

highlights

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Class Action Lawsuit

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 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. If the court permits the case to proceed as a class action, other inmates will be provided notice of their opportunity to opt in. On May 11, a hearing on the state’s motion to dismiss the suit was held. A decision is being awaited.

The complaint and major pleadings filed in the case are posted on www.justice4all.org/our_programs/vip/parole. This action is an outgrowth of Legal Aid Justice Center’s Virginia Institutionalized Persons Project. Lead counsel for the plaintiffs is Stephen Northup, at the law firm of Troutman Sanders LLP in Richmond. He can be reached at 804/697-1240, or steve.northup@troutmansanders.com.

Virginia CURE Legislative Wrap Up

Carla Peterson

Virginia CURE reported on 2010 legislation at a meeting on April 10th in the State Capitol Building. Featured speakers included:



Del. Betsy Carr (D-69), keynote speaker, spoke of her impressions of the House of Delegates as well as two bills she patroned: 1) alternatives to incarceration (**HB838**) and (2) restoration of voting rights for former felons (**HJ116**).

Stephen Northrup, Troutman Sanders, provided an update on the current status of the parole lawsuit and detailed how class action suits are researched, prepared and proceed through the court system.



Melissa Goemann, Director, Juvenile Law and Policy Clinic, and Co-Director, Mid-Atlantic Juvenile Defender Center, reported on **SB259** (passed), (Lucas D-18) that allows juveniles to remain in juvenile facilities rather than adult, and **SB 585** (failed) (Marsden D-54), that would provide an institutional attorney for juveniles, but was left in committee.

Robert Bohall, member of Virginia CURE’s Board of Directors, discussed bills affecting sentencing and demonstrated that incarceration rates are not related to crime rates. This data is posted on www.vacure.org.

Carla Peterson provided an overview of this year’s session and read reports from issue representatives who were not able to attend. Several of these reports appear in this issue.

Virginia General Assembly Highlights

See the report on the budget bill (page 3) for more legislation. Other Bills of concern to Virginia CURE include:

Passed

SB259 Lucas (D-18) Allows juveniles to be placed in juvenile detention even if transferred to adult court

HB203 Alexander (D-89) Writ of actual innocence available after parole or pardon

SB248 Watkins (R-10) Indigent defendants: right to ex parte hearing for appointment of experts in capital cases

HB927 Bell (R-58) Immediate sanction probation program (technical violator could receive short jail sentence instead of re-incarceration)

Failed

HB823 Surovell (D-44) Expungement for those acquitted of misdemeanors. **SB70** McEachin (D-9)

Expungement of certain crimes after five years, **HB183**, Morrissey (D-74) Expungement after ten years

HB828 Surovell (D-44), **SB124** Petersen (D-34) Raise threshold for grand larceny

HB827 Surovell (D-44) Electronic recording of court proceedings

HB685 J. Miller (R-50) First offenders charged with possession or distribution of pornography to have charges dismissed if they are minors

HB1328 Pogge (R-96) Provide written notice to sex offenders of laws affecting them

SB158 Edwards, (D- 21) Establish mental health courts

HB151 Obannon (R-73) Provides home incarceration option for certain crimes

Crime Commission and Sex Offender Legislation

Lelia Lawless

The Virginia State Crime Commission examined bills referred from the 2009 session related to the federally mandated Adam Walsh Act, looked at the “sexting” issue, and received information on the status of civil commitment. No consensus was reached on implementation of the Act, but this multi-million dollar legislation will not be reconsidered until the economy improves or federal dollars are provided.

The Commission decided not to support any changes in current laws preventing young people from ending up as registered sex offenders. The Commission asserted that prosecutors will make the “right” decisions in these cases and were reluctant to risk any “real” offenders from slipping through the cracks.

A presentation on civil commitment advised that eligible offenses have increased from the initial four very serious offenses to include 28 offenses now classified as “violent” and that, at this rate, the civil commitment facility will be full by 2012. This overflow has the potential to cost \$85-\$100 million for a new facility.

For the first time in 15 years, no significant sex offender legislation passed. Virginia CURE provided testimony opposing Del. Cline’s **HB1366**, 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 Subcommittee with only Del. Watts (D-39) voting against it. However, the full committee decided to let it “go by for the day,” effectively killing the bill.

Two bills were designed to ameliorate some negative impacts of the sex offender registry. Sen. Marsden (D-37) offered **SB635** to remove employer’s names from the registry. This bill passed the Senate unanimously but died in the House. Del. Pogge (R-96) offered **HB1328** requiring the state to notify registered sex offenders of changes in laws that impact them. It was not heard in committee.

Many bills not heard this year have the potential to resurface in better fiscal times.

Restorative Justice and Practices

Christa Pierpont

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 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 HB913 Bell (R-58) 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

Failed SB679 Hanger (R-24) provided the court the option of referring individuals, who acknowledged participation in actions that created harms, to a restorative justice program. Facilitators would 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 State Crime Commission completed a report on restorative justice. Find it by googling: “Virginia State Crime Commission Report on Restorative Justice” (the URL is too long to reproduce here!)

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 that Virginia CURE supported. Under the Virginia Constitution, Governor McDonnell had until April 13 to approve or veto this bill, or to recommend items for change. The General Assembly met on April 21 and approved the following items.

1. HB 30 will 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. *No money was appropriated for this item.*

2. HB 30 requires 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 requires 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, the 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.
- 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.

Save the Date!
Virginia CURE Annual Meeting
October 30, 2010
9:00am - 3:30pm
Virginia Wesleyan College
Virginia Beach, Virginia

Voting Rights Effort Made as Kaine's Term Wanes

Last fall, Virginia CURE joined a coalition of organizations in an attempt to persuade Governor Kaine to issue an Executive Order to automatically restore voting rights to all ex-felons before he left office. Meetings were held and a memo was drafted and sent to the Governor's office. Unfortunately, the governor was not swayed and no order was issued.

Governor McDonnell Establishes Reentry Initiative

Carla Peterson

Virginia CURE attended a meeting in Richmond on May 11 in which Governor Robert McDonnell unveiled a reentry initiative by issuing Executive Order #11 creating the Virginia Prisoner and Juvenile Offender Reentry Council.

The Council headed by Marla Decker, the Secretary of Public Safety and Banci Tewolde, Virginia's first Prisoner Reentry Coordinator, will work with many state and local service providers, including community colleges, 18 state executive agencies, local community services, and faith based and non-profit groups.

Council staff includes Mark Early Jr., a Policy Analyst and Re-entry Specialist with DCE, Lawrence Wilder Jr., who has experience in implementing community and economic development models, and Jane Brown, who created reentry programs for the Virginia Department of Social Services.

Council members will examine and address barriers to successful reentry and are currently completing a survey of all reentry programs in the state. According to Governor McDonnell, the coordination provided by the Council would increase support to ex-offenders and decrease recidivism, thus saving money and lowering future crime rates.

Attorney General Cuccinelli expressed enthusiasm for the plan stating that "the collaborative approach taken by the Governor is the best way. We do believe in redemption and second chances."

The Governor also signed **HB927** Bell (R-58) which provides an alternative to re-incarceration for non-violent technical violators through an "immediate sanction probation program" and **SB670** McDougle (R-4) which would require prisoners to set aside part of their income for payment of fines as a condition for participating in correctional facility work programs.

Virginia Parole Board Decisions July 2005 through 2010

Robert Bohall

The following current update includes January 2010 data. The January grant rate was just under 7% out of 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 (October - December 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.

See page 5 for *Virginia Parole Board Decisions, July 2005 - January 2010*

We regret to announce that the Virginia CURE Family Day Picnic has been canceled for this year. We hope to hold the picnic next year and are looking for volunteers to assist in preparations. Contact us at vacure1@cox.net or call 703-272-3624 if you want to help.

Virginia Parole Board Decisions: July 2005 to January 2010

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

AWARDS



Virginia CURE K.I.D.S. Receive Toys for Tots Award

Lenny Carter and Gina Hudson accepted an award from the Marine Toys for Tots Foundation on behalf of Virginia CURE for being the largest distributor of Toys for Tots in the Richmond area in 2009. "This is our second award from the Marines and we feel very honored," Gina stated. During the 2009 season, the team distributed over 5,000 toys. It was their largest distribution yet. Gina, Director of Virginia CURE K.I.D.S., represents children with an incarcerated parent and also coordinates the Family Day Picnic. Lenny is a member of the Virginia CURE Board of Directors. Congratulations to Gina and Lenny! Members like you are the life blood of volunteer organizations like Virginia CURE.

Virginia DOC Receives Muzzle Award

The Muzzle Awards are bestowed by the Thomas Jefferson Center for the Protection of Free Expression and are now in their 19th year. The awards recognize those who, according to the organization, committed some of the more egregious or ridiculous affronts to the First Amendment in the preceding year. According to Robert M. O'Neil, Director of the Center, "The point of the Muzzles is to discourage others from infringing on free speech and to encourage the recipients from becoming repeat offenders."

The Virginia DOC received its Muzzle for refusing to allow an inmate to listen to a CD of a Christian sermon because of a policy that allows music CDs but bans spoken-word CDs within cells. Larry Traylor, spokesman for the Department of Corrections, said he could not comment because the case is under litigation. Traylor noted that "all policies are based on law."

Virginia CURE Receives the Kelley H. Bartges Community Partnership Award

Virginia CURE, represented by Director Carla Peterson, received the Kelley H. Bartges Community Partnership Award from Assisting Families of Inmates at their Annual Meeting in Richmond on April 29. In its 22 years of existence, Virginia CURE has partnered or worked with over 40 organizations to address issues concerning Virginia's criminal justice system. Virginia CURE is grateful to be acknowledged by such a respected organization as Assisting Families of Inmates; an organization that provides so many valuable services for families with incarcerated loved ones. We look forward to continued cooperation with Assisting Families of Inmates as we work together to reform the system and support both prisoners and their families as they deal with the realities of incarceration.

DOC/Virginia CURE Quarterly Meeting April 2010

The CURE Board of Directors was informed that:

- Transfer issues resulting from the closings of prisons and intake of Pennsylvania prisoners are being worked out. In April, there were thirty Level 2 and 3 prisoners at Keen Mountain and twenty in Sussex One. Governor McDonnell stated that there will be no more prison closings. Money received from Pennsylvania allowed the 800 bed wing at St. Brides to be opened and provided about \$8 million to the General Fund.
- There will be a small pay raise in July. This was a high priority for the DOC, but obtaining the money from the budget was difficult.
- DCE is looking into allowing families to deal directly with college payments rather than going through the DOC. Liberty University no longer conducts classes at Green Rock, since it cannot enroll out of state prisoners (only Pennsylvania prisoners are housed at Green Rock). DCE is looking for money for more classes.
- Finally, video conferencing for visitation is now established in Richmond, Norfolk, and Arlington, and response from families has been good.

*The DOC reported plans for the 90-day early release item in the budget. Unfortunately, this item was "amended out" by the Governor, after this meeting occurred.

CURE Chapters

Northern Virginia CURE
Carla Peterson
Vacure1@cox.net
3rd Wednesday, 7:30 PM
Arlington Unitarian Church
4444 Arlington Blvd.
Arlington VA 22204

Richmond CURE
Al Simmons
Al22s@hotmail.com
4th Sunday, 1 :00 PM
Friends Meeting House
4500 Kensington Ave
Richmond VA 23221

Hampton Roads CURE
Cindy Gibbs
cphtclg@yahoo.com
3rd Tuesday, 7:00 PM
Norview Baptist Church
1127 Norview Ave.
Norfolk VA 23513

WE NEED YOUR EMAIL ADDRESS!

If you have an email address and are not receiving updates from Virginia CURE, please send a message to vacure1@cox.net. (vacure one)

2010-2011 Virginia CURE Board of Directors and Issue Representatives

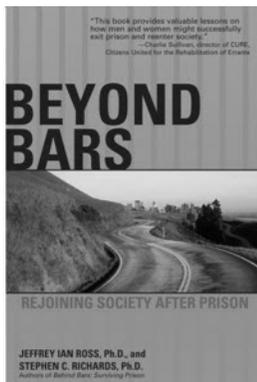
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Sandra Brandt
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Robert Bohall
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Pamela Carpenter
Independence
Clarence “Lenny” Carter
Richmond
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Leila Lawless
**Children with An
Incarcerated Parent
(Virginia CURE K.I.D.S)**
Gina Hudson
Prison Industries
Tom Petersik
Newsletter Editor
Reesy Floyd-Thompson

**Have You Renewed
Your Membership?**

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, Director of International CURE

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 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.”

Citizens United for Rehabilitation of Errants– Virginia, Inc.
Virginia CURE

P.O. Box 6010
Alexandria, Virginia
22306-0010

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www.vacure.org

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*Today's prisoners
are tomorrow's neighbors*

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Use form for new memberships or to renew your membership for

Membership in Virginia CURE

Join Virginia CURE today and become a part of the effort to work for criminal justice reform and safety in our communities. Send dues payment to:

Virginia CURE, P.O. Box 6010, Alexandria, Virginia 22306-0010

Dues are payable January 1 on a yearly, non-prorated basis for current year. Prisoner members need to include state number on all communications to CURE.

Remember to send address changes.

Check type of membership

- Prisoner* \$ 2.00
- Individual \$ 15.00
- Family \$ 25.00
- Sustaining \$ 50.00
- Organization \$100.00
- Life \$100.00
- Renewal

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*Prisoners may send five stamps.

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e-mail _____ prisoner birthday _____

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Involvement: prisoner family friend professional volunteer

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Virginia CURE invites prisoners to submit original articles, poetry and artwork for consideration for publication. VA CURE reserves the right to edit submissions accepted for publication.

Virginia CURE will not return submissions unless prior arrangements are made. Send submissions to: Newsletter Editor, Virginia CURE, P.O. Box 14241, Norfolk VA 23518

InsideOut is published by Citizens United for Rehabilitation of Errants–Virginia, Inc., P.O. Box 6010, Alexandria, Virginia 22306. Phone and fax: 703-765-6549