to enhance public safety through supervision of clients in the community. If, in fact, a need exists for quicker access of presentence data for parole release decisions, additional staff and enhanced automation would be required to meet those needs without compromising supervision time and quality.

Complete automation and a significant increase in probation and parole field staff, both officers and clerical positions, would be required to shorten report preparation times without reducing the time available to provide client supervision. Enhanced automation would also require funding of additional FTE's in the PSI Receiving Unit to meet the already increased workload and to accommodate increased field input. Even these measures would not ensure automation of all reports six months prior to parole eligibility since in some cases persons with shorter sentences become eligible at the time of sentencing.

Recently the Department invited the Parole Board to link-up with the PSI Receiving Unit in order to provide quicker access to PSI information. We will continue to work with the Parole Board in any way we can to increase their access to necessary information.

RECOMMENDATION 9: The General Assembly may wish to shift to the Parole Board those resources in the Department of Corrections Parole Release Unit which are devoted to parole support functions.

DOC Parole Release Unit functions are to assure the safe and consistent release of inmates from the institution to the community and to provide a link between prisons and the probation and parole offices. Both of these functions are DOC functions. Parole Release Unit activity commences either after a positive decision to grant parole, or where release is not connected in any way with decision-making by the Parole Board (such as release from indeterminate sentences or mandatory parole). If the Parole Release Unit is shifted to the Parole Board for handling its discretionary parole releases, the Department of Corrections will have to duplicate staffing to handle other types of releases.

In addition to this recommendation for a shift in Parole Release Unit resources, Recommendation 11 asks the Secretary of Public Safety to examine the current organizational placement of post-release, interstate compact, and probation and parole functions within the Department of Corrections for possible transfer to the Parole Board.

The function of the Interstate Compact Unit is to oversee legally mandated requirements for supervision of both probationers and parolees involving other states and to handle all of the communication and paperwork between probation and parole offices nationally. Since 1983 the Governor has appointed the

Chairman of the Parole Board as the Interstate Compact Administrator. Prior to 1983 the Interstate Compact Administrator was in the Department of Corrections. Since the Interstate Compact includes responsibility for probationers as well as parolees, it may be more appropriate to consider a shift of the Compact Administrator to the Department of Corrections.

RECOMMENDATION 10: When possible, the Parole Board should schedule all hearings six months prior to the inmate's parole eligibility date to allow sufficient time to plan for the release of all inmates who are granted discretionary parole.

I support recommendation 10.

RECOMMENDATION 11: The Secretary of Public Safety should examine the current organizational placement of post-release, interstate compact, and probation and parole functions within the Department of Corrections for possible transfer to the Parole Board. The Secretary should report the findings and recommendations from this assessment to the State Crime Commission prior to the 1993 session of the General Assembly.

While Recommendation 9 states that "The General Assembly may wish to shift to the Parole Board those resources in the Department of Corrections Parole Release Unit which are devoted to parole support functions." (see response to Recommendation 9) this recommendation has been expanded to consider shifting other Department resources and functions.

The placement of probation and parole functions within the Department of Corrections has been studied several times with no resultant change in the current structure. During this time of revenue shortfalls consideration of disruptive and potentially costly organizational changes without compelling or objective rationale for such changes should not be entertained. If the recommendation to pursue an additional study of this matter is implemented I would encourage that any study mandate require a careful and complete cost-benefit analysis.

I have attached a recent study drafted by Department staff which addresses once again the placement of probation and parole functions within the Department. This draft may provide your staff with some additional information to consider for your final report. (See Attachment C)

RECOMMENDATION 12: The General Assembly may wish to consider requiring the Parole Board to adopt a structured instrument for use in determining an inmate's risk and a set of policies governing the use of this tool.

Since this recommendation is directed at the Parole Board, the Department has no comment.

RECOMMENDATION 13: The General Assembly may wish to require the Parole Board in conjunction with the Department of Corrections to determine what level of community resources would be necessary to accommodate the Board's future plans to release more inmates to residential treatment beds.

I support continued communication with the Parole Board and do not feel there is a need for General Assembly action.

RECOMMENDATION 14: The Parole Board should refine the instrument used to predict risk by conducting a multivariate analysis of the impact of certain inmate characteristics on the likelihood of committing new felonies.

Since this recommendation is directed at the Parole Board, the Department has no comment.

RECOMMENDATION 15: The General Assembly may wish to mandate a study of recidivism among persons released on discretionary parole to determine the magnitude of the problem, and the factors contributing to the problem, and possible strategies for lowering recidivism among persons released at the discretion of the Parole Board. This study could incorporate a review of the adequacy of community services to support persons released.

Since this recommendation is directed at the Parole Board, the Department has no comment.

RECOMMENDATION 16: To ensure that future increases in the State's prison population do not hamper the efficiency of the discretionary parole review process, the Secretary of Public Safety should study the following options: (1) adoption of a presumptive parole process, (2) delaying the reconsideration of cases for inmates who are initially denied parole, and (3) expansion of the Parole Board. The Secretary should report the findings of the review with recommendations to the Virginia State Crime Commission prior to the 1992 Session of the General Assembly.

Since this recommendation is directed at the Parole Board, the Department has no comment.

Attachment B
POINTS OF CLARIFICATION

Page 3, states ". . . the Board is responsible for exercising supervision over prisoners released on conditional parole . . .". If this statement is based on Section 53.1-139 of the Code of Virginia, it should read on conditional pardon.

Page 10, states "In addition to good-time awards, inmates can also receive credits toward their sentence if they perform an extraordinary service, help prevent an escape, donate blood to other prisoners, or receive a serious injury while in prison." Good-time awards for blood donations have been discontinued for some time.

Page 12, states "Using an order of release from the Board, the unit examines the inmate's file for all required documents and then sends it to the relevant prison or jail with the order of release." What the PRU sends to appropriate institutions are parole conditions (the order of release is transmitted by the Parole Board).

Page 30, states "In Virginia, on the other hand, the Parole Board can provide for a discretionary release only after the inmate has served a minimum sentence as required by law." Inmates in Virginia do not have to serve a minimum sentence, although they must serve a minimum term in order to be released on discretionary parole some inmates become eligible on the day of sentencing.

Page 96, states "This unit (meaning the Parole Release Unit) has 19 positions, most of which are exclusively funded to provide support to the Board by implementing its orders of release." The Parole Release Unit processes the release from prison/jail to the community for releases not decided by the Board, such as mandatory releases, maximum sentence served, and indeterminate sentences as well as for discretionary paroles.

Page 103, states "According to Board staff, the central problem is that the Parole Board has the authority to establish policies governing the activities of DOC's parole support units and the probation and parole offices, but has no control over whether these policies are properly implemented." Section 53.1-5 of the Code of Virginia includes under the powers and duties of the Board of Corrections "to develop and establish program and fiscal standards and goals governing the operation of state, local and community correctional facilities and community correctional services. This section gives the Board of Corrections the authority to establish the policies governing the Department's probation and parole support units. The Department then has the responsibility for implementing and monitoring the policies set by the Board of Corrections.

Attachment C

DRAFT POSITION PAPER

PLACEMENT OF PROBATION AND PAROLE FIELD SERVICES STAFF
DEPARTMENT OF CORRECTIONS OR VIRGINIA PAROLE BOARD

Department of Corrections
1991

INTRODUCTION

The Deputy Director, Division of Adult Community Corrections, requested that issues be identified and a position paper developed surrounding the reassignment of probation and parole field services from the Department of Corrections to the Virginia Parole Board. This request was based on the possibility that, during the 1991 General Assembly, legislation would be proposed to move responsibility for supervision of probation and parole field staff and its central administration from the Department to the Board.

The material in this paper is organized in two sections. The first section briefly reviews general historical information about Probation and Parole Services. The second section identifies the major issues to be considered when studying the relocation of field service and administrative support responsibility.

BACKGROUND

Probation and parole services have existed in Virginia in some form since the turn of the century. In 1898, the General Assembly passed an act creating a conditional pardon system. The 1918 General Assembly passed a comprehensive probation act. The probation act permitted circuit court judges and judges of the juvenile and domestic relations court to appoint probation officers to serve under their direction. The appointed officers were to be paid by the city or county in which the court was located.

In 1942, the General Assembly passed the basic Parole Act. This act created a system consisting of a parole board and such parole officers and agents as the board deemed necessary. The board was established as part of the executive department of the state, but was practically autonomous. It consisted of a full time director of parole and two part time members. The act provided for the board to divide the state into as many separate parole districts as they felt necessary to carry out the terms of the law. At least one officer was to be appointed to each district to serve as both a parole and probation officer. Because of the dual character of this position the power to appoint or remove the officer was vested in the judge of the judicial circuit where the parole district was located. The appointment of state parole and probation officers did not interfere with the power of the judges to appoint local probation officers.

A reorganization of state administrative agencies in the Commonwealth in 1948, established the Department of Welfare and Institutions, and incorporated the Parole Board in this agency. The Department of Welfare and Institutions furnished only certain administrative services.

In May 1955, a study titled "The Virginia Parole System, An Appraisal of Its First Twelve Years", was prepared by the Bureau of Public Administration at the University of Virginia. Recommendations included in the study were designed to relieve Parole Board Members of certain administrative duties, and result in increases in the amount of time that could be devoted to deliberative and policy making tasks. The study recommended that the Parole Board remain part of Welfare and Institutions, and a position for the Director of Parole, separate from the position of Chairman of the Parole Board should act as chief administrative officer. However, this recommendation was not implemented.

The 1962 General Assembly amended the Code of Virginia to give the Parole Board a clear mandate to provide leadership in providing good probation services to all courts in the Commonwealth. While there had been a probation and parole program in Virginia since 1942, in terms of recognition, parole was prominent. The 1965-1966 Annual Report of the Virginia Probation and Parole Board reported the 1966 General Assembly's act of changing the name of the agency to the Virginia Probation and Parole Board in order to emphasize probation services.

A second study was completed in 1965 under the direction of the National Council on Crime and Delinquency (NCCD). This study was titled "Adult Probation and Parole in Virginia, An Appraisal of the Second Ten Years". This study found disadvantages with the hybrid character of state-local administration of probation and parole services. According to the study, precedent for combining administration and supervision of probation and parole services existed in thirty states. Additionally, the study suggested that Parole requires an administrative structure within State government to allow for independent action by the paroling authority. An administrative structure within state government also coordinates the authority's services with other departments including probation, institutions, and departments of health, welfare, and mental hygiene.

At the time of the NCCD study, the trend toward central administration of Probation and Parole Services was one of the most persistent in the correctional field. Information reported from a 1962 NCCD Professional Council, Committee on Standards for Adult Probation, Standards and Guides for Adult Probation, stated among other issues that administration at the state level had the following advantages:

- o It centralizes responsibility and reduces administrative duplication by maintaining programs that lend themselves to centralization, such as research, statistical reporting, fiscal control, case record clearance, personnel administration, and training.
- o It permits the establishment and maintenance of uniform standards and quality of work in all parts of the state.
- o It can combine probation and parole with one field service which is more economical than a divided service. . . It provides a built-in coordination of field services with the institutions and the Parole Board.

Legislation enacted in 1974 established a separate Department of Corrections (DOC) within which was located a separate Division of Probation and Parole Services. This legislation removed probation, and supervision and administrative responsibilities from the Parole Board to permit the Board to serve almost exclusively as an adjudicatory body. The name of the Board was again changed to the Virginia Parole Board. The Board retained a reduced central staff for processing parole release, discharge, and revocation orders, Board correspondence, and administrative reports. All other staff were subject to DOC policies and were considered part of that agency's Division of Probation and Parole Services.

In 1984, the Virginia Parole Board and its administrative and clerical staff were split from the Department of Corrections. At that time, neither the field probation and parole staff nor the three casework sections were transferred from the DOC. Those sections remained part of the DOC's Division of Adult and Community Services.

Today the Department of Corrections and the Virginia Parole Board are housed in adjacent offices within the same building.

ISSUES RELATED TO THE PLACEMENT OF PROBATION AND PAROLE FIELD SERVICES STAFF

A study report of the Department of Corrections/Parole Board was presented by the Department of Information Technology (DIT) in August 1987. The study recommended that three parole support units currently within the Department of Corrections should be organizationally placed within the Virginia Parole Board, with the organizational structure of the Board adjusted to accommodate the three units. The report also recommended an additional study of the alignment, management, and supervision in probation and parole, including field staff, to be completed by DIT.

After considering information, documentation and arguments presented in the report, then Secretary of Transportation and Public Safety Vivian E. Watts, was not convinced that the three Probation and Parole Support Services Units should be placed under the Parole Board. Reasons for not relocating support service units could be expanded to include probation and parole field staff. Additionally, consideration of the judicial role of the Parole Board indicated a basic philosophic question.

Courts determine guilt and sentence; they do not oversee the operation of incarceration or alternative sentencing programs. The primary role of the Parole Board is the adjudicatory function of granting, and discharging from or revoking parole.

Judges, like the Parole Board, express frustration. They feel that appropriate sentencing alternatives are not available to them, and that operations of the Clerk's office could be improved. However, our system of government does not give them executive control.

Administration of parole field services is done in most states by an agency other than the Parole Board, most often under the Department of Corrections. While supervision in the community serves to implement the decision goals and purposes of the paroling authority (McGarry 1988), a task force survey showed that this is true in 38 states today.

The document "Corrections Options for the Eighties" addresses the question of where probation should be placed in the framework of government. The report shows that National Advisory Commission of Criminal Justice Standards and Goals recommended placement under executive authority using the rationale that:

All other subsystems for carrying out court dispositions are in the executive branch.

The current arrangement allows a closer coordination with other corrections personnel.

Indications are that supervision of probation and parole field staff should remain within the Department of Corrections. An argument could be developed however, to split probation and parole supervision and give the Board responsibility for parole supervision. Generally though, it appears that probation and parole services should be provided by a single entity.

Probation and parole field services are included in a single division because they provide similar services.

The administration of probation and parole field services in one division can greatly contribute to the consistency and quality of investigations and supervision provided by the staff.

Unification of all correctional programs allows a single state agency to:

- o coordinate programs that are essentially interdependent
- o better utilize scarce human and fiscal resources
- o develop more effective programs across the spectrum of corrections.

Both probation and parole services operate along the same casework lines. A combination of the functions was a logical next step following the trend toward centralized state control of both. Virginia's structure followed the national trend.

There is a high ratio of probationers to parolees and a number of offenders on dual supervision. While the Parole Board's concern is parole, as of July 1990 there were 20,770 clients on probation and 8,410 clients on parole, a ratio of 2.47 to 1, receiving similar services. According to the Offender Based State Correctional Information System (OBSCIS) as of June 1990 we had 2,805 split sentences. This is likely an underestimate of the number of dual supervision cases since probation cases are not opened statistically until after the client is discharged from parole. The large number of probationers receiving services would require more Parole Board attention to administration, reducing the focus on the responsibilities of granting and revoking parole.

The previously mentioned DIT study indicated no overriding factors dictating placement of three parole support units either in the Parole Board or in the Department of Corrections. It was noted in a September 1987 response to the DIT study that without overriding factors there is no compelling or objective rationale for a disruptive and potentially costly organizational restructuring.

Summary

- o The primary role of the Parole Board is to grant and discharge from or revoke parole.
- o The role of the Department of Corrections is to provide casework services to persons on probation, parole or dual supervision.
- o Probation and parole services operate along the same casework lines. The ratio of probationers to parolees is 2.47 to 1.
- o With the large number of probation cases being served there is no obvious justification for relocation of field staff to the Parole Board.
- o Field staff often provides supervision to cases under dual supervision. Division of probation and parole field staff would entail either a duplication of services or the additional cost of supervision between several agencies.

Evidence does not show that relocation of probation and parole field services would result in improved services to the Commonwealth. It is likely that it would be disruptive and costly to relocate the administration of casework services from the Department of Corrections to the Virginia Parole Board. Without evidence of the benefits expected to result from a change, probation and parole field services should remain within the Department of Corrections.

JLARC Staff

RESEARCH STAFF

Director

Philip A. Leone

Deputy Director

R. Kirk Jonas

Division Chief

● Glen S. Tittermary

Section Managers

John W. Long, Publications & Graphics

Gregory J. Rest, Research Methods

Project Team Leaders

Teresa A. Atkinson

Linda E. Bacon

Stephen A. Horan

Charlotte A. Kerr

Susan E. Massart

Robert B. Rotz

● Wayne M. Turnage

Project Team Staff

James P. Bonevac

Craig M. Burns

Andrew D. Campbell

Julia B. Cole

Joseph K. Feaser

● Stephen P. Fox

Joseph J. Hilbert

● Lisa J. Lutz

Laura J. McCarty

Deborah L. Moore

Barbara W. Reese

Phoebe A. Roaf

E. Kim Snead

ADMINISTRATIVE STAFF

Section Manager

Joan M. Irby, Business Management
& Office Services

Administrative Services

Charlotte A. Mary

Secretarial Services

Becky C. Torrence

SUPPORT STAFF

Technical Services

Desiree L. Asche, Computer Resources

Betsy M. Jackson, Publications Assistant

Intern

Mary S. Delicate

● *Indicates staff with primary
assignments to this project*

Recent JLARC Reports

Funding the Standards of Quality - Part I: Assessing SOQ Costs, February 1986
Proceedings of the Conference on Legislative Oversight, June 1986
Staffing of Virginia's Adult Prisons and Field Units, August 1986
Deinstitutionalization and Community Services, October 1986
The Capital Outlay Planning Process and Prison Design in the Department of Corrections, December 1986
Organization and Management of The State Corporation Commission, December 1986
Local Jail Capacity and Population Forecast, December 1986
Correctional Issues in Virginia: Final Summary Report, December 1986
Special Report: Collection of Southeastern Americana at the University of Virginia's Alderman Library, May 1987
An Assessment of Eligibility for State Police Officers Retirement System Benefits, June 1987
Review of Information Technology in Virginia State Government, August 1987
1987 Report to the General Assembly, September 1987
Internal Service Funds Within the Department of General Services, December 1987
Funding the State and Local Hospitalization Program, December 1987
Funding the Cooperative Health Department Program, December 1987
Funds Held in Trust by Circuit Courts, December 1987
Follow-up Review of the Virginia Department of Transportation, January 1988
Funding the Standards of Quality - Part II: SOQ Costs and Distribution, January 1988
Management and Use of State-Owned Passenger Vehicles, August 1988
Technical Report: The State Salary Survey Methodology, October 1988
Review of the Division of Crime Victims' Compensation, December 1988
Review of Community Action in Virginia, January 1989
Progress Report: Regulation of Child Day Care in Virginia, January 1989
Interim Report: Status of Part-Time Commonwealth's Attorneys, January 1989
Regulation and Provision of Child Day Care in Virginia, September 1989
1989 Report to the General Assembly, September 1989
Security Staffing in the Capitol Area, November 1989
Interim Report: Economic Development in Virginia, January 1990
Review of the Virginia Department of Workers' Compensation, February 1990
Technical Report: Statewide Staffing Standards for the Funding of Sheriffs, February 1990
Technical Report: Statewide Staffing Standards for the Funding of Commonwealth's Attorneys, March 1990
Technical Report: Statewide Staffing Standards for the Funding of Clerks of Court, March 1990
Technical Report: Statewide Staffing Standards for the Funding of Financial Officers, April 1990
Funding of Constitutional Officers, May 1990
Special Report: The Lonesome Pine Regional Library System, September 1990
Review of the Virginia Community College System, September 1990
Review of the Funding Formula for the Older Americans Act, November 1990
Follow-Up Review of Homes for Adults in Virginia, November 1990
Publication Practices of Virginia State Agencies, November 1990
Review of Economic Development in Virginia, January 1991
State Funding of the Regional Vocational Educational Centers in Virginia, January 1991
Interim Report: State and Federal Mandates on Local Governments and Their Fiscal Impact, January 1991
Revenue Forecasting in the Executive Branch: Process and Models, January 1991
Proposal for a Revenue Stabilization Fund in Virginia, February 1991
Catalog of Virginia's Economic Development Organizations and Programs, February 1991
Review of Virginia's Parole Process, July 1991



Suite 1100, General Assembly Building
Capitol Square, Richmond, VA 23219
(804) 786-1258

