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Class Action Lawsuit Against Parole Board

Bill Richardson

On February 3, 2010, eleven Virginia inmates filed a lawsuit in federal district court against the members of the Virginia Parole Board. The case is *Burnette v. Fahey*, Civil Action No. 3:10cv70.

The plaintiffs in this case make two separate claims that allege violations of the requirements of the U.S. Constitution. First, they argue that the Parole Board has violated the requirements of the Due Process Clause to provide them with fair and meaningful consideration for parole, by reducing the parole process for violent offenders to little more than a rubber-stamp denial, year after year, based on “serious nature and circumstances of the crime.” Second, they argue that the Board has violated the requirements of the *Ex Post Facto* Clause by changes that pose a significant risk of increasing time served well beyond that contemplated by sentencing judges, at a time (before the abolition of parole in 1994) when parole grant rates were over forty percent (40%).

The eleven inmates seek to represent a class of all Virginia inmates eligible for parole. In such class actions, the plaintiffs will in due course be required to seek an order from the court permitting them to represent the class by demonstrating they meet the requirements of federal law. There is no need for any inmate to seek to be added to the case. If the court permits the case to proceed as a class action, other inmates will be provided notice of their opportunity to opt in.

The lawsuit is still in its very early stages. The Parole Board has filed a motion to dismiss the lawsuit, and the plaintiffs have filed an opposition to that motion. The federal court has not yet acted on the motion, the outcome of which will determine how the case will proceed. The complaint and all major pleadings filed in the case are posted on the website of the Legal Aid Justice Center, at www.justice4all.org/our_programs/vip/parole. This action is an outgrowth of LAJC’s Virginia Institutionalized Persons Project. Lead counsel for the plaintiffs is Steve Northup at the law firm of Troutman Sanders LLP in Richmond. Steve may be reached at steve.northup@troutmansanders.com, or 804/697-1240.

Virginia CURE Wrap Up Meeting

Carla Peterson

On April 10th, attendees of the Virginia CURE Wrap Up meeting, held in Richmond, heard several reports on legislative concerns.

Hon. Betsy Carr, Delegate from District 69, as a new member, gave her impressions of the General Assembly. Ms. Carr sponsored two bills; alternative to incarceration and voting rights. We are pleased with her interest in reforming the Virginia criminal justice system. She invited her constituents to be in touch with her about their concerns.

Mr. Stephen Northup Esq., partner in Troutman Sanders (the law firm that filed the recent class action lawsuit against the Virginia Parole Board). Mr. Northup described how class action lawsuits are researched and prepared, provided an update on the current status of the lawsuit and warned of what to expect. Legal Aid Justice Center has a link to the litigation on its website, including copies of pleadings that have been filed with the court. To follow the progress of the suit, visit justice4all.org.

Melissa Goeman, Director, Juvenile Law and Policy Clinic, Co-Director, Mid-Atlantic Juvenile Defender Center, University of Richmond School of Law reported legislation involving the transfer of juveniles to adult prisons. SB259 (Lucas), passed, provided juveniles whose cases were being heard in circuit court be kept in juvenile facilities rather than adult facilities. SB585 (Marsden) provided for appointment of attorney(s) to assist youth in juvenile facilities. This bill was left in Courts of Justice, but will be introduced again next year.

Virginia CURE Board Member, Bob Bohall, focused attention on bills affecting sentencing, such as HB828 (Surovell) and SB125 (Petersen), which attempted to raise the amount for a grand larceny charge, resulting in less felonies, i.e.. less people incarcerated; both bills failed. By comparing states with higher incarceration rates to states with lower rates, Bob demonstrated incarceration rates are not related to crime rates. In some cases more “lenient” states actually saw decreases in the crime rates. Bob’s data will be posted on the website.

Virginia Crime Commission and General Assembly Sex Offender Update

Lee-Lee Lawless

Virginia Crime Commission (VCC) examined bills referred from the 2009 session related to the federally mandated Adam Walsh Act (AWA), looked at the “sexting” issue, and received information on the status of Civil Commitment in Virginia. No consensus was reached on implementation of the AWA, but this multi-million dollar legislation will not be reconsidered until the economy improves or federal dollars are provided. The Crime Commission decided not to support any changes in current laws preventing young people from ending up as registered sex offenders. VCC asserted prosecutors will make the “right” decisions in these cases and were reluctant to risk any “real” offenders slipping through the cracks.

The VCC had a presentation on Civil Commitment. It was informed that our designated facility will be full by 2012. Eligible offenses increased from the initial four very serious offenses to

include the twenty-eight (28) offenses classified as “violent.” This overflow has the potential to cost \$85-\$100 million for a new facility (rather than examining ways to reduce this population).

For the first time in 15 years, no significant sex offender legislation passed in the General Assembly. Virginia CURE provided testimony opposing Del. Cline’s HBI366 – a bill effectively banning “violent” offenders from attending churches that operate a weekday preschool. After much discussion (and two post-meeting vote changes), the bill passed the House Criminal Law sub-committee with only Del. Watts voting against it. However, the full committee decided to let it “go by” for the day, effectively killing it.

There were two bills designed to ameliorate some negative impacts of the registry. Sen. Marsden offered a bill to remove employer names from the registry. This bill passed the

Senate unanimously but died in House Militia, Police and Public Safety. Del. Pogge offered a bill requiring the state to notify registered offenders of changes in laws that impact them; this bill was never heard.

Many bills not heard this year have the potential to resurface in better fiscal times, such as expanded residency restrictions, more “safety zones” where offenders can’t go, additions to required registry information, and stiffer penalties for violations. Virginia CURE continues to fight for rational sex offender legislation that protects the community while allowing former offenders to reintegrate into society.

wrap up meeting *continued from page 1*

Virginia CURE Director, Carla Peterson, provided an overview of legislation that had not been covered. She highlighted the sex offender legislation that didn’t pass. Legislation to comply with the federal Adam Walsh Act was not seriously considered because of the cost to implement it (approximately, twelve million). Virginia CURE participated in a voting rights project with a number of other organizations to convince Governor Kaine to issue an Executive Order giving all ex-felons the right to vote. Gubernatorial staff assured the group this was not legally possible, however a study of the code provided information to the contrary (led by the ACLU). A memo was drafted and sent to the Governor’s office.

Unfortunately, the governor was not swayed. A bill allowing the use of restorative justice programs as an alternative to incarceration was defeated, but an aspect of restorative justice did pass with a bill clarifying the ability of a victim to visit the victimizer in prison, if both parties agreed to the meeting. Finally, the “triggerman” bills, (which passed both House and Senate each year only to be vetoed by Governor Kaine,) did not pass the Senate. Members of the Senate subcommittee considering these bills were convinced to defeat the bills keeping the legislation off Governor McDonnell’s desk, a proponent of the death penalty. There were many more bills, but no time to consider them all.

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2010 Legislation Approved by the Virginia General Assembly

PASSED Oppose HB 227 Sex offenders; prohibiting entry onto school property of those that are violent. (Watts) . Provides that for every adult who is prohibited from entering upon school or child day center property by reason of his status as a violent sex offender, the court may consider objections to his petition for entry onto school property made by the attorney for the Commonwealth and either (i) the proprietor of the child day center, (ii) the superintendent of public instruction of the school division in which the school is located, or (iii) the chief administrator of the school, all of whom receive notice, under current law, of the petition.

PASSED Oppose HB 912 Definition of residence for the purposes of the sex offender registry. (Bell) . Provides that "residence" means, for any sex offender who declares himself homeless ... any single location described by him, which can be located with reasonable specificity, where he routinely spends the night

PASSED Oppose HB 1198 Sex offenders; registration requirements; collateral proof of conditions requiring registration. (laquinto) | Redefines "offense for which registration is required" in Title 9.1 to include an offense under another jurisdiction for which registration is required "regardless of whether adjudication was withheld." The bill also provides that offenses for which a condition of registration is that the offense was committed against a minor, a physically helpless person or a mentally incapacitated person, the additional condition need not be alleged and proven at trial but may be adjudicated in a separate proceeding. The bill also provides that the residency of those offenders under the supervision of the Department of Corrections or Community Supervision pursuant to § 37.2-919 (persons committed to the Department of Behavioral Health and Developmental Services whether on conditional release or in involuntary secure inpatient treatment) shall be verified by the State Police. The bill also provides that the Department shall give notice to a sex offender committed to the Department of Behavioral Health and Developmental Services, prior to his release, of his requirement to register with the State Police as a sex offender; and that the

Department shall give notice to the State Police within 12 hours if such an offender escapes from custody. The bill also provides that if a sex offender escapes from a jail, the jailer shall notify the State Police within 12 hours of the escape.

PASSED SB 528 Prisons; Treatment and control of prisoners (Puller) |.

Allows licensed professional counselors or licensed clinical social workers to direct sex offender treatment programs in the Virginia Department of Corrections.

PASSED SB 529 Civil commitment of sexually violent predators; evaluation. (Puller) |. Provides that an evaluation for initial determination of whether a prisoner meets the definition of a sexually violent predator may be performed by a licensed professional counselor or licensed clinical social worker.

PASSED SB 259 Juveniles; detention of these transferred or certified.(Lucas) |.

Provides that juveniles whose criminal cases have been transferred to circuit court or certified be placed in juvenile detention centers rather than in adult correctional facilities. If the juvenile demonstrates that he is a threat to the security or safety of the other juveniles detained or the staff of the home or facility, he may be moved to an adult facility if authorized by a judge.

PASSED HB 203 Writ of actual innocence; available after parole or pardon. (Alexander) | Emphasizes that the Supreme Court and the Court of Appeals have the authority to issue writs of actual innocence for persons who are not currently incarcerated because they have been released on parole or probation, granted a pardon, or otherwise released

PASSED HB 500 Preliminary hearing; admissibility of certificates of analysis at hearing and trial. C. Todd Gilbert.

Provides that at any preliminary hearing, certificates of analysis and reports prepared by lab analysts, etc., shall be admissible without the testimony of the person preparing such certificate or report.

PASSED Oppose SB 153 Destruction of exhibits. (Stuart) | Relieves the clerk of notifying a defendant of the destruction or donation of certain exhibits used at trial: drugs, weapons, or exhibits deemed contraband. The defendant's attorney still receives notice.

PASSED SB 248 Indigent defendants; right to ex parte hearing for appointment of experts in capital cases.(Watkins) | . Provides that an indigent defendant who has been charged with a capital offense may move in circuit court for the appointment of experts to assist in the preparation of his defense.

PASSED Oppose HB 934 Capital murder; auxiliary law-enforcement officers; penalty. (Bell)

PASSED SB 162 Capital cases; sentencing proceeding. John S. Edwards |Capital case sentencing forms. Removes from the Code of Virginia the statutory sentencing forms used in capital cases. (gets rid of the mandatory sentencing forms used in capital cases and instead allows judges to notify juries of the proper instructions for a finding of a sentence of death or life imprisonment.)

PASSED Oppose HB 166 Capital murder; adds law-enforcement officers, etc., to statute so death sentence can be imposed. (Pogge)| .

PASSED Oppose SB 520 Capital murder; auxiliary police officers; penalty. (Norment)

PASSED SB 87 Inmates; court or person having custody to determine if treatment of mental illness is necessary. (Howell, J) | Repeals provisions dealing with determining (i) a defendant's competency to be sentenced after he has been convicted of a crime and (ii) whether an inmate who is in the custody of a local correctional facility needs to be involuntarily hospitalized for treatment of mental illness, and substantially incorporates these provisions into statutes dealing generally with determinations of a defendant's competency and the hospitalization of inmates.

PASSED HB 913 Victims of crime; may visit perpetrator in prison facility. (Bell) | . Provides that a person who was the victim, or is the family member of a victim, of a crime committed by a prisoner incarcerated in any state correctional facility, may go into the interior of the facility to visit the prisoner, subject to the agreement of the prisoner and subject to reasonable time, place, and safety restrictions.

Restorative Justice & Practices

Christa Pierpoint

Restorative principles are a trust agreement between individuals and social groups to be respectful of one another and to care about one another's welfare. Restorative principles are about standing by injured parties as they re-story their lives. These principles are not about unbridled vengeance, belittling the harms or the people involved.

We do not live in a perfect world and people (collectively and individually) sometimes act on their worst instincts. Restorative justice is a range of practices intended to repair the harms, so the 'shalom' can be restored.

Two pieces of legislation were offered in the 2010 General Assembly.

PASSED- (HB 913) provides for greater guidance when a victim of a crime wants to meet with the person(s) responsible for the harms, while the offender (s) is in prison. In some states, these processes are part of re-entry planning; given the point of view that re-entry planning begins from the onset of incarceration.

FAILED- (SB 679) provided the court the option of referring individuals, who acknowledged participation in actions that created harms, to a restorative justice program. Facilitators will be assigned to screen the readiness of the offender (s) and the victim (s). The meeting may help to resolve issues before the court and can be included in a sentencing decision.

The Virginia Crime Commission completed a report on restorative justice, now available for study. Restorative justice and practices are endorsed by numerous government and private organizations. Generally speaking, most individuals who participate find the process to be fair and helpful.

Virginia Parole Board Decisions July 2005 through 2010

The current update includes January 2010 data. The January grant rate was just under 7% out of three hundred eight (308) decisions. The grant rate was 8.7% for 2009, 6% for 2008, 4.7% for 2007 and 3.8% for 2006.

The number of parole revocations in 2009 was slightly less than the number of prisoners granted parole. This is in contrast to past years in which parole revocations were several times higher than parole grants.

After a four-month lapse in information (Oct. - Dec.2009) Virginia CURE is pleased the Parole Board has provided information on cases where parole is revoked. Information on parole revocations is public record and the Code of Virginia requires this information be available for release.

Parole revocations for July 2005-September 2009 included information on the inmate number, name, decision date, decision (revocation), age, sex, race and up to four reasons for the revocation of parole (from a list of 13 reasons). Parole revocations for October 2009 – January 2010, included the same information and offered the document number of the decision. No information is provided on the reason(s) for the revocation of parole.

The Virginia Parole Board Monthly Decisions can be accessed at www.vadoc.vpb.

Virginia Parole Board Decisions: July 2005 to 2009

Month/Year	Granted Parole		Not Granted	Revoked
	Number	Percent	Number	Number
Total Jul-Dec 2005	174	7%	2149	217
Total 2006	164	4%	4186	660
Total 2007	218	5%	4402	653
2008	Number	Percent	Number	Number
January	15	5%	276	56
February	13	3%	463	27
March	18	5%	369	43
April	29	5%	592	76
May	32	7%	450	19
June	8	5%	153	41
July	28	7%	366	66
August	21	7%	296	14
September	30	10%	285	46
October	31	6%	497	67
November	22	6%	366	36
December	29	12%	209	32
Total 2008	276	6%	4322	523
2009	Number	Percent	Number	Number
January	10	4%	261	44
February	65	13%	426	29
March	42	11%	328	9
April	28	9%	284	47
May	34	8%	378	12
June	44	12%	329	66
July	32	8%	347	31
August	48	10%	415	15
September	7	6%	104	37
October	38	8%	420	27
November	19	5%	373	31
December	13	4%	307	29
Total 2009	380	9%	3972	377
2010	Number	Percent	Number	N u m b e r
January	21	7%	287	8

Budget Bill Addresses Criminal Justice Issues

Bill Richardson

On March 13, 2010, the Virginia General Assembly passed its budget bill (HB 30) and adjourned. In addition to substantial reductions in expenditures for the Department of Corrections and other public safety agencies, the budget bill includes three items of interest Virginia CURE supported. Under the Virginia Constitution, Governor McDonnell has until April 13 to approve or veto this bill, or to recommend items for change. The General Assembly will return on April 21 to consider whether to accept or overrule any such changes.

1. HB 30 would continue the work of the Secretary of Public Safety's Task Force on Alternatives for Nonviolent Offenders, in order to monitor the progress of its earlier recommendations and also to include additional steps that may be required to encourage expanded use of electronic monitoring. The bill also permits expansion of the membership of the Task Force, as well as expansion of its scope to include reentry issues.

Last December, this Task Force made a series of recommendations for reform. Among others, these included (1) codifying existing sentencing guidelines for probation violations and revalidating the risk assessment instrument used under these guidelines, (2) using short jail stays and detention and diversion facilities as intermediate sanctions for probation and parole technical

violators, (3) shortening the maximum of term of supervision on probation, (4) awarding good time credit on probation, (5) streamlining release from supervised probation for those whose only failure is to make full payment of fines, fees, and costs, (6) expanding use of drug courts, (7) renewing funding of day reporting centers, and (8) increasing funding for treatment options and mental health services in prisons and in the community.

2. HB 30 would require the Secretary of Public Safety to study the feasibility and desirability of use by parole examiners of a risk assessment instrument as one factor in making recommendations to the Parole Board for parole release. A report on this study is due to the General Assembly by November 15, 2010.

3. HB 30 would require the Department of Corrections, by August 1, 2010, to identify those eligible for parole who may be suitable parole risks, recommend them to the Parole Board, and notify those inmates that it has so identified. In making these recommendations, DOC is required to take into account the prisoner's criminal history record, mental and physical condition, employability, institutional adjustment, and other appropriate factors, including risk of violence to others.

There are a number of other public safety provisions in the budget bill, all of which are too numerous to note here. Some provisions include:

- Setting aside \$150,000 each year for a position dedicated to the improvement and coordination of reentry efforts (which the Governor has already filled).
- Reducing the Parole Board from three full-time and two part-time members to two full-time and three part-time members.
- Extending from one year to two years the period of time which DOC must assume custody of prisoners from local jails, substantially reducing the budget of the Department of Correctional Education while requiring preservation of existing academic, life skills, and vocational training programs.
- Conducting a review of inmate medical expenses to look for additional opportunities to reduce costs.
- Requiring a report on potential options for re-use or redevelopment of Natural Bridge Juvenile Correctional Center.

The General Assembly considered, but ultimately did not adopt, the Senate's proposal to promote geriatric release of inmates who are terminally ill or permanently and totally disabled.

For-Up-To-Date Info

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Save the Date

Virginia CURE Annual Meeting
October 30, 2010 - 9:00am - 3:30pm

Virginia Wesleyan College
Virginia Beach, Virginia

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Quarterly Meeting Notes

Carla Peterson

The CURE Board was informed that: transfer issues resulting from the closings of prisons and the intake of the PA prisoners are being worked out. In April, there were still 30 level 2 and 3 prisoners at Keen Mt. and 20 in Sussex One. Gov. McDonnell has stated that there will be no more prison closings. Money from the PA prisoners has allowed the 800 bed new wing at St. Brides to be opened and provided about 8 million dollars to the General Fund. A new bill allows the jails to keep state prisoners with 2 year and under sentences, in the jails. The 90-day early release item in the budget passed this year and the DOC expects that 400 nonviolent prisoners in prisons and 200 in jails

will be released early in July. After that, releases will occur as people mandatory. There will be a small pay raise in July. This was a high priority for the DOC, but prying the money from the GA was hard! The DCE is looking into allowing families to deal directly with college payments rather than going through the DOC. Liberty University has left Green Rock, since it now has only PA people and they cannot teach out-of-staters. The DCE is looking for money for more classes. Finally, video conferencing is now established in Richmond, Norfolk, and Arlington, and response from families has been good.

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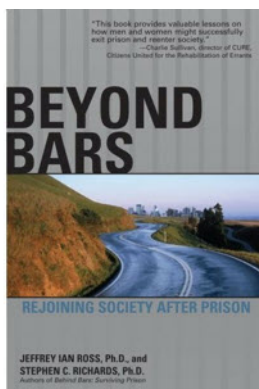
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2010 Memberships Due

Please see membership form on back page.

We couldn't do this without you.

Book Corner

Beyond Bars: Rejoining Society After Prison
Jeffrey Ian Ross and Stephen C. Richards
(authors of *Behind Bars*, *Surviving Prison*)

Barnes & Noble, July 2009

Reviewed by Charles Sullivan

Beyond Bars provides valuable information to the newly released. Topics covered include: preparing for release, reconnecting with family members, finding a place to live, finding and keeping a job, dealing with personal finances and avoiding drugs and other illicit activities.

Charles Sullivan, Director of International CURE writes: “Ross and Richards are professors of criminology and criminal justice. Based on their research and real life experiences, Ross and Richards provide a comprehensive overview of the problems prisoners face when leaving jail or prison. This book offers practical examples on how to solve problems, overcome obstacles, and construct a new life. *Beyond Bars* is the book that we all need to read.”

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VA C.U.R.E. will not return submissions unless prior arrangements are made. Send submissions to: Newsletter Editor, Virginia C.U.R.E., P.O. Box 6010, Alexandria, Virginia 22306.

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