

Spring-Summer 2020

## Highlights

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Dear VACURE member.

Please accept my apologies for taking so long to produce another newsletter. This year, events overcame us and only now am I getting back to the important work of publishing the newsletter. Unfortunately, much will occur during the time it takes to get this newsletter to you. We will update in the fall. This newsletter reflects the contentious times we live in with controversy over the parole board, Virginia's prosecutors, and COVID-19. Nevertheless we hope for a successful special legislative session. **Do remember to remind your**

**families to VOTE in Nov!**

### **Broad Support for Police Reform Legislation in Special Session**

30 bills related to police reform have been filed for the special session, including a bill that redefines what qualifies as assaulting a police officer and eliminates mandatory jail time for the offense that triggered a ferocious political debate over police reforms, and drew public protests and comments from almost half of the Virginia Senate before passing on a party-line vote. Republicans decried Senate Bill 5032 as an insult to law enforcement, court officials and emergency first responders, invoking the specter of sometimes violent protests that arose in Richmond and across the country in response to the killing of George Floyd. Democrats reminded them that the legislation, proposed by Sen. Scott Surovell, (D-Fairfax), wouldn't do away with a felony charge for assaulting a law officer. Instead, they said, the bill would ensure that a felony isn't charged in minor cases, especially those involving people with autism or other intellectual disabilities, or be accompanied by a mandatory minimum jail sentence of six months. "For too long in the commonwealth, there have been cases where the punishment is disproportionate to the crime and will ruin an autistic kid's life," said Sen. Jennifer McClellan, (D-Richmond.). But Republicans said the bill, if made law, would play out disastrously across the state by allowing people to assault law enforcement officers, firefighters or other officials with impunity. Other police reform bills filed in the Senate would prohibit the use of neck restraints, require all police officers to be trained in crisis intervention or de-escalation techniques, and set up a fund to pay for body cameras for local police. One bill bars police officers from justifying searches based on the smell of marijuana, a common practice that's faced growing scrutiny in the house, Results of the session will be listed in the fall issue of InsideOut.

### **Partial list of criminal justice bills filed in the House during the special session 2020**

(The senate had many companion bill to these listed here)

[\*\*HB 5017\*\*](#)•Va. Law Enforcement Professional Standards Commission Accreditation Grant Fund & Program; created.

[\*\*HB 5029\*\*](#)•Law-enforcement officer; failure to intervene in an unlawful use of force, penalties.

[\*\*HB 5032\*\*](#)•Criminal Justice Services, Dept. of; creation of statewide telephone hotline, police misconduct.

[\*\*HB 5034\*\*](#)•Correctional facility, local or state; mandatory reporting of all offenders released.

[\*\*HB 5049\*\*](#)•Law-enforcement agencies; acquisition and use of military property.

[\*\*HB 5051\*\*](#)•Law-enforcement officer; notice to Criminal Justice Services Board of decertification.

[\*\*HB 5053\*\*](#)•Geriatric, terminally ill, or permanently physically disabled prisoners; conditional release.

[\*\*HB 5055\*\*](#)•Law-enforcement civilian review panels; localities required, on or before 7/1/2021, to establish.

[\*\*HB 5058\*\*](#)•Marijuana and certain traffic offenses; issuing citations, etc

[\*\*HB 5066\*\*](#)•Law-enforcement officer training and qualifications; DCJS to develop curriculum & lesson plans.

[\*\*HB 5112\*\*](#)•Law-enforcement officer; duty to render aid, duty to report wrongdoing by another officer.

[\*\*HB 5114\*\*](#)•Law-enforcement officer conduct during an arrest or detention; use of force, prohibited practices.

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***Virginia CURE An effort to reduce crime through criminal justice reform***

### Virginia Parole Board Under Siege

This spring, a report from the inspector general's office, based on an investigation begun in May concerning a parole grant, has caused a furor among republican legislators. The report concerned the release of Vincent Martin, who was convicted and sentenced to life in prison in 1980 for killing of a Richmond police officer. Numerous state and national law enforcement and victims groups also raised concerns about how the parole board reached its decision.

The board, under chairwoman Adrienne Bennett, was accused of violating state law and its own policies and procedures. A major focus of the complaints was on the contacting of family members to inform them of the parole hearing. The report said that the inspector general's office found the board did not initially notify the Richmond commonwealth's attorney of Martin's release within the required time frame. It said the board also did not "endeavor diligently" as required by law to contact the slain officer's family — who ultimately did have a chance to provide input. And it said the board declined to hear from two people with concerns about releasing Martin. Chair Bennett was accused of having an agenda that was too partisan toward the prisoners. In the Martin case, she noted in public comments that the board conducted its own investigation of Martin's conviction and concluded there was a "dark cloud of injustice". She released a statement in April, defending Martin's release and saying Martin had "demonstrated himself over the decades to be a trusted leader, peacemaker, mediator and mentor in the correctional community."

New Parole Board Chair Tonya Chapman, (Bennett retired to accept a judgeship) who was not part of the decision to free Martin, provided a lengthy point-by-point response that concluded the report's findings were "based on faulty assumptions, incorrect facts, a misunderstanding of certain procedures, and incorrect interpretations of the Virginia State Code." Her response noted the family was able to give input about parole for Martin, which was considered in the board's decision

Nevertheless, the lawmakers called for all five members of the parole board to resign or be fired and for the governor to revoke Martin's parole and take him into custody until the parole process can begin again, "this time with proper adherence to the Code of Virginia and Parole Board policies." Senator David Sutterlein, (R -Roanoke) filed a bill for the special session that would require the individual votes of the parole board be made public. \* It's clearly evident that more transparency at the parole board is needed," Suetterlein said in explaining his decision to introduce the legislation. The parole board makes major decisions, deciding if people that were convicted of felonies in the past should be released earlier from prison. And the public has a right to know, and should know, who is making those decisions and how they're making those decisions." "My bill would make the votes public, and it's an effort to bring more sunshine" into the process, he added

Governor Northam has spoken with the new Chair of the Parole Board, and reiterated that he expects all notification procedures to be followed, period," The five members remain on the board.

*\*Virginia CURE has been advocating for years for more transparency from the parole board, but now we wonder if making votes public might cause the board to be even more cautious about granting paroles.*

### Parole Board Has a New Chair

This March, Gov. Ralph Northam named former Portsmouth Police Chief Tonya Chapman as the new head of the Virginia Parole Board. Chapman's professional career in law enforcement and public safety spans almost 30 years. Prior to her appointment, she worked with the International Association of Chiefs of Police and previously served as a Chief of Police, becoming the first African American female police chief of a municipal police department in the Commonwealth of Virginia. In January 2014, Governor McAuliffe appointed Ms. Chapman to serve as Deputy Secretary of Public Safety and Homeland Security. Her portfolio included the Virginia Parole Board, Department of Corrections, Virginia State Police, and the Commonwealth 's Attorneys' Services' Council. Prior to receiving a third Deputy Secretary, her portfolio also included the Department of Military Affairs, Department of Fire Programs and the Department of Emergency Management. Prior to her appointment, Chair Chapman served as Deputy Chief of Police and Interim Director for the Department of Social Services in the City of Richmond.

She began her career as a police officer in 1989 with the Arlington County Police Department, where she quickly progressed through the ranks becoming Arlington's first African American female captain in the history of the department... Chair Chapman earned her Master of Business Administration, Master of Public Administration and her Bachelor of Science degrees all from Virginia Tech. She is currently working on her doctoral dissertation in the PhD program at Virginia Tech. Her field of study is in Public Administration and Public Affairs with a concentration in Homeland Security.

#### A Note About Letters to Virginia CURE

While Virginia CURE cares about your concerns and appreciates being kept informed, we don't have a volunteer staff large enough to reply promptly to all letters received. Please, keep it short and to the point. **Do not send legal papers.** We do not have the capacity to deal with legal issues. Send mail to **P.O. Box 2310, Vienna, VA 22183**

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## Parole Grant Rates Jan—June 2020

Month	Reg Grants	Total Heard	Percent	Geriatric	Total Heard	Percent
Jan	12	187	6	3	48	6
Feb	28	168	2	4	24	2
Mar	77	392	2	12	75	2
Apr	28	139	2	9	47	2
May	4	104	3	3	40	7
June	13	145	8	3	85	3
July	15	77	2	9	142	6

## Early Release Numbers from VDOC

As of August 23, 2020, pursuant to the legislative authority granted to the Director of Corrections through Governor Northam's executive amendments to House Bill 29 and House Bill 30, the following numbers of offenders have been released.

Virginia DOC Facilities 471

Institutional Hospitals 1

State Responsible in Local Jails 230

## Suit filed by prison inmates seeking protection from COVID-19 settled

A suit alleging Virginia failed to reduce the prison population or protect inmates against COVID-19, impinging on their constitutional protection against cruel and unusual punishment, was settled in May and dismissed in federal court in Richmond. The settlement agreement calls for the Virginia Department of Corrections to quickly review inmates eligible for early release under the governor's budget amendment and creates a procedure for the Secretary of the Commonwealth to consider conditional pardons for prisoners with medical issues or concerns related to COVID-19, the ACLU said. The agreement also sets up mechanisms to ensure that incarcerated individuals are receiving prompt medical treatment, that prisons are clean, sanitized, and that appropriate protective equipment is provided to both residents and staff," said Meredith Mason, a spokeswoman for the organization. Kinney wrote that according to the agreement, in addition to what the department is already doing, it will now put the number of individuals released under the budget amendment on the public web site and report to the plaintiffs' lawyers on a weekly basis the number of inmates who were tested for COVID-19 in the preceding week.

## Justice Department files Consent Decree with Hampton Roads Regional Jail

After a lengthy investigation into the jail's practices, the Justice Department has filed a consent decree agreement in federal court with the Hampton Roads Regional Jail that, if approved, would force the jail to better care for its detainees, increase staffing and adhere to the Americans with Disabilities Act. In the complaint filed in U.S. District Court for the Eastern District of Virginia and signed by Attorney General Bill Barr, the department claims jail officials have not corrected longstanding problems. The regional jail is led by a board made up of sheriffs and city officials from Norfolk, Portsmouth, Hampton, Chesapeake and Newport News

## Report maintains police violence against civilians is enabled by prosecutors

Prosecutors who turn a blind eye to officer misconduct are part of a "culture" that rewards tough-on-crime strategies with career advancement, according to a *Boston University Law Review* paper. The paper maintains that little will change unless reformers focus on ending the "codependence" between prosecutors and police. Researchers from the ACLU and Brown University analyzed a series of U.S. cases involving alleged officer misconduct and uncovered a pattern of co dependence between the police and prosecutors. They contended that prosecutors, the most powerful players in the U.S. justice system, manipulate both legal and extralegal tools to "protect their police benefactors—and themselves in the process." "Police misconduct," they concluded, "needs prosecutors to enable it." Strengthening civilian oversight of the police; and more "democratic engagement" by voters, legislators and the media encourages authorities to stop shielding police from the impact of their actions by fining both police and prosecutors when officers are found guilty of misconduct.

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### UPDATE: Jails and prisons have reduced their populations in the face of the pandemic, but not enough

A recent study by the Prison Policy Initiative reveals that jails and prisons are not releasing enough prisoners to save lives. At a time when more new cases of the coronavirus are being reported each day, state and local governments should be redoubling their efforts to reduce the number of people in prisons and jails, where social distancing is impossible and the cycle of people in and out of the facility is constant. But the most recent analysis of data from hundreds of counties across the country shows that **efforts to reduce jail populations have actually slowed — and even reversed** in some places. In state prisons — where social distancing is just as impossible as in jails, and correctional staff still come and go every day — have been much slower to release incarcerated people.

Since January, the typical prison system had reduced its population by only 5% in May and about 13% as of July 27<sup>th</sup>. Some states' prison population cuts are even less significant than they initially appear, because the states achieved those cuts partially by refusing to admit people from county jails. Other states are indeed transferring people in prison to outside the system, either to parole or to home confinement, but these releases are not enough to protect vulnerable incarcerated populations from COVID-19. State and local governments clearly need to do more to reduce the density of state prisons and county jails. For the most part, states are not even taking the simplest and least controversial steps, like refusing admissions for technical violations of probation and parole rules, or releasing people that are already in confinement for those same technical violations.

**More than 1,500 of Virginia's 29,000 prison inmates have been infected with COVID-19**, but officials say roughly nine out of 10 had no symptoms and almost all are now believed virus-free. The VADOC had tested 22,538 inmates for the virus as of July 30, as part of a large-scale "point prevalence" testing program, which involves testing everyone. The testing revealed that about 5% of individuals are infected but most do not have symptoms. The data on individual facilities indicates that many facilities have had no infections at all so far. Past "Hot Spots" have occurred at Dillwyn, Buckingham, Fluvana, State Farm, Haynesville., Greensville, St Brides, and Baskerville. Hot spots have cooled down as they passed the peak. Many facilities have not had any infections. The Total number of those infected at the current time (9/8) is 330 infected, 12 in hospital and 15 deaths. The UCLA Law Covid-19 Behind Bars Data Project has been tracking confirmed cases in prisons across the country. It said roughly a dozen states, like Virginia, have tested significant portions, if not all, of their inmate population. The many people who tested positive but were without symptoms indicates that there are more infected people in the community than we know, which is contributing to the danger this virus poses. The Centers for Disease Control and Prevention said that recently, there were 2.6 million reported cases in the U.S., but that there are likely 10 times as many people who have been infected by the virus.

### The Redemption Campaign-Embracing Clemency

The American Civil Liberties Union (ACLU) is spearheading a campaign to lobby governors for the release of 50,000 "unjustifiably imprisoned" state inmates over the next five years. It aims at persuading governors to use their clemency powers "to confront mass incarceration and racial injustice by granting commutations to large groups of people who are unjustifiably imprisoned." The campaign is called "The Redemption Campaign – Embracing Clemency"

People who could be eligible for early release include:

- People who, if convicted under current laws, would serve a lesser sentence than what they are currently serving;
- People convicted of drug distribution and possession offenses, regardless of underlying substance;
- People incarcerated for technical probation or parole violations; and
- Older incarcerated people.

"The Redemption Campaign will push governors to use their existing clemency powers to confront mass incarceration and racism in the criminal legal system," said Udi Ofer, Director of the ACLU's Justice Division.

### Study Concludes Early Releases do not Cause Crime spike

A study of 29 U.S. cities has found no correlation between the early release of detainees from the cities' jails due to COVID-19 fears and any increase in crime in those cities between March and May. "The analysis confirmed that the amount by which a county changed their jail population wasn't correlated with the amount of change in crime," said the report by the American Civil Liberties Union, "Decarceration and Crime During Covid-19," released Monday. "We found no evidence of any spikes in crime in any of the 29 locations, even when comparing monthly trends over the past two years."

### Pell Grants Ban Lifted

The House of Representatives has voted to lift the longstanding ban on Pell Grants for people in state and federal prisons. The provision to lift the ban was included in the appropriations minibus that cleared the House on July 30<sup>th</sup>. The vote represents a historic milestone in the effort to ensure that people in prison can access postsecondary education through Pell Grants. Since 2016, the U.S. Department of Education's Second Chance Pell Experimental Sites Initiative has helped to make clear that broad access to postsecondary education is a smart and effective strategy that produces result. Nicholas Turner, president and director of the Vera Institute of Justice, released the following statement in response to the House's historic vote: "Lifting the ban on Pell Grants is one of the most straightforward and effective ways we can create opportunities for incarcerated students and their families as well as strengthen the communities to which they return. And it's something we can do now. The readiness of this policy fix is especially critical because we believe that lifting this ban is an important step toward a more equitable society."

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## Bills gone into effect July 1

**SB 793 Parole; exception to limitation on the application of parole statutes** Introduced by: **Jennifer L. McClellan** . Provides that an incarcerated person is eligible for parole if (i) such person was sentenced by a jury prior to the date of the Supreme Court of Virginia decision in *Fishback v. Commonwealth*, 260 Va. 104 (June 9, 2000), in which the Court held that a jury should be instructed on the fact that parole has been abolished, for a noncapital felony committed on or after the abolition of parole went into effect (on January 1, 1995) and (ii) the jury was not instructed on the abolition of parole in the Commonwealth.

**SB 103 Juvenile 1020 Offenders; Parole.** Introduced by: **David W. Marsden** . Provides that any person sentenced to a term of life imprisonment for a single felony offense or multiple felony offenses committed while that person was a juvenile and who has served at least 20 years of such sentence, and any person who has active sentences that total more than 20 years for a single felony offense or multiple felony offenses committed while that person was a juvenile and who has served at least 20 years of such sentences, shall be eligible for parole

**SB 1 Driver's license; suspension for nonpayment of fines or costs** . Introduced by: **William M. Stanley, Jr.** Repeals the requirement that the driver's license of a person convicted of any violation of the law who fails or refuses to provide for immediate payment of fines or costs be suspended

**SB 124 Food stamps and TANF; eligibility, drug-related felonies.** Introduced by: **Mamie E. Locke** Provides that a person who is otherwise eligible to receive food stamp benefits shall not be denied such assistance solely because he has been convicted of a drug-related felony.

**133 Criminal cases; deferred disposition.** Introduced by: **Richard H. Stuart** | Allows a court to defer and dismiss a criminal case where the defendant has been diagnosed with autism or an intellectual disability

**HB 972 Marijuana; possession and consumption, penalty.** Introduced by: **Charniele L. Herring** | Decriminalizes simple marijuana possession and provides a civil penalty of no more than \$50

**HB 277 Court fines and costs; community work in lieu of payment during imprisonment** . Introduced by: **Marcia S. "Cia" Price** . Allows courts to provide an option to any person upon whom a fine and costs have been imposed to discharge all or part of the fine or costs by earning credits for the performance of community service work during imprisonment.

**HB 278 Home/electronic incarceration program; payment to defray costs.** introduced by: **Patrick A. Hope** | :. Changes from mandatory to optional the current requirement that the director or administrator of a home/electronic incarceration program charge an offender or accused a fee for participating in the program in order to pay for the cost of home/electronic incarceration equipment

**SB 215 Inmates; review of death in local correctional facilities, report.** **David R. Suetterlein** . Provides that the Board of Corrections shall publish, on its website, an annual report summarizing the jail death reviews conducted by the Board within that year. The bill provides that such report shall include any trends or similarities among the deaths of inmates in local correctional facilities and present recommendations on policy changes to reduce the number of deaths in local correctional facilities.

**SB 1023 Correctional facilities, state; visitation and search policies for visitors.** Introduced by: **Mark J. Peake** Sets visitation and search policies for visitors to local and state correctional facilities, including the circumstances under which visits may include or exclude personal contact. Searches of the person are not allowed on persons under 18 years of age and visitors will not be barred from future visits if they (i) stop a search prior to the discovery of contraband or (ii) refuse to be searched

**HB 1284 Correctional facilities; use of isolated confinement.** Introduced by: **Patrick A. Hope** Directs the Board of Corrections to, in consultation with a stakeholder work group, conduct a review of the standards and requirements governing, and the application and use of isolated confinement in, local correctional facilities.

## **Governor stops strip searches of minors**

Saying that he was “deeply disturbed” by the strip search of an 8 year old girl last fall, the governor suspended the practice immediately. The girl was “stripped naked and searched” by correctional officers reportedly leading the girl, to “believe refusal would result in not being allowed to see her father.” Strip searches of adults, especially women, seemed to be increasing before the shutting down of visitation. CURE received several complaints from women who had been searched, at least one in the presence of her daughter who, the woman stated, was traumatized. The Governor’s statement reads “I am deeply disturbed by these reports—not just as Governor, but as a pediatrician and a dad. I’ve directed The Director of Public Safety and Homeland Security to suspend this policy while the Department conducts an immediate investigation and review of their procedures

## **VADOC adds more air conditioning to facilities**

Currently, 75 percent of Virginia’s 29,000 inmates are housed in facilities with climate controlled air conditioning,... Over the past several years, construction projects have been completed that have included the installation of air conditioning ...at Central Virginia Correctional Unit and State Farm Correctional Center’s school building. Renovations were also completed that added air conditioning at Virginia Correctional Center for Women and Keen Mountain Correctional Center. Renovations that include A/C for the Marion Correctional Treatment Center have been funded and are in the planning and procurement phase.... The VADOC plans to monitor the availability of capital improvement funds in SFY2021-2022 and hopes to address heat related renovations in additional facilities.

## **Arlington County Prosecutors Face New Requirement**

Dehghani-Tafti, a prosecutor with a reform agenda, is part of a group that wants the state Supreme Court to intervene against a new requirement. Tafti came up against the new requirement when she moved to dismiss a marijuana possession charge set for trial in Arlington District Court 6 days after she took office. As one of a number of new, liberal prosecutors seeking to overhaul the justice system, she made it clear during the election that she would eliminate cash bail and would not prosecute small marijuana possession cases. It is not unusual for prosecutors to use discretion in dismissing a case by dropping charges or entering a plea bargain This time was different. Arlington Circuit Court judge Daniel Fiore demanded a written explanation for the dismissal and scheduled oral argument on the issue. Two months later the judge issued a written order requiring all prosecutors to spell out their reasons in detail for dismissing or amending charges in all cases and to explain the “good cause” required by Virginia law. Tafti, responded by, accusing Arlington circuit judges of violating her prosecutorial discretion in charging cases. She has asked the Supreme Court of Virginia to order the Arlington judges to withdraw their order. Tafti stated that “the order is not only time-consuming, but potentially damaging in cases where reasons for dropping a case remain private. It is not wise for us to be putting in all those details, and the court should know that,” she said. Judge Fiore rejected an argument by prosecutors that they were entitled to dismiss marijuana possession charges because they saw enforcing that law as a “poor use of judicial resources” “The decision by the executive branch to “effectively nullify a statute passed by members of the Virginia Assembly ... fails to constitute good cause” he wrote, This is the latest battle between law enforcement agencies faced with new actors imbued with a reforming spirit. “I ran on certain policies saying what we’re going to do, being transparent about it and letting the community decide. The person sitting in this seat reflects the priorities and desires of the community. The judges don’t because they are not elected” she said. Tafti’s motion is supported by an amicus brief from 62 prosecutors around the country. “Tellingly, “ the supporting prosecutors wrote. “Courts, historically did not interfere with prosecutorial discretion when that discretion was being used to ramp up prison and jail populations and ramp up and fuel tough on crime thinking and mass incarceration.. It is particularly troubling that now, as reform minded prosecutors are being elected in cities and counties across the country, courts are intervening in charging and prosecutorial decisions perceived by some to be too lenient.”Arlington judges involved in this matter include Chief Judge William Newman, and judges Daniel Fiore, Louise DiMatteo, and Judith Wheat.

## **Court Rulings Condemning Cash Bail Systems Increasing**

A historically overlooked, or at least minimized, constitutional guarantee is that excessive bail amounts must not be imposed upon citizens accused of crimes. Cash bails routinely far exceed not only most people’s ability to pay but are usually far in excess of the severity of the crime at bar. Study after study has proven that people of color and the poor are the largest groups adversely affected by this routinely imposed unconstitutional practice. These same (and similar other studies) also have shown that there are an increased number of convictions in cases where the accused were effectively denied bail by setting a cash bail so high it could not be met. Even with bail bondsmen available, most of the accused are not able to raise just the 10 percent required because the total bail amounts are set so high...As federal judge after federal judge begin to recognize the unconstitutionality, inequity, and downright unfairness of the cash bail system, rulings ordering positive changes are slowly but surely taking hold.

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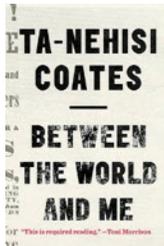
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**Book Reviews:**



Ta-Nehisi Coates' letter to his 15-year-old son is both the intimate meditation of a father who feels fear every time his child leaves his side and a despairing polemic against a country where Trayvon Martin, Eric Garner, and Michael Brown are only the most recent examples of the ways in which violence is visited upon black bodies with impunity. Weaving a history of America built on plunder and exploitation with an autobiography of personal evolution, *Between the World and Me* is a troubling and urgent exploration of race and adulthood.

**NAMED ONE OF THE MOST INFLUENTIAL BOOKS OF THE DECADE BY CNN • NAMED ONE OF PASTE'S BEST MEMOIRS OF THE DECADE • NAMED ONE OF THE TEN BEST BOOKS OF THE YEAR BY *The New York Times Book Review* • *O: The Oprah Magazine* • *The Washington Post* • *People* • *Entertainment Weekly* • *Vogue* • *Los Angeles Times* • *San Francisco Chronicle* • *Chicago Tribune* • *New York* • *Newsday* • *Library Journal* • *Publishers Weekly* Hailed by Toni Morrison as "required reading," a bold and personal literary exploration of America's racial history by "the most important essayist in a generation and a writer who changed the national political conversation about race" (*Rolling Stone*)**

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*InsideOut* is published by Citizens United for Rehabilitation of Errants–Virginia, Inc., P.O. Box 2310 Vienna, VA 22183 Phone and fax: 703-272-3624.