

Virginia Capital Case Clearinghouse
Washington & Lee University School of Law

**PAROLE IN VIRGINIA, 2021:
THE FINAL REPORT OF THE
WASHINGTON AND LEE LAW
PAROLE REPRESENTATION PROJECT**

David I. Bruck, Esq.
Lexington, Virginia
bruckd@wlu.edu

Bernadette M. Donovan, Esq.
Charlottesville, Virginia
bernadette@donovanengle.com

Matthew L. Engle, Esq.
Charlottesville, Virginia
matthew@donovanengle.com

The Virginia Capital Case Clearinghouse (“VC3”) was a yearlong ten-credit legal clinic at Washington and Lee University School of Law. Professor William Geimer created VC3 to assist in the defense of Virginia defendants who were facing the death penalty in the state’s trial courts. In 2017, recognizing both the waning need for capital defense support in Virginia and the almost total lack of legal representation for parole-eligible Virginia prisoners, VC3’s then-director, David Bruck, added the Parole Representation Project to VC3’s mission. Each year since then, VC3 students have represented at least sixteen prisoners in proceedings before the Virginia Parole Board (“VPB” and “Board”). Following the 2021 repeal of Virginia’s death penalty, Washington and Lee reallocated the funding on which VC3 has depended for the past 32 years. Accordingly, VC3 has now permanently ceased operations. To our knowledge, no other law school clinic, defender office, or non-profit agency will be providing representation to parole-eligible prisoners from now on.

VC3 hopes, through this final report, to make one last contribution to criminal justice reform in Virginia. In this report, we reflect on our experience and observations before the VPB over the last four years, and propose legislative and administrative changes to improve the transparency and reliability of Virginia’s parole process.¹

No one familiar with Virginia’s parole system doubts that changes are needed. In the last year, VPB has come under intense public scrutiny and criticism for its handling of the Vincent Martin case and a handful of others. A report from the Office of the Inspector General (“OSIG”) concluded that the VPB violated state law in its handling of the Martin case, and issued recommendations. Although the current VPB Chair disputes many of the OSIG factual conclusions about the Martin case, she nevertheless concurs in several of the OSIG recommendations, including revisions to VBP procedures. VC3 hopes that its observations and experiences with Virginia’s parole system as it now operates will contribute to the process of reform.

We wish to state at the outset that the VPB fulfils a critically important mission in Virginia: reviewing eligible prisoners to determine whether their release is compatible with the public interest. The VPB consists of conscientious and hard-working members and staff who operate in a politically charged environment. Much of the public criticism of the VPB does not appear to be made in good faith, but reflects hostility to the very concept of parole itself and an effort to score political points by sensationalizing the facts of a long-ago crime whenever the Board makes a decision in favor of mercy and rehabilitation rather than more punishment.

The conversation about parole reform in Virginia should not be driven by ideological opposition to parole itself, or by partisan politics. To allow such considerations to dominate the discussion would be incompatible with the public interest. Addressing systemic racism in Virginia’s judicial system and ending Virginia’s over-reliance on mass incarceration require a robust parole board that operates free from political intimidation. The 2020 General Assembly advanced these goals by expanding parole eligibility to two groups of prisoners who were not previously eligible: (1) juvenile offenders who have served over twenty years and (2) the so-

¹ The authors also wish to thank Deirdre Enright, Stephen Northup, and Steven Rosenfield for their advocacy on behalf of parole candidates and thoughtful contributions to this Report.

called *Fishback* prisoners, who were sentenced by juries between 1995 and 2000, after Virginia had abolished parole but before juries were regularly informed that Virginia had done so. These legislative expansions of parole eligibility recognized the strong public interest in ensuring that rehabilitated prisoners are released rather than left to languish needlessly for extra years and even decades.

In our experience with the VPB, we have always encountered the highest levels of professionalism. Our student advocates have been treated with respect and patience. Our clients and their families have reported many positive interactions with VPB members over the years. Additionally, Board members have always stressed that receiving victim input is an important part of their jobs. Indeed, one of the difficulties we encountered in representing our clients was the strictness with which the Board honors and protects the confidentiality of victims' communications with the Parole Board: the Board members and staff would never tell us whether victims have communicated with the Board about our clients' parole cases, much less what they might have said. At the same time, during our own scheduled meetings with Board members (meetings known as "Board appointments"), our clients' remorse and attitudes toward their victims have always among the Board members' primary concerns in assessing whether our clients had truly accepted responsibility and were ready to reenter society. In short, any perception that the Virginia Parole Board ignores the needs and concerns of victims is simply wrong. While there is certainly room for improvement in Virginia's parole process, the VPB members themselves should be thanked for their service to the Commonwealth and not subjected to unfair politically motivated criticism or pressure.

IMPORTANCE OF PAROLE

Any discussion of potential reforms to Virginia's parole system must start with the recognition that parole is a societal good. A decision to grant parole recognizes the successful rehabilitation of a prisoner. In other words, a parole grant is the result of the penal system functioning as we want it to. And the alternative—a system that never or rarely paroles anyone—is a system that punishes blindly, unable to consider and act on new information even when it shows that years more incarceration would only cause more expense and suffering without any corresponding benefit.

The abolition of parole in Virginia in 1995 was part of a broad national "tough on crime" movement that promoted harsher penalties and aggressive incarceration. Much has been written about the disparate impact that the policies of this era have had on racial minorities, especially young Black men. Even children—especially Black teenaged boys, who were labeled in the media as "super predators"—were sentenced to lengthy prison terms in adult facilities. As a society, we are still grappling with the after-effects of the retrograde policies that led to mass incarceration. The question of whether Virginia should remain in the minority of states that have abolished parole for deserving prisoners is beyond the scope of this report but deserves the attention of our public and our legislators.

For present purposes, it is important to consider how the abolition of parole affected people sentenced *before* 1995. Before parole was abolished, judges and juries knew that most defendants were likely to be paroled relatively soon. Accordingly, they accounted for this in

fashioning sentences. (This is not a controversial proposition—in fact, it is the basis of both the Supreme Court of Virginia’s 2000 *Fishback* decision and the 2020 legislative determination that pre-*Fishback* prisoners sentenced by juries unaware of the then-recent abolition of parole should be eligible for parole after all.) The result of the courts’ universal expectation of early parole release before 1995 was that most men and women sentenced during that era received much longer sentences than anyone expected or even intended that they would actually serve.

With the abolition of parole, however, came the restructuring and reorientation of the VPB. Although pre-1995 prisoners were supposedly not affected by the abolition of parole for post-1995 cases, it did not work out that way in practice. Rather, the VPB’s parole rate quickly fell to one of the lowest in the country, plummeting from over forty percent annually before abolition to approximately five percent by 2010. And despite Virginia’s more recent shift towards criminal justice reform, VPB grant rates remain very low. The result is that all of the “old law” prisoners who remain parole-eligible now have served over twenty-five years in prison, regardless of what the citizens and judges who sentenced them intended or expected.

The costs of a parole system that fails to release such aging prisoners are enormous. Virginia spends over \$20,000 per year to incarcerate each person in its prison system, and for older prisoners the average cost is much, much higher. Although many prisoners are willing to and do work hard, Virginia prisoners are paid less than a dollar per hour for their labor, meaning that they cannot contribute to the economy or even cover their own expenses. Consequently, as those with loved ones in prison well know, incarceration burdens prisoners’ families with costs such as paid email services, expensive phone calls, and supplementary food—money that is fed into the prison system instead of local business. Meanwhile, Virginia’s prison population is aging rapidly, and the number of prisoners over fifty is expected to double in the coming decades. With the aging prison population will come dramatic increases in health care costs, which will be shouldered by taxpayers.

The simplest solution is often the best. And in this case, the simple solution is to release those prisoners who are eligible for parole, have demonstrated rehabilitation, and can be safely released into society. But although they have spent at least quarter century (and in many cases much longer) maturing and aging in prison, parole eligibility remains an illusory promise for all but a small minority of these prisoners.

Two recent VC3 cases illustrate the importance and value of parole. The first client, whom we will call DP, was eighteen years old when he stabbed a man to death during a 1993 robbery. The probation officer who prepared DP’s pre-sentence report opined that he “showed no remorse.” The prosecutor in the case described this eighteen-year-old as “one of the most callous and dangerous that he ha[d] ever prosecuted.” The judge imposed sentences totaling life plus twenty-five years imprisonment. However, subsequent events have disproven the prosecutor’s assessment of DP as “one of the most callous and dangerous.” In twenty-eight years of imprisonment, DP has committed a total of only *three* minor disciplinary infractions. In 1998, he was written up for failure to follow count procedures. In 1999 he was found to be in possession of a television that belonged to another prisoner. And in 2001 he was written up for disobeying an order. For the last twenty years, he has not had a single disciplinary infraction.

Now forty-six years old, DP has proven to be a model prisoner. He has earned certifications for Computer Literacy, Data Entry Clerk, Word Processor Operator, Administrative Clerk, and Personal Computer Operator. He has completed ServSafe and met the requirements to work as a cook in the prison kitchen. DP has maintained his employment in the kitchen at Nottoway Correctional Center for fourteen years. His supervisor in the Department of Corrections describes him in glowing terms:

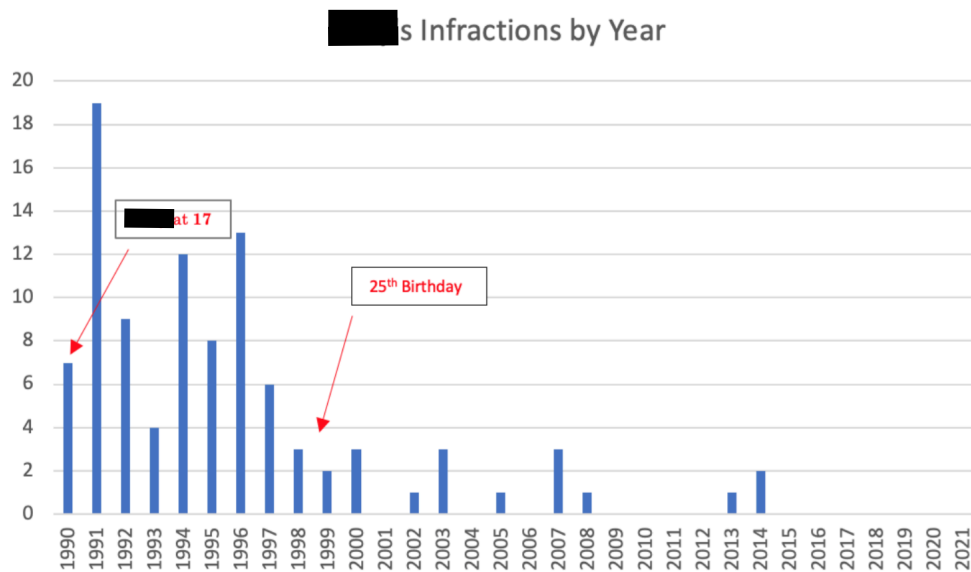
In all my years of dealing with him, he has grown a lot, learned a lot, and he seems remorseful for what happened. And he deserves a chance to prove himself. He's my "Go-To Guy." If he should be granted parole, I wouldn't mind letting a potential employer know how good a worker [DP] is. If I had my own business out in the world and he came in asking for a job, knowing what I know about him, I'd hire him right on the spot.

DP's case is one in which the trial process simply got it wrong. He was never among "the most callous and dangerous" of defendants. He was a scared and impulsive teenager who committed a terrible crime and paid a heavy price for it. This is an obvious case where parole is a vital second look at the necessity of further incarceration. If a prisoner can serve almost three decades without a single violent infraction, can earn the myriad certifications that DP has earned, and can prove himself to be a reliable and trustworthy employee, then what societal interest is advanced by keeping him incarcerated any longer? The forty-seven-year-old DP hardly resembles the defiant eighteen-year-old who committed this crime. There is virtually no risk that DP will re-offend if he is released. Simply put, when the passage of time proves that the judicial system's assessment of a young offender was wrong, parole should be granted because it makes no sense to keep that prisoner incarcerated any longer.

In other cases, the judicial assessment of the prisoner looks much more defensible, but the prisoner has simply changed over time. The case of "LD" fits into this category. LD was only sixteen years old when he and a co-defendant beat an elderly man to death during a robbery. At trial, LD was sentenced to life plus thirty-two years in prison. As a juvenile placed in an adult prison, LD continued to misbehave. During his first eight years of incarceration, LD received seventy-eight infractions, some of them violent. In 1996, when LD was twenty-three years old, he got involved in a fight with another prisoner, during which he pulled a shank. When a correctional officer intervened in the fight, LD cut him with the shank. He was subsequently convicted of malicious wounding and possession of a weapon, and sentenced to fifteen additional years. As a further consequence of this conviction, LD's parole eligibility was delayed from 2002 until 2017.

This 1996 episode would prove to be a turning point in LD's life. He spent over seven years in solitary confinement until he was finally returned to general population in 2003. Following his return to general population as a thirty-year-old man, LD's behavior reflected considerable maturation. Between 2003 and 2014, he had only eight infractions, only one of which—tampering with security equipment in 2007—was a 100 Level (the more serious category) offense. In 2005, he earned his GED. LD has not had a single infraction since 2014. In 2019, an Institutional Classification Authority Hearing examiner noted LD's "overall exceptional behavioral and institutional adjustment as seen by his efforts to remain infraction

free, maintain stable employment as a cell house worker, and compliant with case plan agreement.” A graph of LD’s infractions prepared by VC3 in connection with his parole hearing illustrates his maturation into a reliable and peaceful man:



This is another situation that warrants a “second look” at the prisoner’s continued incarceration. LD’s case represents the best possible outcome for a juvenile tried and incarcerated as an adult. Undoubtedly, he was an impulsive and dangerous teenager. But he has now matured into a hard-working, rule-abiding forty-year-old man. The passage of time and the effort LD has put into his education and rehabilitation have paid dividends. There is no longer any societal benefit to keeping him behind bars. A robust parole process is valuable to recognize that rehabilitation works in cases like LD’s.

SYSTEMIC DEFICIENCIES

Notwithstanding the appointment of conscientious and well-intentioned board members, there are systemic deficiencies in the processes (or absence of processes) in Virginia’s parole system that need reform. In many ways, the procedures followed by the VPB are remnants of a system that was designed to justify the routine denial of parole, not to promote rehabilitation and successful reentry. Following the discussion of these systemic deficiencies, this report will propose specific legislative and administrative changes to improve Virginia’s parole process.

1. Lack of Standards

Perhaps the single most valid criticism of Virginia’s parole process is the lack of clear and objective standards governing VPB’s decision to grant or deny parole in any given case. From the perspective of a parole candidate or his advocate, the parole decision is wholly discretionary, and therefore frequently arbitrary. Obviously, an arbitrary parole process is an unjust process. The core concept of our criminal justice system is fairness, which requires that similarly situated people should be treated the same way. But the lack of objective standards governing the VPB’s decisions can make those decisions appear irrational or even inexplicable.

For every successful Virginia parolee, many who appear to have the same level of culpability and exhibit the same rehabilitation are denied parole every year. When denying parole, the VPB provides only a computer-generated list containing one or more stock explanations, which often leave prisoners with more questions than answers. Establishing clear standards for the grant of parole—such as a specific period of time without misconduct, the completion of specific programs, the attainment of educational objectives, a successful employment history within the Department of Corrections, etc.—will not only advance fairness and the appearance of fairness, but also incentivize prisoners to meet those standards in order to earn their release.

Furthermore, an arbitrary system lends itself to discrimination. While we suggest no purposeful racial discrimination on the part of the VPB members, the lack of clear standards invites systemic racism to infect the parole process. This may manifest itself in many ways. As a starting point, documented racial disparities in sentencing have resulted in Black prisoners receiving lengthier sentences for the same crimes as white prisoners, placing them at an immediate disadvantage. Other factors that are correlated with race—such as access to resources—exacerbate this disadvantage. For example, the family of a white prisoner may be better positioned to secure legal representation before the Parole Board than the family of a Black prisoner. Similarly, a white prisoner may appear to have a more fulsome support system because his family can afford to travel long distances for visits (often requiring leave from work), pay high fees for telephone and email communications, or assist in securing post-incarceration employment. The simple reality of American life is that important resources are not, at this time, equally distributed among racial groups. This can lead to unfair racial disparities.

Receiving victim input is also an important function of the VPB, but this too can have racial implications. If a case involves vocal and motivated victim opposition, a grant of parole is far less likely. White families may in a better position to mobilize opposition to a grant of parole. When public opposition is a factor, Black prisoners also may receive less support due to implicit or explicit bias in the community. Identifying and adhering to clear objective standards will help ensure that Black or other minority prisoners are not at an unfair disadvantage in the parole process.

2. Lack of Reasons for Granting Parole

Closely related to the lack of objective standards governing the parole decision is the VPB's failure to state its reasons for *granting* parole. Under current practice, the VPB publishes monthly reports of its decisions to grant and deny parole. When parole is denied, the monthly VPB report provides reasons the denial. The reasons tend to be perfunctory (“Serious nature and circumstances of your offense(s),” or “You need to show a longer period of stable adjustment”), or even tautological (“The Board concludes that you should serve more of your sentence prior to release on parole.”). But at least the VPB does state reasons for the denial. When parole is granted, however, there is no statement of the reasons for that decision. This reinforces the perception that any grant of parole is arbitrary and more akin to a lottery win than a recognition of a prisoner's rehabilitation and preparedness for reentry. It also leaves the VPB vulnerable to

unfair public criticism of politically sensitive decisions, such as in the Vincent Martin case. In the Martin case, the Board's official silence allowed the facts of Martin's 40-year-old crime to dominate media coverage, while the public was told little of his decades as a rehabilitated prisoner whose skills as an in-prison peacemaker were greatly valued by correctional officers and wardens. A system that never justifies its decisions to *grant* parole is setting itself up for trouble and may, over time, settle into a defensive and overly cautious mode of operation.

In connection with the development of standards, the VPB should state the reasons why it has decided to grant parole. For example, "the inmate has had no serious infractions for five years," "the inmate was 18 years old at the time of the offense," "the inmate has successfully completed rehabilitative programs," or "the inmate has demonstrated a long history of stable employment in the Department of Corrections." This simple step would help the public understand why the VPB has decided to release a particular prisoner, which would increase public confidence in the parole process. It is worth noting that in her October 6, 2020, response to the OSIG recommendations, VPB Chair Tonya Chapman agreed that providing reasons for grant decisions was "essential."

3. Lack of Deliberation

Currently, the VPB reviews approximately two thousand cases per year. With only five members (three of whom are part time), the Board cannot meaningfully review this many cases each year. Likely due to limited staffing, the VPB does not meet in person to discuss cases. Instead, the VPB members vote by computer in *seriatim*. After one VPB member has voted, the case is added to the electronic queue for the next member. That member can then review the case notes that were generated by the investigator and first member, and vote. The case is passed along to each Board member in this fashion, until the requisite number of "grant" or "not-grant" votes have accumulated and the case is removed from the queue. The absence of any structure for actual discussion among Board members means that the parole decision is not deliberative. It is simply the result of between three and five individual assessments, as opposed to a reasoned consensus of the VPB.

In fact, one of the more bizarre criticisms leveled at the VPB in the aftermath of the decision to parole Vincent Martin was that former Chair Adrienne Bennett "stepped out of her impartial role and put on the hat of advocate for the inmate."² Of course, there should be nothing remarkable about a VPB member advocating for the release of a prisoner if that member believes the person is suitable for release. Similarly, there should be nothing remarkable about a VPB member advocating against parole if that member believes that the potential parolee would present a threat to the community. Discussion and deliberation amongst VPB members will result in more reliable parole decisions. In fact, it is the absence of deliberation in the overwhelming majority of cases that makes former-Chair Bennett's advocacy for release in Mr.

² Jon Burkett, "Report details violations made granting parole to a man who killed a Richmond Police Officer," 6NEWS (Feb. 25, 2021), *available at* <https://www.wtvr.com/news/problem-solvers/problem-solvers-investigations/parole-violations-vincent-martin-case> (last visited May 25, 2021).

Martin's case appear unusual or suspect. VPB members should engage in discussion about all of the cases under consideration.

4. Lack of Transparency

In the aftermath of the Vincent Martin parole grant, lack of transparency has been one public criticism of the VPB with some merit. We agree with Chair Tonya Chapman that transparency is an important goal for VPB in carrying out its mission, and that increased resources would further this goal. One area in which transparency could be improved is in reporting the vote totals for each case. This would help prisoners have a more realistic understanding of the Board's assessment of their fitness for release.

Relatedly, another area in which transparency could be improved is with respect to the materials that the VPB receives and considers in connection with parole consideration. During VC3's representation, it was not unusual for the VBP to have considerably more information from the Department of Corrections ("DOC") than the parole candidate or his counsel. In 2019, the General Assembly amended section 19.2-299 of the Virginia Code to allow the VPB to provide copies of the pre-sentence reports, which it considers in every case, to potential parolees or their attorneys. Similarly, the VBP should make available to potential parolees or their attorneys any information received from the DOC regarding institutional infractions, work history, educational history, and the completion of programs. Otherwise, prisoners have no way to correct, challenge, or explain information in their DOC file.

Finally, the transparency problem is particularly acute in cases involving sex crimes. Under the Virginia Code, the DOC creates a Commitment Review Committee ("CRC") to assess for possible civil commitment any prisoner convicted of a sexually violent offense whose release is scheduled or who is referred by the VPB. The CRC may determine that the prisoner is not a sexually violent predator, may recommend civil commitment if it determines that the prisoner is a sexually violent predator, or may recommend conditional release. Based upon the CRC recommendation, the Attorney General determines whether to pursue civil commitment. If the Attorney General petitions for civil commitment, the prisoner is entitled to a jury trial in which he receives notice, legal representation, and customary due process protections such as the rights to remain silent, to present evidence in his favor, and to confront the evidence against him. Thus, a prisoner due to be released cannot be civilly committed without an adversarial process designed to ensure the reliability of the Sexually Violent Predator determination.

In the parole context, the VPB often refers potential parolees to the CRC before deciding whether to grant parole. The VPB then considers the CRC's recommendation in deciding whether to grant parole. But unlike the civil commitment process, the prisoner has no right to see the CRC determinations and therefore cannot rebut or explain those findings. Indeed, a potential parolee who is referred to the CRC and then ultimately denied parole has no way to know whether the CRC evaluation is actually unfavorable, or if parole has been denied for some other reason. This referral practice—which is not statutorily required but appears to have been adopted as a matter of course by the VPB—puts potential parolees at an unfair disadvantage. If there are errors in the CRC evaluation, the prisoner will never be aware of them. This effectively allows a prisoner to remain incarcerated without the due process protections that Virginia law

provides to anyone facing civil commitment. In 2020–21 alone, at least three VC3 clients found themselves in the impossible position of being referred to the CRC for an evaluation which they never got to see, after which they were denied parole without any further explanation. The VPB’s efforts to improve transparency should include making available to the prisoner any evaluation or other evidence upon which the VPB relies in making the decision to deny parole.

RECOMMENDATIONS

To address the deficiencies identified above, VC3 recommends the following reforms.

1. Legislative Reforms

Many of the deficiencies identified above can be remedied through administrative reform. Some, however, will require legislative action. For example, it is simply impossible for a Board consisting of only five voting members (only two of whom are full-time) to give meaningful consideration and deliberation to approximately two thousand cases per year.

a. Increasing the size of the Board

VC3 urges the General Assembly to at least double the size of the Parole Board. With ten voting members, the VSB could assign panels to review parole candidates and could hold in-person Board meetings to discuss the pros and cons of granting parole in a particular case.

b. Additional support staff

The General Assembly should also increase VPB funding to allow for full-time investigator positions. Currently all of the investigators and parole examiners are part-time employees. Ideally these positions should be staffed not only by former law enforcement officials, but also by professionals with other backgrounds (such as social workers and criminal defense investigators) to bring a diversity of perspectives into the process. Given that the General Assembly has (appropriately, in our view) expanded the pool of parole-eligible prisoners to include juvenile offenders and *Fishback* candidates, a commensurate funding increase is also necessary.

c. Software upgrades

In her October 6, 2020, response to the OSIG recommendations, Chair Tonya Chapman stated that upgrading the VACORIS system through which voting occurs to include a drop-down menu allowing VPB members to select “grant” reasons as they currently select “not grant” reasons would require additional funding. VC3 endorses funding for this upgrade.

d. Release of records

To the extent that the VPB relies upon DOC or other records that are confidential and cannot be shared with prisoners or their attorneys, the General Assembly should amend the

Virginia Code as it amended section 19.2-299 in 2019 to permit all relevant records to be shared with the parole candidate and his legal representative.

e. Grants for parole representation

The closure of VC3's Parole Representation Project leaves a void in representation of parole-eligible prisoners. The vast majority of Virginia prisoners who are currently eligible for parole have already served over twenty-five years in prison and are indigent. Because they are incarcerated, they are unable to obtain or organize the records and witnesses necessary for an effective parole presentation. They also have no right to appear before the VPB: their only ability to be "heard" by the Board comes through a one-on-one interview by a Board investigator. Although the Parole Representation Project operated for only four years, word quickly spread in Virginia's prisons and VC3 was inundated with requests for assistance from parole-eligible prisoners. Every year, VC3 could represent only a small minority of these deserving applicants, leaving many more behind. The legislature should approve and fund grants for nonprofit organizations to hire staff members to provide parole representation. Given the high per-prisoner costs of incarceration, especially for the older prisoners who are parole-eligible, these grants would quickly pay for themselves by reducing the number of "old-timers" in Virginia's prisons who can be safely released.

f. Addressing the innocence problem

Finally, funding and staffing must be directed towards addressing the issue of parole-eligible prisoners with credible innocence claims. At VC3, we examined several cases in which "old law" prospective parolees had plausible claims that they were actually innocent of the crimes for which they were serving long sentences. Of course, we can all agree that innocent persons should not be in prison. But a prisoner's assertion of innocence runs contrary to the VPB's expectations of remorse and acceptance of responsibility. Innocent prisoners are thus left with an agonizing choice between insisting on the truth—at the cost of appearing "remorseless" and being denied parole—or pretending to accept responsibility for a crime they did not commit in order to increase their chances for parole.

This conundrum is especially difficult because it is hard to prove innocence in old-law cases. First, because all of these convictions are over twenty-five years old, there are often practical obstacles such as evidence that has been destroyed, a lack of transcripts and attorney files, and witnesses who have died. Second, these prisoners were convicted before the widespread use of DNA and other improved forensic technologies, and thus their convictions often rest on circumstantial evidence and witness testimony. Current forensic techniques cannot be used to reverse such convictions, especially where the physical evidence has been destroyed. Third, because of the difficulty of proving innocence in these cases, they are usually not selected for representation by Innocence Projects or pro bono lawyers.

As a result, old law prisoners with credible innocence claims are trapped in a Catch-22 where the single most powerful reason for their release (an innocence claim) can be held against them as indicative of a lack of remorse. These cases deserve attention, resources, and meaningful investigation. VC3 proposes an executive office tasked with investigating the actual

innocence claims of parole-eligible prisoners.³ This office could evaluate claims and either make recommendations to the VPB, represent prisoners with meritorious assertions of innocence, or refer such cases to non-profit organizations. Additionally, VC3 proposes that the legislature approve and fund grants to non-profit organizations for the investigation of innocence claims in this population and representation of those prisoners with credible claims.

2. Administrative Reforms

In addition to these legislative reforms, VC3 endorses the following changes to the VPB Policy and Procedures.

1. Standards for granting parole

VC3 encourages the VPB to articulate standards for granting parole, not merely for denying parole. Simply including such standards in the VPB Policies and Procedures will encourage prisoners to demonstrate their rehabilitation by meeting those standards. This will also make the parole process less arbitrary and more rational, and will reduce the risk of discrimination.

2. Stating reasons for parole grants

In addition to developing standards for granting parole, the VPB should articulate the reasons for the grant any time a prisoner is paroled. Had the VPB publicly stated its reasons for granting parole to Vincent Martin, it is likely that the coverage of the grant would have included those reasons. The fact that the VPB did not state its reasons for granting parole to Mr. Martin left the public conversation dominated by voices critical of the decision. The fact is that Mr. Martin was an excellent parole candidate with a persuasive claim of innocence, a great deal of mitigation, and (as mentioned earlier) a track record of exemplary behavior in the DOC. As a matter of regular practice, the VPB would be better served by providing reasons for a parole grant.

3. Meeting in panels

While recognizing that this is probably contingent upon the General Assembly increasing the size of the Board, VC3 urges the Board members to hear directly from eligible prisoners and to meet in panels to discuss the cases that are up for review annually.

4. Releasing votes

Transparency can and should be improved by simply reporting the total number of votes to grant and not to grant in each case.

³ While this Report was being prepared, Virginia Attorney General Mark Herring announced the creation of a Conviction Integrity Unit in his Office. While we are certain that the CIU will quickly be overwhelmed with cases, old-law parole candidates deserve particular attention and would be a worthy use of the CIU's resources.

5. *Sex offenders*

In order to prevent unfavorable CRC assessments from blocking favorable parole consideration without ever giving the potential parolee or his legal representative an opportunity to review or challenge the assessment, the VBP should change its policy and make referrals to the CRC only after the Board has voted in favor of a parole grant. Such a policy change would simply treat potential parolees the same way that prisoners with release dates are currently treated. Under current law, parole-ineligible sex offenders are referred to the CRC for assessment only when they are within twenty-four months of a release date. If the VPB votes to grant parole and the CRC subsequently classifies a parolee as a sexually violent predator, the decision will be made by the Attorney General whether to seek civil commitment of the parolee, just as it would be made in any case in which a sex offender has an upcoming release date. Of course, unlike the current procedure, the parolee would then have important statutory and due process rights in the commitment proceeding.

Alternatively, if the VPB wishes to continue relying upon information from the CRC in making its parole decisions, the VPB should develop policies to share this information with the parolee or his legal representative. To the extent that legislation is required to implement this reform, VPB should seek appropriate amendments in order to protect the rights of Virginia's parole-eligible prisoners.

CONCLUSION

In four years of the Parole Representation Project, VC3 has had the opportunity to represent dozens of deserving parole-eligible prisoners. In our work with this population, we have seen firsthand how the operation of Virginia's parole system affects incarcerated persons and their families. We also have had the opportunity to present our cases to the VPB and observe the Board's attention to the issues of rehabilitation, acceptance of responsibility, readiness for release, and respect and compassion for victims and their families. Efforts to reform parole should begin from the premise that a working parole system is one that actually results in release for rehabilitated prisoners. Consistent with that premise, reform efforts should recognize the good faith of the Board and should support its mission through enhancing transparency and eliminating arbitrariness.