REPORT OF INVESTIGATION
VIRGINIA PAROLE BOARD

Pursuant to Governor's Executive Order 3 (2022)

JANUARY 25, 2023

Dear Governor Youngkin,

Following the issuance of Executive Order 3 (2022), I assembled an investigative team to inquire into the Virginia Parole Board according to your instructions. I am pleased to deliver the following report, which details the results of our investigation. Additionally accompanying the report is a list of legislative and policy recommendations to ensure the Virginia Parole Board maintains transparency and stability well into the future.

Sincerely,

Jason S. Miyares
Attorney General of Virginia

Copies to:

Honorable Winsome Earle-Sears, Lieutenant Governor
Honorable Richard Saslaw, Majority Leader, Virginia Senate
Honorable L. Louise Lucas, President *pro tempore*, Virginia Senate
Honorable Thomas Norment, Minority Leader, Virginia Senate
Honorable C. Todd Gilbert, Speaker of the Virginia House of Delegates
Honorable Terry Kilgore, Majority Leader, Virginia House of Delegates
Honorable Don Scott, Minority Leader, Virginia House of Delegates
Honorable Raymond F. Morrogh, Commission Counsel, Judicial Inquiry & Review Commission

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I. INTRODUCTION TO REPORT OF INVESTIGATION

The Virginia Parole Board comprises five members appointed by the governor whose main responsibility is deciding whether Virginia's approximately 2,500 parole-eligible inmates are suitable for release. Historically, Parole Board release decisions and operations have been subject to little public oversight.

Following the institution of truth-in-sentencing in Virginia in 1995, the parole-eligible population in Virginia's prisons includes three categories of offenders:[1]

(1) Offenders serving original sentences that predate 1995. These offenders often have "life plus" sentences for serious, violent offenses such as rape, murder, and robbery. These offenders are eligible for discretionary parole, the main type of release granted by the Parole Board. They may also be "dual eligible" for geriatric conditional release if they are at least 60 years old.

(2) Offenders over age 60 serving post-1995 sentences. These offenders are ineligible for discretionary parole, but eligible for geriatric conditional release.[2]

(3) Offenders who were paroled from their original pre-1995 sentence but who have been reincarcerated for parole violations. These offenders may have "dual eligibility" for discretionary parole or geriatric conditional release.

Given the generally violent and serious nature of Virginia's parole-eligible offenders, past Parole Board decisions have sometimes been the subject of controversy. However, in 2020, the Parole Board's release decisions and operations came under elevated public scrutiny, beginning with the April 2020 decision to release Vincent Martin, who received a life sentence for murdering Richmond police officer Michael Connors in 1979.

The decision to release Vincent Martin coincided with the beginning of the COVID-19 emergency. State and local lawmakers told Virginians that a public health crisis required them to close their businesses, stop associating with other people, and stay in their homes. The freedoms of law-abiding Virginians were greatly restricted. By contrast, the Parole Board released 95 offenders in March 2020—the highest number of releases granted in a single month by the Board since such statistics have been tracked—giving newfound freedom to dozens of convicted murderers and rapists.

The full scope of the Parole Board's watershed March 2020 releases has not been previously reported, but our investigation discovered that they included 4 capital murderers, 31 first-degree murderers, 11 rapists, and 33 offenders convicted of robbery. The Parole Board followed this significant set of releases by paroling Vincent Martin to significant public outcry.

Virginians were not told why the Parole Board was releasing so many violent offenders at the beginning of the COVID-19 emergency. They were not told what due diligence the Parole Board had performed, or what danger they may be in due to the Board's actions. As it turns out, offenders were not released due to COVID-19, due diligence was not performed, and the safety of Virginians was endangered. This was all traceable to the actions of one person: Parole Board Chair Adrianne Bennett. Bennett chaired the Parole Board from January 2017 until April 2020. During

the final weeks of her chairmanship, she was elected as a judge on March 2, 2020.

As parole releases mounted, citizens filed complaints with the Virginia Office of the State Inspector General (OSIG) about the releases of multiple violent offenders. Elected prosecutors in Richmond, Halifax, Grayson, and Suffolk began to speak publicly about how the Parole Board had failed to notify them about offender releases, as required by law. **Victims began to voice concerns that the Board never contacted them for input on whether the offender who victimized them should be released.**

OSIG issued multiple reports in summer 2020 finding that the Parole Board had failed to comply with laws and policies in multiple parole release cases. During this time, OSIG was being advised by a single attorney from the Office of the Attorney General of Virginia (OAG), then under the administration of Attorney General Mark Herring. This single attorney was "walled off" from all other OAG staff to avoid conflicts of interest within OAG.

Our investigation has not been designed to confirm or dispel OSIG's findings, but to conduct a wholesale review of the Board's operations. This review discovered 34 individual drafts of OSIG's report on Vincent Martin. The drafts ranged between 6 and 19 pages long, and they were edited pursuant to OSIG protocol by multiple OSIG staff experienced in investigations, including the Deputy Inspector General and the Inspector General.

Although the OSIG investigation revealed multiple credible allegations that the Parole Board violated other laws and procedures, OSIG's drafting process focused on reducing the report's allegations to administrative violations of Board policies and procedures. We found that as the investigation into Vincent Martin attracted more public attention, OSIG internally grew more conservative in editing the allegations eventually levied against the Parole Board. We discovered that the 6-page final report on Vincent Martin was a quasi-executive summary to the 13-page report that later made its way into public reporting. We did not find that OSIG was pressured to edit its report on Vincent Martin during the drafting process.

In direct contrast to OSIG's contact with a single OAG attorney who was "walled off" from the rest of the office, the Parole Board benefitted from direct advice from a Deputy Attorney General. The Herring administration's initial recognition of the adverse OSIG reports quickly gave way to an effort to rebut OSIG's findings. Instead of investigating the allegations of misconduct and taking remedial action as the Commonwealth's chief legal officer, the Herring administration ran interference and conducted damage control for the Parole Board.

With the assistance of the Deputy Attorney General, the Parole Board generated detailed rebuttals to the OSIG reports. However, concerns about the Board's failures persisted. Bipartisan legislators called for the creation of a select committee, empowered to take testimony and issue subpoenas, to examine OSIG's findings. **These calls were ignored.**

Instead, the administration of Governor Ralph Northam asked the General Assembly to commission an investigation into OSIG to determine how a leaked 13-page draft of its report on Vincent Martin was reduced to a final 6-page report. The Northam administration appropriated $250,000 for the investigation, and the administration of Attorney General Mark Herring contracted with New York law firm Nixon Peabody LLP to perform the investigation. The Nixon Peabody investigation is the subject of a separate section at the end of this report.

Despite multiple investigations, Virginians still had questions about the true nature of the Parole Board's operations and decisions. As a result, Governor Glenn Youngkin issued Executive Order 3 on January 15, 2022, directing the Attorney General to investigate the Parole Board. Governor Youngkin's specific instructions to the Attorney General were the following:

> The Virginia Office of the State Inspector General ("OSIG") recently conducted an independent investigation into allegations involving the Virginia Parole Board. These allegations were brought forward by citizens, crime victims and their relatives, and elected Commonwealth's Attorneys. The OSIG investigation revealed some of the inmates released by the Virginia Parole Board had been recently denied parole or otherwise deemed ineligible for parole, raising questions about the lawfulness of the abrupt reversals of these decisions. The Virginia Parole Board also violated victims' rights and broke Virginia law by releasing multiple violent offenders without complying with the legally required notification to the victim or the prosecutor.
>
> To this day, the family members and victims have no answers as to how or why the Virginia Parole Board failed to abide by the laws governing its operations, and no one has been held accountable.
>
> We therefore must ensure confidence and integrity in our criminal justice system. Too often, victims of violent crime are ignored, silenced, and overlooked. Victims deserve to know their voices matter. In order to ensure that these mistakes never happen again, we must fully understand the decisions that led to them.

This report fulfills the governor's mandate in Executive Order 3. The Parole Board, OSIG, and the Virginia Department of Corrections all provided full access to their records and permitted interviews of their employees during our investigation. We also reviewed records and emails from the previous Attorney General administration. No employee of any agency refused to be interviewed or withheld documents or records,[3] and we conducted 41 interviews of 38 employees during the investigation.

Throughout our investigation, interviews of Parole Board members and administrative staff provided a thorough understanding of Board policies, procedures, and historical practices. We reviewed legal opinions from state and federal courts on the Board's authority and discretion, and we were granted access to CORIS, the electronic data management system the Board uses to conduct its business. We also reviewed email correspondence of Parole Board members and staff, including internal communications regarding policies, procedures, and specific parole cases. We also attempted to obtain the entire email history of former Chair Bennett. However, despite the best efforts of Department of Corrections information technology personnel, former Chair Bennett's Commonwealth of Virginia email account had been deleted, as had the email history of former Chair Tonya Chapman. We were unable to determine why the email accounts for Chairs Bennett and Chapman were deleted.

We additionally examined all OSIG files and documents generated about complaints against the Parole Board, as well as all files and documents generated by Nixon Peabody investigators. **This report contains significant information gathered by Nixon Peabody investigators that has not been previously made public.**

This report identifies three main areas in which the Parole Board failed to comply with the Virginia Code and its policies and procedures:

(1) The Board's decisions to grant offenders parole and geriatric conditional release in March and April 2020 were made with systematic disregard for the statutory right of victims and prosecutors to receive notice;

(2) Chair Adrianne Bennett's action to grant 137 parolees final discharge from parole supervision in April 2020 violated multiple laws, Board policies, and procedures; and,

(3) The Board's restoration of hundreds of offenders to parole eligibility under Virginia's "Three Strikes" statute violated multiple Virginia laws and Board procedure.

Chair Bennett's extensive actions regarding the final discharges from supervision and the "Three Strikes" statute, Va. Code § 53.1-151(B1), resulted in multiple violations of law.

We further found that public concerns about the Parole Board's adherence to policies and procedures during the parole release of Vincent Martin were well-founded. However, the Vincent Martin case was merely a small snapshot of the Board's systemic violations of Virginia law and the policies and procedures governing its work.

Separate sections of this report will examine each of these areas of statutory and policy noncompliance in detail. First, applicable laws, policies, and historical practices will be detailed. Second, factual information gathered from witness interviews and Parole Board records will be provided to demonstrate how and whether the Board applied laws, policies, and procedures correctly. Third, the Parole Board's compliance with laws, policies, and procedures will be reported. Each section of this report is accompanied by an appendix in which the records relied upon by the Board are described in detail.

Our report is not an indictment of parole or a rejection of reform. We have reported the facts of all 134 parole releases granted by the Parole Board in March and April 2020, and we do not render conclusions about whether the offenders released by the Board were proper candidates for parole. No offenders were targets of this investigation. We do, however, report information about the offenders' crimes and the way in which the Board evaluated them for release.

Parole reform and the rehabilitation of offenders is a vital societal task, and this report recommends multiple procedural and legislative changes to assist the Commonwealth in accomplishing that task. However, parole reform and offender rehabilitation cannot be accomplished in secret and away from public oversight.

This report emphasizes that the Parole Board, like every other governmental agency, derives its authority and discretion from the consent of the citizens it serves.[4] The Board's decisions to release violent convicted offenders directly affect the safety and security of those citizens. As such, Board operations must be subject to public inspection and corrective action when warranted.

II. SUMMARY OF REPORT FINDINGS

A. SYSTEMIC VIOLATIONS OF VIRGINIA'S VICTIM CONTACT STATUTE

The Parole Board violated the mandate of Va. Code § 53.1-155(B) that it "endeavor diligently" to contact victims before making discretionary parole decisions 83 times in March and April 2020. Sixty-three of the Board's 95 release decisions in March 2020 violated this statute, and 20 of the Board's April 2020 release decisions violated the statute.

B. SYSTEMIC VIOLATIONS OF VIRGINIA'S PROSECUTOR NOTIFICATION STATUTE

The Parole Board violated the mandate of Va. Code § 53.1-136(3)(c) that it notify local Commonwealth's Attorneys about its release decisions within at least 21 days of release 66 times in March and April 2020. Fifty-nine violations were observed among the Board's March 2020 release decisions, and seven of the Board's April 2020 release decisions violated the statute.

C. CHAIR BENNETT'S UNILATERAL "FINAL DISCHARGE" OF 137 VIOLENT OFFENDERS FROM PAROLE SUPERVISION AND FALSIFICATION OF BOARD RECORDS

In violation of multiple Parole Board administrative procedures, and in a manner never before attempted by a Parole Board Chair, Adrianne Bennett unilaterally discharged 137 violent offenders from parole supervision in her final days with the Board—most of whom were convicted of capital or first-degree murder. Our investigation revealed that, in violation of Va. Code § 18.2-472, Chair Bennett falsified three entries in her list of discharged offenders by claiming that a Parole Board employee or parole officer had "requested" the offender's discharge. One Board employee told us that Chair Bennett "lied" when claiming that the employee had requested certain parole discharges.

D. UNLAWFUL SUSPENSION OF VIRGINIA'S "THREE STRIKES" PAROLE INELIGIBILITY STATUTE, VA. CODE § 53.1-151(B1)

In 2017, Chair Bennett implemented a new interpretation of how the Board would evaluate the parole eligibility of repeat offenders who were convicted of more than three murders, rapes, or armed robberies, or some combination of these offenses. However, the Virginia Code required this new interpretation to be approved by the Governor. Chair Bennett sought approval for her new interpretation of "three strikes" cases from Secretary of Public Safety and Homeland Security Brian Moran, but Secretary Moran rejected the policy in late 2017, stating that the General Assembly would have to amend the "three strikes" statute to allow for Chair Bennett's desired interpretation.

During the 2018 legislative session, Senator Scott Surovell patroned a bill that would have amended the Virginia Code to make Chair Bennett's new interpretation part of the "three strikes" statute: 2018 SB 98.[5] The Parole Board supported this bill. However, the bill was withdrawn, and Chair Bennett's new interpretation of the Board's "three strikes" policy did not become law. Notwithstanding this legislative failure to revise the statute, review of hundreds of Board records shows that Chair Bennett implemented the change anyway.

Chair Bennett's unauthorized implementation of her "three strikes" policy resulted in the restoration of two offenders to discretionary parole eligibility in violation of court orders that specifically ruled the offenders were ineligible for discretionary parole. The unauthorized implementation of the policy also resulted in renewed parole eligibility for multiple serial rapists

who had been correctly deemed parole-ineligible because of three or more rape convictions. The unauthorized policy also freed David Simpkins, who, despite being convicted of 42 prior felonies, was released by the Bennett Board in 2019 and committed 10 separate armed robberies following his release on parole.

E. PARDONS GRANTED WITHOUT PAROLE BOARD INVESTIGATION OR CABINET SECRETARY APPROVAL

In addition to reviewing parole-eligible inmates for release, the Parole Board investigates pardon petitions submitted to the Governor. Virginia law and historical practice require the Board to investigate all pardon petitions except in extenuating circumstances. Under former Secretary Brian Moran, pardon petitions were not historically approved without an investigation by the Parole Board. Once investigated by the Board and approved by Secretary Moran, other approvals from the Secretary of the Commonwealth, the Governor's chief of staff, and the Governor were required.

However, in a November 2021 meeting, former Secretary of the Commonwealth Kelly Thomasson informed Secretary Moran that the Parole Board would no longer be asked to investigate pardon petitions as a matter of course. Secretary Moran stated that he would not sign pardon petitions as "approved" without an investigation by the Parole Board, and as a result, the Secretariat of Public Safety and Homeland Security was effectively cut out of the pardon process. **From November 2021 until the end of the Northam administration, we estimate that over 500 pardons were issued without a standard investigation by the Parole Board or approval by the Secretary of Public Safety and Homeland Security.** These included approximately 514 simple pardons, 64 conditional pardons, and 5 absolute pardons.

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III. DISCRETIONARY PAROLE AND GERIATRIC CONDITIONAL RELEASE DECISIONS IN MARCH AND APRIL 2020

A. GENERAL SCOPE AND METHODOLOGY OF INVESTIGATION

1. SCOPE OF INVESTIGATION

We examined Parole Board and VADOC files for each offender granted discretionary parole under Va. Code § 53.1-151, or geriatric conditional release under Va. Code § 53.1-40.01, in March and April 2020. This period was selected for review for multiple reasons.

First, the investigation revealed direct and circumstantial evidence that Chair Bennett accelerated the pace of parole grants upon learning that she would be leaving the Parole Board for a judgeship, so that she could claim responsibility for any backlash that occurred. Despite their best efforts, Parole Board staff were unable to keep up with Chair Bennett's pace in March and April 2020 while remaining compliant with the law, policy, and procedure.

Second, the Parole Board's 'grant' caseload in March and April 2020 was the subject of numerous complaints made to OSIG, as well as the subject of extensive media reporting that detailed additional complaints.

Third, the Parole Board granted 95 releases in March 2020, its highest-ever monthly 'grant' total. According to the Board's long-tenured chief administrator, the average monthly volume of 'grants' was between 12 and 20. To contextualize the unusually high volume of 'grants' in March 2020, the Board's 39 April 2020 'grants' were also examined.

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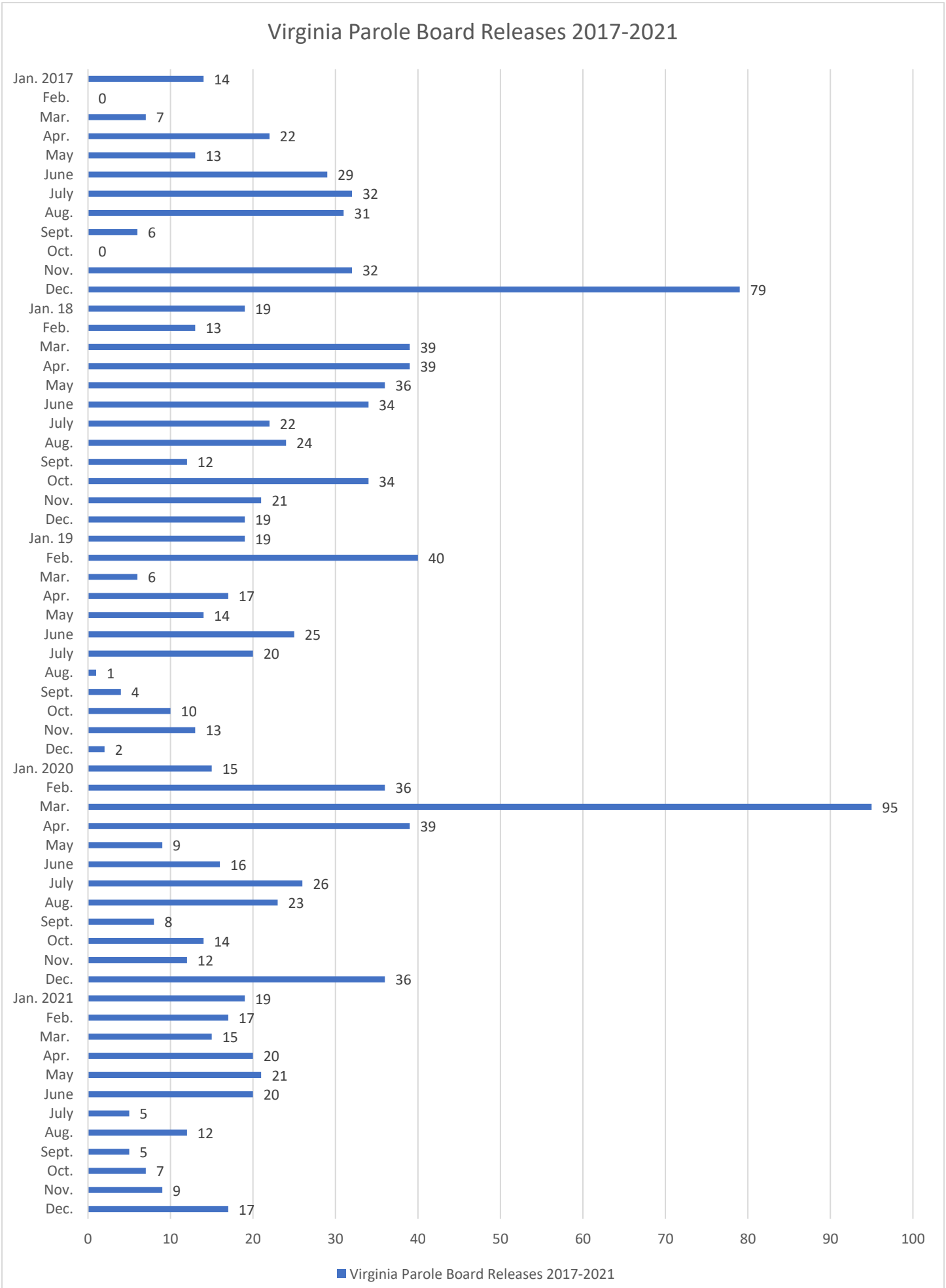
Virginia Parole Board Releases 2017-2021
Jan. 2017 14
Feb. 0
Mar. 7
Apr. 22
May 13
June 29
July 32
Aug. 31
Sept. 6
Oct. 0
Nov. 32
Dec. 79
Jan. 18 19
Feb. 13
Mar. 39
Apr. 39
May 36
June 34
July 22
Aug. 24
Sept. 12
Oct. 34
Nov. 21
Dec. 19
Jan. 19 19
Feb. 40
Mar. 6
Apr. 17
May 14
June 25
July 20
Aug. 1
Sept. 4
Oct. 10
Nov. 13
Dec. 2
Jan. 2020 15
Feb. 36
Mar. 95
Apr. 39
May 9
June 16
July 26
Aug. 23
Sept. 8
Oct. 14
Nov. 12
Dec. 36
Jan. 2021 19
Feb. 17
Mar. 15
Apr. 20
May 21
June 20
July 5
Aug. 12
Sept. 5
Oct. 7
Nov. 9
Dec. 17
0 10 20 30 40 50 60 70 80 90 100
Virginia Parole Board Releases 2017-2021

Fourth, Parole Board emails reveal that incoming Chair Tonya Chapman expressed concern about her predecessor's actions in March and April 2020. In an email to Northam administration Deputy Secretary of Public Safety and Homeland Security Nicky Zamostny, Chair Chapman attached a list of the Board's March and April release decisions, along with the single sentence, "I don't know if you really want to see this list."

From: Chapman, Tonya on behalf of Chapman, Tonya <tonya.chapman@vpb.virginia.gov>
To: Nicky Zamostny
Subject: March/April Grants - Confidential Governor"s Working Papers
Date: Thursday, May 14, 2020 2:58:30 PM
Attachments: Updated1March2020 30April Grants.xlsx

I don't know if you really want to see this list.

--
Tonya D. Chapman
Chair
Virginia Parole Board

Almost immediately after Chair Bennett's departure, then-Vice-Chair Linda Bryant and new Chair Tonya Chapman internally acknowledged problems with the Parole Board's recent compliance with laws, policies, and procedures. In mid-April 2020, former Vice-Chair Bryant immediately began a thorough internal review of Board policies and procedures, including a targeted effort to update them. Following Chair Bennett's departure, the Board identified deficiencies in its compliance with laws, policies, and procedures.

B. General Findings Regarding March/April 2020 Releases

1. Notable Release Decisions

The Parole Board's decision to release any offender is complex. However, reported below are some of the Board's significant releases in March and April 2020, taking into account factors such as the seriousness of the offense, the parole examiner's recommendation against release, and the offender's continuing risk level to society.

Release of Cordell Reed

Cordell Reed committed attempted rape, felony assault, three robberies, attempted robbery, and four firearm offenses and was released on parole in 1989.[6] In 1993, while still on parole in Virginia, Reed committed second-degree murder in Arizona and was sentenced to 25 years.[7] Reed was extradited to Virginia in 2018 and his parole was revoked for the murder conviction.[8] **Reed's parole examiner recommended that the Parole Board deny his release.**[9] **The Board nevertheless voted to release Reed, in violation of Virginia's victim contact and prosecutor notification statutes.**[10] **Forty-four days after his release, on May 30, 2020, Reed was arrested for abducting and wounding a woman in Colonial Heights.**[11] Reed was convicted of unlawful wounding and sentenced to three years in prison.[12]

RELEASE OF MAURICE JARVIS

Maurice Jarvis was incarcerated for 17 felonies, including robbery and carjacking.[13] Jarvis had violated his parole on four previous occasions, and he committed seven disciplinary infractions in prison between 2017 and 2019.[14] The Parole Board voted to release Jarvis in violation of Virginia's victim contact statute.[15] **Eight months after his release, in January 2021, Jarvis was arrested for robbery and attempted malicious wounding against a woman in Hampton.[16]** He was convicted of robbery and sentenced to five years in prison.[17]

RELEASE OF ANTHONY SEXTON

Anthony Sexton was serving 115 years for two counts of attempted murder, robbery, aiding a prisoner escape, two counts of selling heroin, and one count of third-offense drug sale.[18] Sexton had violated his parole on three prior occasions, and his COMPAS[19] assessment showed a medium risk of general recidivism.[20] Sexton's parole examiner recommended that the Parole Board deny his release.[21] The Board voted to release Sexton anyway, in violation of Virginia's victim contact statute.[22] **Sexton was arrested in September 2020 and later convicted of felony possession of a schedule I or II controlled substance and misdemeanor hit and run.**[23] Sexton's parole was subsequently revoked for a fourth time.[24]

RELEASE OF LINWOOD SCOTT JR.

Linwood Scott Jr. was serving 58 years for armed burglary, arson, attempted arson, multiple grand larcenies, and 6 other burglaries.[25] **Parole Board files showed that Scott was previously identified as the "Towel Rapist," who was alleged to have raped an estimated 13 women between 1981 and 1983.**[26] **The Board voted to release Scott, but on the date of his scheduled release in May 2020, Norfolk officials arrested Scott for rape, abduction with intent to defile, and burglary**, related to a 1994 incident.[27] Scott was convicted of all three charges in 2022 and sentenced to 30 years in prison.[28] Parole Board files contained no information that Norfolk officials had lodged a detainer against Scott for rape.[29]

RELEASE OF TORONTO MCCALL

Toronto McCall was serving 123 years in prison for first-degree murder, robbery, conspiracy, and a firearm offense.[30] **McCall committed 81 institutional infractions while incarcerated.**[31] Chair Bennett directed the Parole Board to skip McCall's 2019 parole interview and vote on McCall's case based on outdated information.[32] McCall went on to commit multiple institutional infractions in 2019 that were not reported to Board members.[33] The Board voted to release McCall in violation of Virginia's victim contact and prosecutor notification statutes.[34]

Since his release, McCall has been arrested twice for committing domestic assault and battery against his wife.[35] McCall was convicted of one count of domestic assault and battery, but after McCall appealed, the charge was withdrawn by the prosecution.[36] McCall failed to appear in court for the second count.[37] As of the release of this report, a parole violation warrant was outstanding for McCall's arrest as a result of his failure to report to his parole officer.[38]

RELEASE OF PERNELL REDWINE

Pernell Redwine was serving 130 years for six armed robberies, three firearm offenses, arson, escaping from custody, and entering a bank while armed.[39] Redwine was also convicted of a federal armed bank robbery.[40] Redwine committed 37 institutional infractions while incarcerated,

and his COMPAS assessment showed a high risk of general recidivism and a medium risk of violent recidivism.[41] Redwine's parole examiner recommended that the Parole Board deny his release.[42] The Board voted to release Redwine anyway, and he was arrested Henrico in November 2021 for possession of a schedule I or II controlled substance with intent to distribute.[43] As of the release of this report, Redwine's jury trial is pending.[44]

RELEASE OF MICHAEL SPAIN

Michael Spain was convicted of first-degree murder, robbery, and burglary for invading the home of an 86-year-old woman, stealing her property, and stomping and kicking her in the chest, causing her death from a heart attack.[45] Spain committed 62 institutional infractions while incarcerated, including possessing a weapon in prison in 2018.[46] **Spain's COMPAS assessment showed a high risk for general recidivism.**[47] **The Parole Board voted to release Spain in violation of Virginia's victim contact and prosecutor notification statutes.**[48] Less than four months after being released, Spain died of a fentanyl overdose.[49]

RELEASE OF HORACE BURNETTE

Horace Burnette was serving life in prison plus 30 years for two counts of first-degree murder and arson for setting a home on fire and killing two women.[50] Burnette committed 58 institutional infractions while incarcerated.[51] **The Parole Board voted to release Burnette in violation of Virginia's victim contact and prosecutor notification statutes.**[52] Burnette's parole was revoked in 2022 for excessive drug use.[53]

RELEASE OF CLINTON JACOBS

Clinton Jacobs was serving 70 years for heroin distribution and the rape, abduction with intent to defile, forcible sodomy, and attempted forcible sodomy of a 13-year-old girl.[54] **Jacobs' parole examiner recommended that the Parole Board deny his release.**[55] **The Board voted to release Jacobs anyway.**[56] Jacobs' parole was revoked in February 2021 after repeated positive drug tests and allegations of selling narcotics.[57]

RELEASE OF CHARLES SHEPPARD

Charles Sheppard committed two armed robberies and raped a woman in front of her husband while holding a gun on the couple's 3-year-old child.[58] **While in prison in 2016, Sheppard was convicted of two counts of sexual battery for sodomizing an inmate.**[59] **A court thereafter found Sheppard to be a sexually violent predator under Virginia law.**[60] **Chair Bennett prioritized Sheppard for release in 2020, and the Parole Board voted to release him; Chair Bennett encouraged Board members to contact her after she left the Board in April 2020 so that she could defend releasing Sheppard.**[61] Board members subsequently voted to rescind the Bennett Board's decision to release Sheppard, who remains in custody.[62]

RELEASE OF VINCENT MARTIN

We reviewed 538 instances of victim opposition to Vincent Martin's release from 39 different Virginia localities and 9 different states.[63] Parole Board policy and procedure allowed Vincent Martin's parole to be rescinded based on the significant victim opposition.[64] However, the Board took no such action.

We learned that Chair Bennett developed a dedicated interest in releasing Vincent Martin

from prison that apparently drove her to ignore Parole Board policies. Before attempting victim contact as required by law, Bennett and the other Board members "discussed Vincent Martin in November [2019] and all agreed that [they] would grant him parole this time around."[65] Bennett wanted to get Martin's case certified quickly "so I can take the hit,"[66] claiming that Martin had been "railroaded."[67]

Chair Bennett wrote in one email that she "was just going to vote him and not interview," despite Va. Code § 53.1-154 requiring an annual review.[68] When Martin was interviewed by a parole examiner who did not share Bennett's admiration for Martin, Bennett directed a Parole Board administrator to substitute a prior year's interview as if it were the current year's interview.[69]

Bennett expressed "regret" that the Parole Board was required by law to contact the family of Martin's victim, Richmond police officer Michael Connors.[70] Immediately after a phone call with the victim's family, Bennett told other Board members that the victims' perspective did not change her vote.[71]

Bennett's "regret" for having to contact Officer Connors' family is contrasted with her personal outreach on Martin's behalf. In one email, Bennett gave her personal cell phone number to Geronimo Muhammad, convicted of attempted capital murder for shooting a police officer while escaping from a robbery, so she could ask Muhammad "a few questions about Vincent Martin's co-defendants."[72]

We found that the Parole Board's decision to grant Vincent Martin discretionary parole violated Virginia's victim contact statute, Va. Code § 53.1-155(B).[73]

RELEASE OF HUGH BROWN

Hugh Brown was sentenced to life in prison for shooting his pregnant girlfriend to death and setting her body on fire.[74] Chair Bennett referred to Brown's crime as 'sociopathic' in a 2018 file note.[75] **Brown had just been denied parole in March 2020, but Chair Bennett ensured that the Parole Board gave Hugh Brown's case an extra "board review" in April 2020 that resulted in Brown's release.**[76] **Chair Bennett directed the Board to re-vote Brown's case and ordered staff to stop the victim notification system from alerting the victims.**[77] The Board's vote to release Brown violated Virginia's victim contact statute.[78]

RELEASE OF WALTER LAWSON

Walter Lawson was serving life in prison plus 60 years for capital murder, six robberies, five firearm offenses, two burglaries, and two counts of conspiracy.[79] Lawson was part of a Norfolk "death pact" gang called the "Deathstalkers" who had all vowed to commit a murder as part of their initiation.[80] The parole examiner who interviewed Lawson recommended that the Parole Board deny his release, recounting how Lawson had senselessly executed a cab driver as part of his initiation into the "Deathstalkers."[81] The Board voted to release Lawson anyway, in violation of Virginia's victim contact statute.[82]

RELEASE OF TYSON GOLDEN

Tyson Golden was serving life in prison plus 118 years for first-degree murder, four robberies, four counts of malicious wounding, six firearm offenses, abduction, and burglary.[83] Golden committed 41 institutional infractions while incarcerated, and his COMPAS assessment

showed a medium risk for general recidivism and violent recidivism.[84] Golden did not complete any institutional programming while incarcerated, and his parole examiner recommended that the Parole Board deny his release.[85] The Board voted to release Golden anyway, in violation of Virginia's victim contact and prosecutor notification statutes.[86]

RELEASE OF HENRY BURTON

After committing eight robberies in 1976 and being released on discretionary parole, Henry Burton committed 3 more armed robberies in Wythe County, Washington County, and Pulaski County in 1996.[87] Burton was sentenced to three consecutive life terms in 2000 after pleading guilty.[88] While Burton was eligible for geriatric conditional release, he was ineligible for discretionary parole after the institution of truth-in-sentencing in 1995.[89] The Parole Board nevertheless granted Burton discretionary parole, in violation of Va. Code § 53.1-165.1.[90]

RELEASE OF PATRICK MACK

Patrick Mack was serving two life sentences plus five years for capital murder, robbery, two counts of abduction, and attempted extortion.[91] While in jail, Mack abducted 10 hostages, including multiple sheriff's deputies; Mack then demanded $100,000 and a helicopter to escape from the jail.[92] Nine years later, Mack incited a separate riot at Powhatan Correctional Center.[93] **Mack committed 50 institutional infractions while incarcerated, and his parole examiner recommended that the Parole Board deny his release.**[94] **The Board voted to release Mack anyway, in violation of Virginia's victim contact and prosecutor notification statutes.**[95]

RELEASE OF LONNIE COLEMAN

Lonnie Coleman was serving 71 years for rape, forcible sodomy, and at least three burglaries.[96] Coleman committed 332 institutional infractions while in prison, including 36 counts of indecent exposure and 26 assaults.[97] The Parole Board voted to release Coleman in violation of Virginia's victim contact and prosecutor notification statutes.[98]

RELEASE OF RONALD PATTERSON-EL

Ronald Patterson-El was serving 2 life sentences plus 27 years for 2 rapes, 2 counts of forcible sodomy, 2 robberies, sexual battery, and a firearm offense.[99] Patterson-El, known at the time as Ronald Dennis, raped a 26-year-old woman at gunpoint in a store bathroom; 4 months later, he burglarized a home and raped and forcibly sodomized the 75-year-old female occupant.[100] Patterson-El's parole examiner recommended that the Parole Board deny his release.[101] The Board voted to release Patterson-El anyway, in violation of Virginia's victim contact and prosecutor notification statutes.[102]

2. THE COVID-19 EMERGENCY DID NOT JUSTIFY INCREASED PAROLE RELEASES OR THE PAROLE BOARD'S STATUTORY/POLICY NONCOMPLIANCE

The Parole Board and Chair Bennett attributed the accelerated pace of parole grants at the end of her tenure to the COVID-19 emergency. **However, in an interview, Chair Bennett's direct supervisor, former Secretary of Public Safety and Homeland Security Brian Moran, stated that the Parole Board was not given authority to release offenders due to the COVID-19 situation**; that authority was given to VADOC. Secretary Moran told us, "[W]e weren't going to do it in a random manner. I mean, that was insane. . . I didn't want the authority with us [the Public Safety and Homeland Security Secretariat] or the Parole Board, I wanted it with [VADOC

Director] Harold Clarke. . . I didn't want to go through the Parole Board."

Secretary Moran also told us that the very nature of Virginia's parole-eligible population made them difficult to release:

> *[T]he reason they're there [in prison] still is because they're sentenced to . . . life terms, typically. So you either have, you know, some sort of egregious robbery, or murder, or some . . . serious sex assault. So you know that, that population was difficult to parole because of the nature of their offenses.*

Consistent with Secretary Moran's desire for a uniform release plan, the Governor proposed "Item 402" under budget amendment 101, which authorized the Director of VADOC, Harold Clarke, to develop a plan for releasing nonviolent offenders with less than one year remaining on their sentences.[103] The legislative amendment specifically prohibited VADOC from releasing offenders "convicted of a Class 1 felony or a sexually violent offense as defined in § 37.2-900 of the Code of Virginia."

In contrast to VADOC's clearly defined and legislatively authorized release authority, the Parole Board was not authorized to release more parole-eligible offenders in a like manner. Secretary Moran and the General Assembly vested that authority in a more appropriate agency, VADOC. Yet, the Parole Board claimed—and broadly wielded—the authority anyway.

Unlike VADOC's detailed COVID-19 plan, the Parole Board did not publicly promulgate a specific plan for releasing parole-eligible offenders. The Board simply increased the pace of its parole grants without informing the public what criteria it was considering. **Furthermore, the General Assembly's clear intent was that the COVID-19 situation did not authorize the release of class 1 or sexually violent felons. The Parole Board ignored this standard and instead voted to release multiple class 1 and sexually violent offenders in March and April 2020.** Finally, although Governor Ralph Northam issued various executive orders permitting state agencies such as the Parole Board to suspend regulations and statutory requirements, Secretary Moran stated that he did not authorize the Virginia Parole Board to suspend any such requirements or regulations.

The COVID-19 situation was an authorized and valid reason for VADOC to release nonviolent offenders, as well as offenders who had less than one year on their sentences. VADOC's COVID-19 early release plan was approved by the General Assembly and remains posted for public review to this day.[104] The Parole Board had no such plan, no such mandate from the Governor or Secretary Moran, and no such legislative authorization from the General Assembly. Despite these circumstances, the Board proceeded to release some of the most violent and notorious offenders in Virginia's prison system.

3. Chair Bennett Presided over a Culture of Ignoring the Virginia Code, Parole Board Policies, and Administrative Procedures

a. The Bennett Board Generally Voted to Release Discretionary Parolees Before Attempting to Contact Victims

Section 53.1-155(B) of the Virginia Code requires that the Parole Board complete a comprehensive investigation prior to releasing offenders on discretionary parole. This

investigation requires the Board to "endeavor diligently" to contact the victim or their family "prior to making any decision to release any inmate on discretionary parole."[105] Before this requirement was enacted in 2002, the burden was on victims to contact the Parole Board. Legislation in 2002 instead charged the Board with the duty of contacting victims.

Review of the Parole Board's parole decisions in March and April 2020 revealed that the Bennett Board rarely initiated victim research and contact efforts until at least some members had voted in favor of release. In many cases, victim research and contact only began after an offender had received *all* the necessary votes to be released. In some cases, the Parole Board attempted no victim contact whatsoever.[106]

We found that in March 2020, 63 of the Parole Board's 95 release decisions violated the victim contact requirement of Va. Code § 53.1-155(B). In April 2020, 20 of the Board's 39 releases violated the victim contact requirement.

The practice of voting to grant parole before considering victim input began under prior Parole Boards. Arguably, these prior Boards were also in violation of the victim contact statute. However, there has been no comparable volume of public complaints about prior Boards' victim contact efforts. This investigation was predicated on an executive order referencing specific, repeated public complaints about the victim contact practices of the Bennett Board.

Prior Boards did not attempt to process such a high volume of offenders as the Bennett Board. This enabled prior Boards to suspend voting while victim input was obtained and considered, and to revote cases if victim input was obtained. By contrast, Chair Bennett's demonstrated intent to move parole cases as quickly as possible in March and April 2020 made it impossible for the Parole Board to research, solicit, and fully consider victim input.

While victim input is just one part of the complex decision to grant parole, Parole Board members cannot make a fully informed decision without it. By all witness accounts, Chair Adrianne Bennett controlled and administered the Parole Board's victim contact efforts. Board members Sherman Lea, Kemba Pradia, and Linda Bryant stated that with some exceptions, they were much less involved in victim research and contact, and they generally relied upon the Parole Board's CORIS files to contain the information they needed about victims' input. However, the Board's victim contact efforts simply did not comply with the law. An interview of the Board's OAG agency counsel revealed that Chair Bennett contacted OAG for legal advice *twice* during her nearly four-year tenure as Chair. Neither of those instances involved questions about compliance with the Parole Board's victim contact obligations.

The senior staff of the Herring administration made no attempt to publicly or privately correct the Parole Board's discharge of its statutory victim contact duties. In addition, our internal review found no evidence of oral or written warnings from the OAG to the Northam administration or the Secretary of Public Safety about the Board's widespread noncompliance with the Virginia Code and Board procedures. **In the aftermath of the OSIG reports, the Herring Administration effectively acted as the Parole Board's publicist by helping the Board respond to negative media coverage, but never counseling the Board to correct illegal actions or filing any court action to prevent violations of law or policy.**

b. THE BENNETT BOARD INTENTIONALLY FAILED TO CONTACT THE VICTIMS OF PAROLE VIOLATORS

Analysis of the March and April 2020 parole cases revealed that the Bennett Parole Board had an unwritten policy of not attempting victim research and contact in cases involving "parole violators" who were up for discretionary parole consideration. These offenders had previously committed parole-eligible crimes but were reincarcerated for a parole violation. The plain language of the Virginia Code required the Parole Board to contact the victims of parole violators' original offenses, but the Bennett Board deemed this unnecessary. After Chair Bennett's departure, the Chapman Board received legal advice confirming that the Virginia Code required victim contact for parole violators.

c. CHAIR BENNETT'S POLICY OF NO VICTIM CONTACT IN YOUTHFUL OFFENDER CASES

The Parole Board has jurisdiction to grant discretionary parole to offenders under age 21 who were convicted of post-1995 offenses under the "youthful offender" program. However, the Bennett Board was apparently foregoing victim input altogether in youthful offender cases. Following Chair Bennett's departure, Vice-Chair Linda Bryant acknowledged the existence of this policy in separate emails to Victim Input Coordinator Lisa Bowen. Bryant used the acronym "ALB" to refer to Chair Bennett, and "YO" to refer to youthful offender cases.

From: Bryant, Linda (VPB VFE)
To: Bowen, Lisa (VPB VFE)
Subject: Victim Input for Juan Perry, 1892827
Date: Monday, May 4, 2020 2:25:08 PM

Lisa,
Can you do a victim input request letter to Juan Perry, 1892827? He is a youthful offender BUT he killed someone (involuntary manslaughter) so, even though ALB did not have us getting input in YO cases, I'd like to know what the victim feels in this case. He has one grant vote and the PB examiner recommends grant. Thanks so much,

Linda L. Bryant
Vice-Chair

From: Bryant, Linda (VPB VFE)
To: Bowen, Lisa (VPB VFE)
Subject: Tyrese Robinson McLain, 1867595
Date: Tuesday, May 5, 2020 8:53:04 PM

Hi Lisa,

I've been doing a deep dive into the code and policies, etc. and I had a quick question - I think in earlier emails I saw where ALB had not required notification in YO cases. My interpretation of the statute is that we are required to get victim input in YO cases - I see no statutory language saying that we do not need to get input in YO cases (53.1-155B) so the safer course is that we treat YO cases like other cases. Just wanted to bring this to your attention - and get your thoughts on it. I might have missed something and you might have said that we do need input in YO cases - but I just wanted to circle back on it. Do you want to ask Tonya about it at some point or do you want me to?

d. CHAIR BENNETT'S UNWRITTEN POLICY OF NOT CONTACTING RAPE VICTIMS

Under Chair Bennett's direction, the Parole Board made little effort to comply with its victim contact obligations in rape cases. Board employee Crystal Noakes, who often assisted with victim contact efforts, confirmed Chair Bennett's policy in an interview. Noakes told OAG investigators that Chair Bennett "would make up policies" that were "convenient," and Bennett's policy regarding rape victims was that "if it was a rape victim, don't traumatize the victim by contacting, by contacting them."[107] Noakes reiterated that "I just know the way Adrianne worked, and she would kind of make up her own rules as she went along."

Analysis of the Parole Board's parole decisions in March and April 2020 confirms the lack of victim contact efforts. The cases of convicted rapists Anthony Hugine, Clinton Jacobs, Aubrey Lawrence, Charles Sheppard, Robert Day, William Whitaker, and Harold Martin are illustrative.

e. VIOLATIONS OF THE COMMONWEALTH'S ATTORNEY NOTIFICATION STATUTE

The 2002 law that enhanced the Parole Board's victim contact obligations also obligates the Parole Board to notify the local Commonwealth's Attorney about release decisions by certified mail "at least twenty-one business days prior to release on parole." During Chair Bennett's tenure, this provision did not require the Parole Board to notify Commonwealth's Attorneys about geriatric conditional release decisions. Nevertheless, the Bennett Board largely failed to obey the 21-day mandate in Va. Code § 53.1-136(c)(3). At our request, the Parole Board provided a log indicating when it had sent prosecutor notifications. **For the review periods of March and April 2020, we found that the Board failed to provide 21-day notice in 66 cases.**

We also found that the Parole Board's violations of the Commonwealth's Attorney notification statute were solely caused by the Board and Chair Bennett. VADOC had a statutory mandate to quickly release qualifying offenders during COVID, but the Parole Board did not. Yet Chair Bennett initiated an informal plan to release parolees quickly. In an email to VADOC Offender Management staff on March 27, 2020, Chair Bennett directed that "Re-Entry is waived and release is authorized upon approval of a home plan." As a result, the offenders released in March and April 2020 did not go through the five-to-six-month re-entry program, with many being released quickly and abruptly. Analysis of March and April 2020 parole cases shows that Chair Bennett failed to cause the Parole Board to adjust its prosecutor notification timing to match her waiver of the re-entry requirement.

f. ADDITIONAL STATUTORY VIOLATIONS

The Parole Board violated Va. Code § 53.1-155(A) by failing to conduct a complete investigation in the case of Linwood Scott Jr. Scott was under indictment for rape, abduction with intent to defile, and burglary in Norfolk at the time the Board voted to release him. Norfolk officials had lodged a detainer against Scott for the charges. However, Board records contained no indication that Scott was wanted for rape at the time of his parole consideration. A detainer investigation is a simple part of the Parole Board's investigation under § 53.1-155(A), but the Board failed to do so in Scott's case, nearly leading to his release into the community while serious, sexually violent criminal allegations were pending against him. In 2022, Scott was convicted as charged of rape, abduction with intent to defile, and burglary, receiving a 30-year sentence.

The Parole Board violated Va. Code § 53.1-155(A) and § 53.1-154 by failing to conduct a

complete investigation in the case of Toronto McCall and failing to interview McCall before his 2020 parole consideration. Chair Bennett instructed a Board administrator in March 2020 to place McCall's case in Board members' voting queues using McCall's 2018 parole interview. McCall, who had already committed nearly 80 institutional infractions by 2018, committed multiple more infractions between that interview and when he was released, and Board members were therefore not privy to that information, which might have affected their votes.

The Parole Board violated Va. Code § 53.1-165.1 by granting Henry Holmes discretionary parole for three convictions of armed robbery that were committed in 1996. Holmes was sentenced to three consecutive life sentences in 2000. These convictions were not eligible for discretionary parole because they occurred after parole was abolished in 1995. However, Board records, including the official record of decisions and the parole conditions signed by Holmes upon his release, show that Holmes was unlawfully granted discretionary parole despite his ineligibility.

g. PAROLE RELEASES BY MOST SERIOUS CONVICTION TYPE

March 2020 **April 2020**

Murder	37 of 95 (38.9%)	**Murder**	13 of 39 (33.3%)
Capital Murder	4	Capital Murder	3
1st Degree Murder	31	1st Degree Murder	8
2nd Degree Murder	2	2nd Degree Murder	2
Rape	11 of 95 (11.6%)	**Rape**	11 of 39 (28.2%)
Robbery	33 of 95 (34.7%)	**Robbery**	9 of 39 (23.1%)
Carjacking	3	**Forcible Sodomy**	1 of 39
Aggravated Malicious Wounding	2	**Arson**	1 of 39
Malicious Wounding	2	**Burglary**	2 of 39
Burglary	5	**Drug Sale**	2 of 39
Misc. Nonviolent Offenses	2		

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IV. EARLY DISCHARGES FROM PAROLE SUPERVISION GRANTED BY CHAIR BENNETT

We found 137 instances in which Chair Bennett granted early discharges from parole supervision contrary to Parole Board policy, and based on the evidence cited below, we believe Chair Bennett committed the following violations:

- **Probable cause exists to conclude that Chair Bennett committed three violations of Va. Code § 18.2-472, prohibiting government officials from making false or fraudulent entries in official records.**
- Chair Bennett committed 137 violations of Parole Board Administrative Procedure 1.402 for unilaterally preparing and submitting certificates of early discharge, a duty delegated not to her, but to the Virginia Department of Corrections.
- Chair Bennett committed 111 violations of Parole Board Policy Manual § VI.D for failing to obey the requirement that parolees be on supervision for five years and be recommended by a parole officer before early discharge can be granted.
- **Chair Bennett committed one violation of Canon 2N of the Virginia Canons of Judicial Conduct for continuing to transact the business of the Parole Board after taking the bench.**
- **Chair Bennett committed one violation of Va. Code § 53.1-136(5) for discharging a convicted murderer from supervision without checking their criminal record.**

A. GENERAL INFORMATION ON DISCHARGE FROM PAROLE SUPERVISION

When Virginia offenders are released from prison on parole, they are supervised by a parole officer in a local Probation & Parole district office. The Parole Board has no staff that supervise offenders directly, leaving that duty to specially trained probation and parole officers who interact personally with offenders in the community. Board policy recognizes that "the direct supervision of offenders is carried out by the Department of Corrections."[108]

One of the Parole Board's duties is to "issue final discharges to persons released by the Board on parole when the Board is of the opinion that the discharge of the parolee will not be incompatible with the welfare of such person or of society."[109] The Board has implemented policies governing when a parolee may be discharged from supervision.

B. PAROLE BOARD POLICY AND PROCEDURE ON DISCHARGE FROM PAROLE SUPERVISION

The Parole Board has two mechanisms for modifying a parolee's supervision level: reducing the level from "active" to "inactive;" and issuing the parolee a final discharge from supervision. Inactive supervision, like unsupervised probation, does not require the parolee to check in with a parole officer. Inactive supervision may only "be considered by the Board any time following the expiration of six months or two-thirds of the fixed parole period, whichever is longer, upon the request of the parole officer or other persons."[110]

Final discharge, otherwise known as "early discharge," is not available unless a parolee has been on supervision for at least five years, with exceptions for extenuating circumstances. Parole Board policy addressing final discharge states that "all cases under parole supervision . . . shall be reviewed by the parole district office to which the case is under supervision . . ." There is

no express mechanism, however, for the Board to remove a parolee from supervision before five years have elapsed or without the recommendation of a parole officer.

Former Parole Board Chair William Muse, who served under Governors McDonnell and McAuliffe, told us, "The way that it was done was you had to get a request from probation officer," and that "we would certainly not do it on our own." Former Chair Karen Brown, who served under Governor McAuliffe, told us "I would never reach out and say let somebody go [on early discharge]." Former Chair Brown emphasized that VADOC "were the ones supervising them, they know whether or not somebody's ready for release." Brown could not "even conceive of why" she would have granted an early discharge from parole supervision without input from the VADOC parole officer.

The Parole Board policy manual delegates the task of issuing certificates of final discharge from parole supervision to VADOC.[111] After a parolee is released from prison, the VADOC also serves as the point of contact between the Parole Board and the parolee and issues any documentation releasing parolees from parole supervision. The Board only makes the final decision about whether a person receives a final discharge from supervision, playing no part in that supervision or in the recommendation for discharge.

C. VADOC Policies on Discharge from Parole Supervision

In 2020, VADOC policy 920.5, titled "Termination of Supervision," provided a catch-all indicating that the Parole Board can consider early termination of parole supervision under unusual conditions or exemplary behavior. This policy mirrors the Parole Board policy discussed above regarding termination of active supervision and final discharge from supervision. While such unusual conditions certainly existed in April 2020, VADOC and the Parole Board took vastly different actions with respect to offenders on community supervision. VADOC took the measured step of briefly "pausing" in-person supervision, and probationers resumed in-person probation meetings once safety measures were applied. The Parole Board took a markedly different tact—abruptly ending the supervision of over 100 violent offenders, some of whom had been released only a year earlier after decades in prison.

VADOC policy also requires parole officers to use the "PPS 60" Parole Discharge Report when requesting that the Parole Board terminate supervision. This report requires the officer to include vital information like the result of a criminal record check, recent drug screenings, and the parolee's compliance with supervision; the form also goes through two layers of internal validation.

D. Chair Bennett Unilaterally Issues Final Discharges from Parole Supervision to 137 Violent Offenders in April 2020

In her final days as chair, Adrianne Bennett violated Parole Board policy by selecting 137 parolees and terminating their parole supervision with the assistance of Laura Hall, a Board staff member. After granting early discharges from supervision, Chair Bennett personally uploaded digital copies of each discharge certificate into CORIS. Bennett personally corresponded[112] with some offenders about their discharge, eliminating the local parole officer from the decision. One such exchange:

From: **Bennett, Adrianne** <adrianne.bennett@vpb.virginia.gov>
Date: Sun, Apr 5, 2020 at 6:55 PM
To: <keronturner[redacted]>

Mr. Turner -

I am attaching for you a copy of your Early Discharge from parole certificate.

You should hear from your Parole Officer soon to advise of you of the same information.

Wishing you well.

Adrianne L. Bennett

From: **Keron Turner** <keronturner[redacted]>
Date: Tue, Apr 7, 2020 at 12:31 AM
To: Bennett, Adrianne <adrianne.bennett@vpb.virginia.gov>

This is one of the biggest moments in my life. I cherish these moments and don't take them for granted.I was up looking at the discharge letter when this email came in.

From: **Bennett, Adrianne** <adrianne.bennett@vpb.virginia.gov>
Date: Tue, Apr 7, 2020 at 12:39 AM
To: Keron Turner <keronturner[redacted]>

Thank you Mr. Turner. It is late! We should probably both get somes sleep!

Warm regards,

Adrianne L. Bennett

Parole Board administrative assistant Laura Hall acknowledged in an interview that she knew these early discharges violated Parole Board policy. A contemporaneous email from Hall confirms the established understanding that early discharges from parole could not be initiated without a parole officer's request:

On Tue, Feb 25, 2020 at 12:10 PM Hall, Laura <laura.hall@vpb.virginia.gov> wrote:

> Hi Carolyn,
>
> This man in on Interstate Parole to NC. He wrote to the Board, requesting early discharge. I know the PO must make the request; but does the request come from NC or District 1?
>
> My gut says his NC PO must make the request, just double checking.
>
> Thanks!!
>
> Laura

Chair Bennett, however, was seemingly undeterred by any Parole Board or VADOC policy regarding early discharges. Though she placed her official imprimatur as Parole Board Chair on the certificates of early discharge from parole supervision, she conducted little, if any, oversight to determine whether her staffer had selected appropriate candidates for final discharge. In an email exchange with Laura Hall, **Bennett says "*I will release anyone you say to release*!"—and she meant it. She later says "*Waive that wand of power and let's cut them loose. There needs to be a silver lining to all this! Give me more*!!!"**

From: Bennett, Adrianne
To: Hall, Laura H. (VPB)
Subject: Re: early discharge cases
Date: Tuesday, April 7, 2020 8:51:35 PM

Waive that wand of power and let's cut them loose. There needs to be a silver lining to all this! Give me more!!!

On Tue, Apr 7, 2020 at 8:49 PM Hall, Laura <laura.hall@vpb.virginia.gov> wrote:

> Ugh!! I thought you were looking behind me. Pleze, I feel drunk with power
>
> Seriously, most if the names are from Board appointment cases!! The Interstate cases are hard to gage because there is no information, but no news is good news!! Hopefully, with no parole obligations, they will continue to flourish and know true freedom. You are truly giving these folks a fresh start!! (PS-loved your email to Northup and Bruck).
>
> L.
>
> On Tue, Apr 7, 2020 at 8:39 PM Bennett, Adrianne <adrianne.bennett@vpb.virginia.gov> wrote:
>
> > Thank you - I will release anyone you say to release!
> >
> > On Tue, Apr 7, 2020 at 8:38 PM Hall, Laura <laura.hall@vpb.virginia.gov> wrote:
> >
> > > Hi Adrianne,
> > >
> > > Here are a few more names for early discharge. I checked each one, they are doing well. I know you are looking at these, and you may not agree with all of them!! I have not finished the supervision list yet!

When Chair Bennett did "waive" her wand of power, she did so in a way plainly contrary to policy and public safety. Instead of following Parole Board policy requiring the recommendation of a local parole officer before the issuance of a final discharge form parole supervision, Chair Bennett did this unilaterally, and without the benefit of reviewing the required "Parole Discharge Report" from the local probation officer, indicating whether the parolee had pending charges, positive drug screens, was employed, and was complying with the parole officer's instructions.

Laura Hall told us she had a close relationship with Chair Bennett and that Parole Board staff had not previously seen a chair with "that kind of passion for parole." In Chair Bennett, Hall found someone who shared her views on parole, stating that "you really shouldn't be sitting here if you don't." Hall stated that Chair Bennett felt that many offenders had been treated unfairly by the justice system.

Hall told us she "had no control" and that she "got caught up in what was going on." Hall stated that "[Bennett] asked and I provided." Hall also described Chair Bennett as "fly[ing] in on two wheels," "a hot mess," and "not calm or collected." Hall also questioned why she was involved so much and wondered if Bennett "[took] advantage of asking me," but believed she was simply helping fulfill the request of the Parole Board Chair.

Hall acknowledged, however, that early discharge requests must come from a parole officer, not from the Parole Board, and not unilaterally from the chair of the Board. Hall was unaware of any prior chairman or board member having unilaterally discharged parolees from supervision without a parole officer's request. **Hall stated "it was very fair to say" that Chair Bennett violated the Parole Board policy requiring a minimum of five years of supervision and a parole officer's recommendation before an early discharge from supervision could be granted.**

In light of the complete lack of due diligence regarding early discharges, we examined each individual parolee who received a final discharge in April 2020.[113]

E. Chair Bennett's April 2020 List of Final Discharges from Parole Supervision

Chair Bennett kept a running list of parolees to whom she was issuing final discharges from supervision. On April 15, 2020, just hours before her tenure with the Parole Board ended, Chair Bennett emailed the Board's Post Release Unit the final installment of a list of 137 parolees, reproduced in full in Exhibit 1 (attached to the Appendix to Section IV). Chair Bennett modified the names of 19 offenders on this list with a parenthetical such as (Requested by Cal'Vina), indicating that a parole officer had requested that an offender be discharged early from parole supervision. **This "request" is required by Parole Board and VADOC policy via the PPS 60 Parole Discharge Report and is the only thing, by policy and in fact, that legitimizes an offender being discharged early from parole supervision.**

We reviewed each of the 19 early discharges that contained Chair Bennett's parenthetical modification, including the offender's complete CORIS file, all external documents uploaded by VADOC personnel, and all supervision notes made by the local parole officer. We discovered that each of the 8 times Chair Bennett noted an early discharge had been "Requested by Erin [Banty, a parole officer]," supporting documentation existed in CORIS that proved that parole officer Erin

Banty had indeed requested the early discharge.

However, for the 11 times Chair Bennett noted an early discharge had been requested by "Helen" or "Cal'Vina," no evidence exists of an employee by that name taking any action in those cases. Many of the early discharges that Chair Bennett represented as having been requested by "Helen" or "Cal'Vina" had been requested by a different parole officer, but in some cases, there was no request from a parole officer whatsoever.

Helen Morton is the director of the Parole Board's Post Release Unit, and she is assisted by Cal'Vina Turner. They do not supervise offenders, request early discharges from supervision, or make any other executive decisions about supervision. **Morton, a 35-year Parole Board employee, said "Neither Cal'Vina or (sic) myself, none of us requested any, um, discharges."** Morton also stated she had never received such a large list of early discharge orders from any previous Parole Board chair or member.

In practice, Morton requires a PPS 60 Parole Discharge Report from any local parole officer requesting early discharge from supervision, "because I know that way, they've covered everything they need to cover." Morton stated that an email from a parole officer was not enough for her to even pass the early discharge request on to the Parole Board; she required more evidence of the parolee's performance on supervision. However, Morton was not preparing the early discharge certificates on Chair Bennett's list of early discharges above—Chair Bennett was.

Morton said that Chair Bennett told her that "you don't have to do them, I'm gonna do them," and she was not comfortable questioning this because it was a direction from the chair of the Board. Since this occurred in April 2020 at the height of the COVID-19 emergency, Morton also did not properly process what Chair Bennett was doing in the confusion of the moment. Morton was "shocked" when she realized how many parolees had been discharged early from supervision in such a short period. By contrast, in August 2022, the Board was only considering 13 parolees for early discharge, according to Morton.

Likewise, Cal'Vina Turner stated that she never requested an early release from supervision, stating "No, that'd be more work for me. Never. I can't do that." Turner acknowledged she "do[es]n't have the information necessary to make that kind of decision." She stated she did not make any requests on Chair Bennett's list, exclaiming "I didn't do that! I don't even know these people." Turner said that Chair Bennett's assertions that she had requested early discharges were "false" and "a lie."

Given the evidence received throughout this investigation, we believe Chair Bennett's actions regarding her list of early discharges, specifically her false entries certifying that a VADOC employee approved of three parole discharges, have created probable cause to believe Chair Bennett committed three violations of Virginia Code § 18.2-472.

F. INSTITUTIONAL REACTION AND RESPONSE TO CHAIR BENNETT'S EARLY DISCHARGES OF PAROLEES

A thorough review of Chair Bennett's 137 early discharges from supervision revealed that the VADOC personnel responsible for supervising these parolees were well-acquainted with the "five-year rule" requiring parolees to be on supervision for five years before early discharge could be requested. Some early discharge petitions that had been recently denied by the Parole Board were reversed without explanation by Chair Bennett. Evidence of the confusion and disorder

caused by Chair Bennett's unilateral early discharges was found in many cases.

1. Convicted double murderer David Campbell was denied early discharge from supervision in February 2020; Chair Bennett reversed course and granted Campbell early discharge without explanation in April 2020.[114]

2. Convicted murderer Shamont Burrell was denied early discharge from supervision in February 2020; Chair Bennett reversed course and granted Burrell early discharge without explanation in April 2020.[115]

3. Herbert Robertson, who was sentenced to two life terms plus 300 years, was granted early discharge from supervision "out of the blue" and without a parole officer's request.[116]

4. Larry Macon, who was sentenced to life in prison plus 9 years after convictions for first-degree murder, robbery, and two weapons offenses, was discharged even though he was "not a candidate for early termination."[117]

5. Chair Bennett discharged convicted murderer Pamela Scott from Interstate Compact supervision while Scott had a DUI charge pending in North Carolina Chair Bennett unilaterally discharged her from supervision, and Scott was convicted of the DUI shortly thereafter.[118]

VADOC became aware on a higher institutional level in early April 2020 that Chair Bennett's early discharges of parolees conflicted with established policy. Julie Lohman, VADOC's Deputy Compact Administrator, oversees all offenders on parole supervision in other states through the Interstate Compact for the Supervision of Adult Offenders ("Interstate Compact").[119] She noted that her unit believed that "[Chair Bennett] is early releasing from supervision all the offenders she granted parole to in 2018" and that she did not "think these offenders qualify by their own policy."

Lohman raised concerns about this lack of policy compliance in an email to Chair Bennett on April 10, 2020. Chair Bennett dismissed the concerns, ordering Lohman to simply "proceed as you have been instructed."

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From: **Bennett, Adrianne** <adrianne.bennett@vpb.virginia.gov>
Date: Fri, Apr 10, 2020 at 9:21 AM
Subject: Re: Early release Khalid Karim 1052162
To: Lohman, Julie <julie.lohman@vadoc.virginia.gov>
Cc: Helen Morton <helen.morton@vpb.virginia.gov>

Early Discharges is approved -proceed as you have been instructed.

On Fri, Apr 10, 2020 at 9:14 AM Lohman, Julie <julie.lohman@vadoc.virginia.gov> wrote:

> Before we send the early release from supervision order to Maryland, I wanted to check to be sure this one was correct.
>
> Subject was released to parole on 9/12/2018. His MED is Lifetime in CORIS and 2028 in ICOTS. His offenses were 1st Degree Murder and Kidnaping and he has a registered Victim.
>
> He was transferred to MD via Interstate Compact on 10/4/2018. To date, we have received no updates or Progress Reports from MD. We would normally request one before the Board would consider early release from supervision.
>
> It is my understanding based on Parole Board policy that offenders had to have served 2/3 of their supervision period before being considered for early release.
>
> Can you clarify as I expect I will need to explain this to MD and the victim.
>
> Thank you in advance,
>
> **Julie Lohman**
> *Deputy Compact Administrator*

Lohman told us regarding this email that "[w]ith Chair Bennett, you definitely got the sense that you weren't going to have a dialogue." She also stated that early discharge notifications were historically forwarded to the Parole Board by her unit after an early discharge request from a parole officer in another state, and that Chair Bennett's early discharges raised questions because of the high volume and the serious nature of the offenders' convictions.

Due to Chair Bennett's disregard for policy in randomly selecting certain parolees for early release from supervision, by the end of April 2020, VADOC had received multiple additional inquiries from regional victim advocates who questioned how long parole-granted offenders would be on supervision. Chair Bennett summarily dismissed these concerns, brusquely noting that victims "don't get input" on early discharge:[120]

From:	Bennett, Adrianne (VPB VFE)
To:	Bowen, Lisa (VPB VFE)
Subject:	Re: Early release concerns
Date:	Wednesday, April 15, 2020 8:59:00 PM

Hi Joe -

Parole Board has the authority to Early Disharge. PO's have made requests and some were PB initiated. Victims don't get input on this.

Adrianne L. Bennett
Chair
Virginia Parole Board
6900 Atmore Drive
Richmond, Virginia 23225
(804) 674-3081

Parole Board Administrator Tracy Schlagel told us that Chair Bennett "flew through a bunch [of early discharges] and removed a bunch." Schlagel noted, "in a lot of cases, the individual released from supervision had only been on parole 18–24 months" instead of the five years required by Board policy.

VADOC Corrections Operations Administrator Jermiah Fitz Jr., a VADOC employee for 26 years, related how during the tenure of Chair Bennett, certain parolees were being identified for what seemed to be special consideration. Fitz noted that Chair Bennett came on as Parole Board chair as a former defense attorney, and she brought "a notion of the process from her clients' perspectives." Fitz said that Chair Bennett, unlike prior Parole Board chairs, did not reach out to VADOC to learn about their existing processes.

Fitz knew of several cases in which Chair Bennett granted early discharges from supervision in violation of established policy and stated that from a "public safety standpoint, this can't happen." Fitz noted that "inmates given a free pass from the Parole Board (regarding the Interstate Compact) negatively impacts other inmates as a result."

Fitz told us that Chair Bennett had "an idea of how things should go, and that was not in step with how [VADOC] had historically applied policies, rules, and laws," and noted that Chair Bennett did not have any regard for VADOC's policies.

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G. General Statistics for Chair Bennett's Early Discharges

1. Early Discharges from Parole Supervision by Most Serious Conviction Type

Murder	**96 of 137 (70%)**
Multiple Murder/Manslaughter	**13 of 137 (10%)**
Single Capital Murder	**10 of 137 (7%)**
Single First-Degree Murder	**72 of 137 (52%)**
Robbery conviction in same event	22
Malicious wounding conviction in same event	8
Single Second-Degree Murder	**1 of 137 (<1%)**
Attempted Capital Murder	**1 of 137 (<1%)**
Rape	**6 of 137 (4%)**
Forcible Sodomy	**1 of 137 (<1%)**
Robbery	**27 of 137 (20%)**
Average number of robbery convictions per offender	2.23 per offender
Burglary	**3 of 137 (2%)**
Other Non-Violent Offenses	**3 of 137 (2%)**

2. Average Total Prison Sentence Length Per Offender[121]

The 137 offenders discharged from supervision by Chair Bennett were sentenced to a total of 104 life sentences plus 6,135 years, or approximately 14,267 years of active incarceration. **The average sentence per offender was 104.14 years, or life in prison plus 28 years.**

3. Discharges from Parole Supervision by Parole Release Year

2008	1	**2015**	8
2010	3	**2016**	4
2012	1	**2017**	52
2013	1	**2018**	49
2014	7	**2019**	11

Because Parole Board policy requires 5 years of supervision in most cases, early discharges from parole supervision in April 2020 should have been granted to offenders released before 2015. However, the data show that the overwhelming majority (81.8%) of early discharges from parole supervision granted by Chair Bennett were for parolees who had been released from incarceration during her chairmanship (Jan. 2017–Apr. 2020). These parolees were ineligible for early discharge from supervision until at least January 2022 under Parole Board and VADOC policy.

H. Violations of Parole Board Policy, Virginia Code, and Other Provisions of Law by Chair Adrianne Bennett

1. Va. Code § 18.2-472

- **Prohibits Virginia government officials from falsifying information in official records they create or maintain.**
- **There is probable cause to believe that Chair Bennett violated § 18.2-472 by falsifying information related to three early discharges from parole supervision.**

2. PAROLE BOARD ADMINISTRATIVE PROCEDURE 1.402

- Recognizes that because VADOC supervises offenders, not the Parole Board, VADOC prepares certificates of early discharge from supervision.
- Chair Bennett violated Parole Board Administrative Procedure 1.204 137 times by unilaterally preparing all certificates of discharge weeks before leaving the Board.

3. PAROLE BOARD POLICY MANUAL § VI.D

- Recognizes that early discharge from supervision is unavailable unless five years have elapsed and a parole officer has requested early discharge.
- Chair Bennett violated Parole Board Policy Manual § VI.D 111 times.

4. CANONS OF JUDICIAL CONDUCT 2N

- Prohibits judges from involvement in executive or legislative appointments.
- **After her term as Parole Board Chair ended, and while she was performing the duties of a judge, Judge Bennett continued to assist the Parole Board with its operations by her own admission in an interview with investigators. Judge Bennett continued to transact Parole Board business (performing the duties of an executive appointee) the day after she took the bench (April 17, 2020 at 9:29 p.m.) by granting convicted murderer Paul Sorensen early discharge from parole supervision and emailing the discharge certificate to Board employee Helen Morton.[122]**
- *See also* Appendix 1 on offender Debra Scribner, showing an April 21, 2020 email from then-Judge Bennett, who was still using her Parole Board email account to instruct then-Chair Tonya Chapman to get "more snarky" with the media and the elected Halifax Commonwealth's Attorney about Scribner's case and others.

5. VA. CODE § 53.1-136(5)

- Permits the Parole Board to "Issue final discharges to persons released by the Board on parole when the Board is of the opinion that the discharge of the parolee will not be incompatible with the welfare of such person or of society."
- Chair Bennett unilaterally released convicted murderer Pamela Scott from supervision without checking her criminal history. Scott had been arrested for DUI in North Carolina in September 2019, and the DUI was still pending when Chair Bennett discharged her from supervision. Scott was later convicted of the DUI.
- It was incompatible with the welfare of society and of offender Scott for Chair Bennett to discharge her from parole supervision without checking her criminal record, and while an allegation of criminal conduct that endangered the public had been levied against her.

It is of paramount importance that policies are fairly and uniformly applied in the sensitive field of corrections. The law guarantees offenders due process, which can only be achieved when corrections officials properly adhere to longstanding policy and procedures. **There cannot be**

special deals for certain offenders arbitrarily selected for a benefit in a secret process imposed by a single individual. The 137 offenders Chair Bennett discharged early from supervision received a special privilege that hundreds of other parolees did not. Given Chair Bennett's disposal of policy in favor of waving her "wand of power," those parolees who did not receive special dispensation can rightly ask, "why not me?"

Though April 2020 was the height of COVID-19, the public health emergency was not a valid reason to terminate a parolee's supervision, nor do we have evidence that it permitted Chair Bennett's actions. As a pandemic measure, VADOC placed all probation and parole cases on "waiver" status, meaning that supervision would still occur, albeit without in-person meetings. VADOC did not use COVID-19 as an excuse to discharge probationers from supervision, and the Parole Board cannot claim that excuse either.

VADOC's COVID-19 Early Release Plan[123] prioritized the release of older, nonviolent offenders while placing murderers and sex offenders at the bottom of the priority list. Yet Chair Bennett's discharges came almost exclusively from these categories of offenders, with convicted murderers and violent sex offenders accounting for 103 of her 137 supervision discharges. In accordance with the law, VADOC pandemic policy prohibited the release of class 1 felons, yet Chair Bennett discharged ten class 1 felons convicted of capital murder from supervision.

Without oversight, Chair Bennett erroneously attributed 11 of the early discharge requests to Parole Board employees who emphatically denied having made such requests. Chair Bennett went even further by certifying that three of the early discharges (all of whom had been convicted of murder) were compliant with policy and officially approved by VADOC.[124] We found no evidence that any parole officer had requested that these three offenders be discharged from supervision, as Parole Board and VADOC policy required. Chair Bennett knew that a parole officer's approval was required for an early discharge, and by certifying in a Parole Board record that a VADOC parole officer approved of the early discharge of three murderers from parole supervision, probable cause exists to believe that Chair Bennett violated Va. Code § 18.2-472.

Chair Bennett's unilateral discharges created a destabilizing effect on VADOC and the community. This led many parole officers and victims to question how and whether policy was being followed, and whether due process was being guaranteed to all offenders. As such, legislative and policy recommendations follow later in this report.

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V. CHAIR BENNETT'S ACTIONS TO UNDERMINE VIRGINIA'S "THREE STRIKES" PAROLE INELIGIBILITY STATUTE, VA. CODE § 53.1-151(B1)

Virginia's "three strikes" parole ineligibility statute protects the public from repeat offenders who are convicted of more than three murders, rapes, or armed robberies. We found, however, that Chair Bennett unlawfully modified this statute by adding elements that the General Assembly did not authorize. She proposed an overhaul of the Parole Board's "three strikes" policy that OAG advised her would require the Governor's approval. Her proposed policy was rejected by former Secretary of Public Safety and Homeland Security Brian Moran, who told her the "three strikes" law would have to be amended by the General Assembly. Chair Bennett then supported a legislative amendment by Senator Scott Surovell that would have codified her "three strikes" policy, but the General Assembly rejected it.

Chair Bennett still went on to apply her unauthorized "three strikes" policy, including unauthorized elements that were not part of the statute, at least 50 times. In so doing, Chair Bennett gutted the protection of the "three strikes" statute and released repeat sex offenders and murderers into the parole eligibility pool.

The scope and breadth of Chair Bennett's actions to undermine the "three strikes" statute was revealed in interviews with former Secretary Moran and former Parole Board Vice-Chair Lethia Hammond. Hammond reviewed hundreds of Board files on its "three strikes" decisions and noticed many disparities. She stated that "I definitely think she [Chair Bennett] inserted . . . an element" into the "three strikes" statute.

Former Vice-Chair Hammond also stated that **"the feeling of the governor and his staff, the chief of staff was that the more you talked about a situation the worse it would become and they just wanted to keep it quiet. It was an election year and wanted to push that under the rug and it was very frustrating"** for her and former Chair Tonya Chapman. According to Hammond, the Northam administration decided to "grandfather" any "three strikes" offenders who had been improperly released.

We found that Chair Bennett's unauthorized "three strikes" policy resulted in the restoration of parole eligibility to serial rapists and murderers. In some cases, Chair Bennett violated court orders by restoring parole eligibility to offenders whose plea agreements and sentencing orders specifically established that they were ineligible. We also found that Chair Bennett's "three strikes" policy directly resulted in the freedom of five offenders who went on to commit new violent felonies against Virginians:

- David Simpkins, previously convicted of forcible sodomy, aggravated sexual battery, 10 robberies, 8 counts of use of a firearm, 4 counts of wearing a mask in public, 4 forgeries, 3 burglaries, 3 grand larcenies, uttering a forgery, abduction, and possession of a firearm by a felon (released by the Bennett Parole Board and later convicted of 10 armed robberies, 2 counts of use of a firearm in the commission of a felony, 2 counts of possession of a firearm by a violent felony, and grand larceny in Wythe, Botetourt, Roanoke County, Rockbridge, Bedford, and Pulaski in 2021)
- Daniel Matthews, previously convicted of 8 robberies, 5 counts of use of a firearm, 2 counts of possession of a firearm by a felon, possession of heroin, possession of cocaine, possession of a firearm while possessing cocaine, grand larceny, multiple larcenies and

assaults, property damage, resisting arrest, shoplifting, and DUI (current charges of robbery and abduction are pending trial in 2023 in Richmond City)

- Freddie Ferrell, previously convicted of 13 robberies, 12 counts of use of a firearm, 7 abductions, attempted robbery, unlawful wounding by an inmate, 2 burglaries, 2 auto thefts, and escape from custody (released by the Bennett Parole Board and later convicted of armed robbery and abduction in Henrico in 2021)
- Pernell Redwine, previously convicted of 10 robberies, 6 counts of use of a firearm, arson, entering a bank while armed, 2 counts of escape from custody, 6 burglaries, disorderly conduct, assault with a deadly weapon, trespassing, 3 counts of destruction of property, possession of burglarious tools, robbery by force, and malicious wounding by an inmate (released by the Bennett Parole Board and later arrested in Henrico for obstruction of justice and possession of a Schedule I/II controlled substance with intent to distribute; jury trial pending in Feb. 2023)
- Star Murphy, previously convicted of 4 robberies, 2 counts of use of a firearm, burglary, 7 forgeries, 7 counts of uttering a forgery, possession of cocaine, and grand larceny (released by the Bennett Parole Board and later convicted of sale of a schedule I/II controlled substance for profit, felony eluding police, and felony hit & run in Stafford in 2022)

A. OVERVIEW OF VIRGINIA CODE § 53.1-151(B1)

Va. Code § 53.1-151(B1) makes any person convicted of three offenses of murder, rape, or armed robbery ineligible for discretionary parole. Informally known as the "three strikes" statute, the provision applies to all offenses committed before parole was abolished in 1995. It ensures that "felons convicted of the violent crimes of murder, rape, and robbery [are] incarcerated for longer periods of time than felons convicted of less violent crimes."[125]

Under Va. Code § 53.1-151(B1), VADOC makes the initial determination whether an offender is ineligible for discretionary parole due to multiple disqualifying convictions. Va. Code § 53.1-151(B1) states that the three offenses must not be "part of a common act, transaction or scheme," and allows the Parole Board to review VADOC's "three strikes" ineligibility determination as long as the Board follows "regulations promulgated by it for that purpose."

The Parole Board promulgated Section 1.222 of its Administrative Procedure manual in 1995, allowing it to review the VADOC's eligibility determination under the "three strikes" provision. Administrative Procedure 1.222 states that the Board has "discretion" to review VADOC's determination and that such rulings "shall be by a majority vote of the Parole Board." This procedure also provides a list of factors, derived from case law, to assist in determining whether a murder, rape, or robbery offense was part of a "common act, transaction, or scheme."

Administrative Procedure 1.222 notes that the concept of a common scheme has a "broad conceptual nature" that the Parole Board can apply on a case-by-case basis. Under Virginia law, a common scheme does not occur when a defendant merely commits the same type of crime repeatedly, in close proximity, or over a short period of time,[126] unless the crimes were so similar that they must have been committed by the same defendant.[127] In other words, if a defendant has an obvious *modus operandi*, the Parole Board can consider his crimes as part of a common scheme.

Va. Code § 53.1-151 is the statute discussing general parole eligibility. Within this statute,

two different subparts, including § 53.1-151(A) and § 53.1-151(B2), discuss a defendant being "at liberty" between offenses when committing crimes. "At liberty" has a specific statutory definition that is completely irrelevant to the "three strikes" statute, and no Virginia case law states that being "at liberty" between offenses during a crime spree makes the offenses part of a "common scheme."

Va. Code § 53.1-151(B1), the "three strikes" statute, is a parole ineligibility provision within the broader parole eligibility statute, but it contains no mention of being "at liberty" or any similar concept. As such, the concept of being "at liberty" between offenses is not, nor ever has been, part of the Parole Board's lawful analysis of the existence of a common scheme under this provision.

The Supreme Court of Virginia holds that the plain meaning of § 53.1-151(B1), the "three strikes" statute, is that it applies to any three convictions of murder, rape, or robbery, regardless of whether that person was "at liberty" between their convictions. In *Vaughan v. Murray*, the Court held that "[s]ubparagraph (B1) is clear and unambiguous" and that the provision "does not require three separate commitments to a correctional facility" for a defendant to be deemed ineligible for parole.[128] Two separate federal district court cases also note that the "at liberty" provision does not apply to § 53.1-151(B1), only to § 53.1-151(A) and § 53.1-151(B2).[129]

B. WITHOUT PROPER AUTHORITY, CHAIR ADRIANNE BENNETT AMENDED "AT LIBERTY" INTO THE BOARD'S "THREE STRIKES" CONSIDERATION

Chair Adrianne Bennett modified the Parole Board's "three strikes" policy to make it easier for repeat murderers, rapists, and armed robbers to become eligible for parole. While the Board is permitted to modify the policies and procedures by which it determines offenders' parole eligibility, state law requires that any modifications are "subject to approval by the Governor" and "shall be published and posted for public review."[130]

In November 2017, in accordance with Va. Code Code § 53.1-136(1), Chair Bennett submitted an amendment to Parole Board Administrative Procedure 1.222 for approval by Governor Northam. Chair Bennett proposed the amendment in an email to Secretary of Public Safety and Homeland Security Brian Moran, writing "I am certain that we need a policy change" and attached a policy draft she prepared.

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From: Bennett, Adrianne (VPB)
Sent: Thursday, November 16, 2017 3:44 PM
To: Moran, Brian (GOV)
Subject: Revised Three Strikes Policy

Dear Secretary Moran :

I have completed a draft of proposed Parole Board Three Strikes Policy and Procedure modification. As you well know, this is an area of great controversy and was addressed on Pg. 48 of the Governor's Commission on Parole Review Report. I have spent countless hours reviewing files, speaking with lawyers and judges, and researching the issue in the effort to develop fair and objective policy. There had been discussions about a blanket reversal of all three strike offenders ineligibility , which I do not believe to be the prudent course of action. The proposed policy endeavors to treat the statue as a recidivist statute by imposing a presumption that predicate offense are part of a common scheme if the offender was not at liberty between offenses (arrested, detained, or convicted). Furthermore, the policy address the concern as it relates to robbery convictions by requiring a conviction for use of a firearm or a weapon as opposed to allowing he Parole Board to make that determination by reviewing records.

The following documents are attached:

1. Current three strikes policy that has not been amended since 1995. (original.doc).
2. The policy draft that I have prepared. (Policy Draft I.doc)
3. Code section that sets for the authority for the Board to promulgate policy/regulations with the Governor's approval (VA Code Section 53.1-136(1):

   " Adopt, subject to approval by the Governor, general rules governing the granting of parole and eligibility requirements, which shall be published and posted for public review".

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4. Virginia Code Section 53.1-151 Eligibility for Parole. The three strikes language is found in B1.

I have spoken to Dick Vorhis as the OAG's office and asked him to walk me through the process. He said he is not aware of a process as there have not been any modifications to the Parole Board Policy and Procedure in over a decade (2006 to be exact). He advised that there should be some memorialization of approval by the Governor (i.e. a letter to the PB approving the change).

I spoke with Asif last week because Tim Eberly from the Pilot contacted him because he is doing a story on three strike offender. Eberly has been persistent with me. I have told Eberly that I will discuss the issue once our policy is settled, that the parole board has been working diligently to promulgate regulations that are fair and objective. He noted that "hope is alive in the prison because in the past year many more offenders have gotten their dates back and are even making parole". Well, that is true, this year we have overturned 11 cases. Based on my experience in reviewing these cases I am certain that we need a policy change before I continue reviewing more cases.

This is a convoluted and confusing issue, particularly if one lacks experience practicing criminal law. I am thankful that you have tremendous experience in the field. I am hoping to get this resolved as soon as possible, for many reasons, but primarily because this is a reform for which I would like for Governor McAuliffe to be credited.

I am speaking to the Norfolk Re-Entry Council tomorrow morning. I will be in Richmond on Saturday to speak to Virginia Cure at 12:30. On Monday, I have Board Appointments until 3:30. I am free Tuesday and hoping not to come up Wednesday to avoid Thanksgiving traffic.

I will wait to hear from your regarding next steps.

Thank you,

Adrianne L. Bennett

Chair
Virginia Parole Board

Secretary Moran confirmed in an interview that he rejected this policy change in a subsequent meeting with Chair Bennett. Secretary Moran told us that the "legislative intent [of the "three strikes" provision] was pretty clear" and that changing the Parole Board's policy "without legislative action" was inappropriate, and that any change to the policy—including the addition of the "at liberty" element—required an act of the General Assembly.

Secretary Moran's rejection led Chair Bennett and the Parole Board to attempt to amend § 53.1-151(B1) during the 2018 legislative session. **On December 11, 2017, State Senator Scott**

Surovell (D-Fairfax) filed SB 98, which would have amended the statute to contain the "at liberty" element desired by Chair Bennett.[131] In January 2018, the bill came before the Rehabilitation and Social Services committee of the Virginia Senate, and Chair Bennett was expected to testify. On Senator Surovell's motion, however, the committee unanimously tabled the bill for the legislative session, and the bill was never subsequently passed into law.

Undeterred by the rejection of her policy amendment by the governor and the withdrawal of Senator Surovell's bill during the 2018 legislative session, Chair Bennett and the Parole Board nevertheless implemented an unapproved and unwritten policy that reversed parole ineligibility determinations under § 53.1-151(B1) by adding the element of being "at liberty" between convictions to the analysis. This policy was never 'published and posted for public review' as required by state law; moreover, Secretary Brian Moran specifically rejected the change, stating that it would require action by the General Assembly; finally, the General Assembly declined to take such action, as noted above.

During our interview with Judge Bennett, we asked her if she had read the Supreme Court of Virginia's opinion in *Vaughan v. Murray*, holding that being "at liberty" is not part of the "three strikes" statute. Judge Bennett responded "I don't know if I read that," and then directed us to a different case. We then asked Judge Bennett how the Parole Board could have added "at liberty" to the "three strikes" statute if the General Assembly had rejected Senator Surovell's SB 93, and Judge Bennett stated that "the Parole Board has the authority to determine what is a common scheme transaction, and that's how." We then asked Judge Bennett what case law supported her conclusion that being "at liberty" made crimes part of a common scheme. At this point, Judge Bennett's attorney interrupted the interview to talk about other alleged violations by different Parole Boards. **We then attempted to ask Judge Bennett about how offender Earl Johnson was restored to "three strikes" eligibility after being convicted for raping 7 women over two years.** Judge Bennett replied:

> I'm not going to do that and I've already explained I'm [not] going to talk about individual cases . . . this no longer feels like a conversation about, you know, issues and policy. It's gone to a place that I'm not comfortable with so we can either move on or I'm just not going to answer any more questions.

We concluded our questions about "three strikes" decisions by asking Judge Bennett about offender Terry Williams. Judge Bennett stated "So sir, I'm gonna say this to you with a lot of as much respect as I possibly can. I don't know anything about that case . . . I'm not gonna play gotcha moments with cases that from five or six years ago that I don't know anything about."

To better understand the practical implication of Chair Bennett's unauthorized policy change, we reviewed the criminal conduct of various three-strike offenders and analyzed the legality of Chair Bennett's restoration of their parole eligibility. This review contained in-depth analysis of approximately 80 offenders initially deemed ineligible for parole by VADOC. The review included Terry Williams, whom Judge Bennett told us, "I don't know anything about."

C. Initial Review of "Three Strikes" Offenders Restored to Parole Eligibility by Chair Bennett

We conducted this review pursuant to the procedures set out in Parole Board Administrative Procedure 1.222, which requires the Parole Board to review multiple sources of

information and documents before making a parole eligibility determination. VADOC's Director of Offender Management sent us Excel sheets indicating the total estimated number of offenders previously determined to be ineligible for parole under § 53.1-151(B1), as well as the identities of the offenders whose parole eligibility was restored. We selected six offenders from the list to review the process by which Chair Bennett and the Parole Board reversed their parole ineligibility.

Though the Parole Board's wide discretion in parole matters is well-established,[132] **one instance in which the Board has no discretion to overturn an offender's parole ineligibility is a case in which the offender has been judicially determined to be ineligible for discretionary parole.** Our review of the Board's "three strikes" files discovered, among other violations, two instances in which Chair Bennett violated court orders by restoring violent offenders to discretionary parole eligibility against the express terms of a sentencing order.

1. DAVID SIMPKINS

David Simpkins was convicted of 42 felonies in Smyth, Roanoke City, Roanoke County, Pulaski, Wythe, Rockbridge, Montgomery, Augusta, and Botetourt in 1989–90: forcible sodomy, aggravated sexual battery, 10 robberies, 8 counts of use of a firearm, 4 counts of wearing a mask in public, 4 forgeries, 3 burglaries, 3 grand larcenies, uttering a forgery, abduction, and possession of a firearm by a felon. Simpkins was sentenced to 218 years in prison. His record contained a total of 42 felony convictions at that time.

VADOC reviewed Simpkins' convictions under § 53.1-151(B1), which included at that time at least 8 disqualifying armed robberies. VADOC correctly deemed Simpkins ineligible for discretionary parole under § 53.1-151(B1) in 1990. VADOC audited Simpkins' parole ineligibility in 1997 in conjunction with the Office of the Attorney General and again confirmed that Simpkins was ineligible for discretionary parole.

Simpkins unsuccessfully appealed his parole ineligibility under § 53.1-151(B1) to the Parole Board multiple times. In one such appeal in 2002, Simpkins made the same erroneous argument that Chair Bennett later adopted, the argument that § 53.1-151(B1) "only applies when at liberty between offenses." The Board rejected Simpkins' argument and voted to uphold his parole ineligibility in 2003. The Board denied Simpkins' subsequent appeal of his parole ineligibility in 2008.

However, after learning of Chair Bennett's unlawful consideration of the "at liberty" element in 2018, Simpkins appealed again. Simpkins asked to be restored to parole eligibility "due to your interpretation of § 53.1-151(B1) and the fact that I have not been at liberty between my convictions." Chair Bennett agreed with Simpkins' argument and issued a letter in her name restoring Simpkins' discretionary parole eligibility. Simpkins was granted discretionary parole in February 2019 and released in April 2020.

Simpkins began committing armed robberies again three months after his release. He was convicted of 15 new violent felonies in Wythe, Botetourt, Roanoke County, Rockbridge, Bedford, and Pulaski. His new convictions included 10 armed robberies, 2 counts of use of a firearm, 2 counts of possession of a firearm by a violent felon, and grand larceny. Simpkins received new sentences totaling over 102 years in prison.

Chair Bennett's unlawful restoration of Simpkins' parole eligibility directly enabled Simpkins to commit these 15 new violent felonies. Bennett's actions also violated Va. Code

§ 53.1-136(1) and § 53.1-151(B1) because the method she used to restore Simpkins' parole eligibility was not approved by the Governor and was not posted or promulgated for public review. Chair Bennett finally violated the Suspension Clause of the Virginia Constitution, Article I, Section 7, by substituting her unauthorized, amended version of § 53.1-151(B1) for the statute lawfully enacted by the Virginia General Assembly.

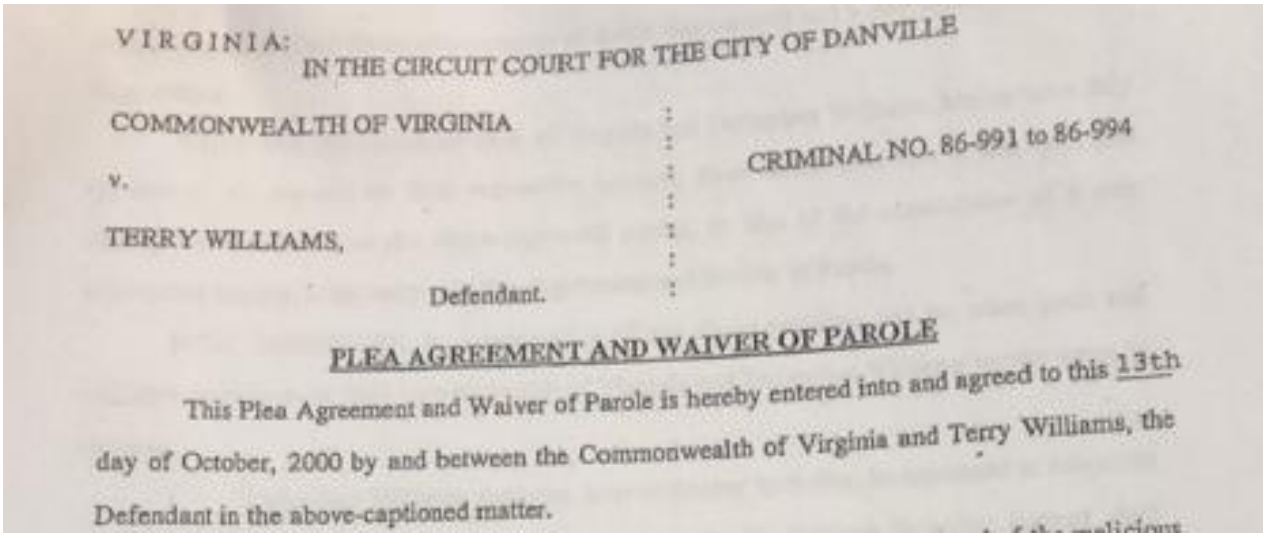
2. TERRY WILLIAMS

Terry Williams was convicted of capital murder and armed robbery in 1986 in Danville. He was sentenced to death. The Supreme Court of the United States vacated Williams' death sentence, holding[133] that Williams' attorneys were constitutionally ineffective in failing to present certain evidence. In a resentencing hearing on November 14, 2000, Williams pled guilty to the same capital murder and robbery in Danville Circuit Court and received consecutive life sentences. Williams had been convicted of one prior armed robbery in Pittsylvania in 1976. He had additional prior convictions for arson, malicious wounding, burglary, and multiple grand larcenies.

Before the November 2000 resentencing hearing, Williams entered into and signed a "Plea Agreement and Waiver of Parole" with the Danville Commonwealth's Attorney's Office. In the plea agreement, Williams specifically agreed that he was "a person convicted of three separate felony offenses of murder, rape, or armed robbery and thus is ineligible for parole under Va. Code § 53.1-151(B1) (1982)." Williams further agreed to the following:

> [H]e shall now and forever waive any possibility of parole. Specifically, Defendant Williams agrees not to request or seek, in any way or for any reason, directly or indirectly, parole or the possibility of parole. In expressly waiving the possibility of parole, now and forever, Defendant Williams understands and agrees that he shall remain in the custody of the Virginia Department of Corrections for the rest of his natural life.

Appearing below are excerpts of the executed plea agreement and waiver of parole, signed by Terry Williams, his attorney, the Commonwealth's Attorney for the city of Danville, and the presiding judge.



VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF DANVILLE

COMMONWEALTH OF VIRGINIA

v.

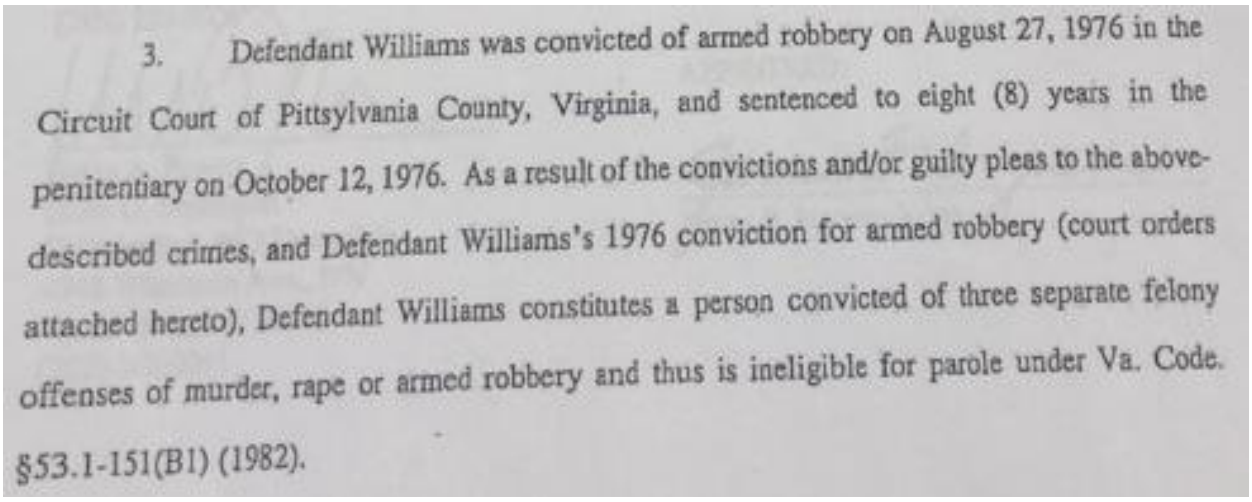
TERRY WILLIAMS,

Defendant.

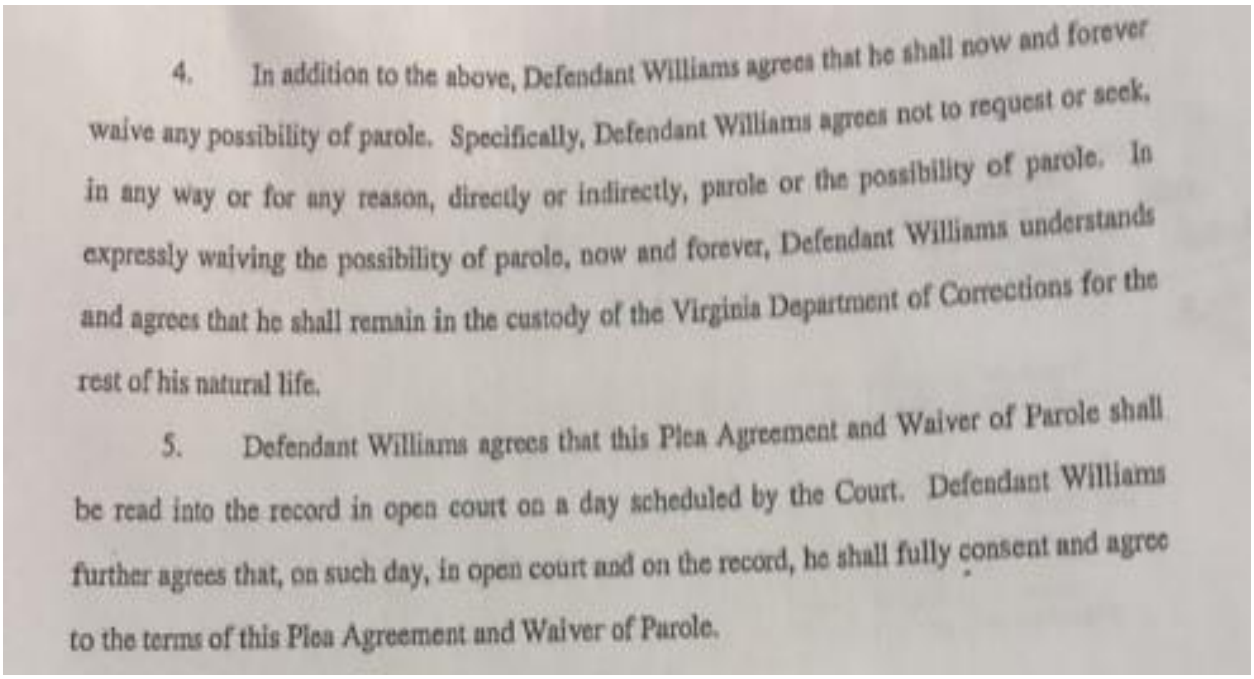
CRIMINAL NO. 86-991 to 86-994

PLEA AGREEMENT AND WAIVER OF PAROLE

This Plea Agreement and Waiver of Parole is hereby entered into and agreed to this 13th day of October, 2000 by and between the Commonwealth of Virginia and Terry Williams, the Defendant in the above-captioned matter.



3. Defendant Williams was convicted of armed robbery on August 27, 1976 in the Circuit Court of Pittsylvania County, Virginia, and sentenced to eight (8) years in the penitentiary on October 12, 1976. As a result of the convictions and/or guilty pleas to the above-described crimes, and Defendant Williams's 1976 conviction for armed robbery (court orders attached hereto), Defendant Williams constitutes a person convicted of three separate felony offenses of murder, rape or armed robbery and thus is ineligible for parole under Va. Code. §53.1-151(B1) (1982).



4. In addition to the above, Defendant Williams agrees that he shall now and forever waive any possibility of parole. Specifically, Defendant Williams agrees not to request or seek, in any way or for any reason, directly or indirectly, parole or the possibility of parole. In expressly waiving the possibility of parole, now and forever, Defendant Williams understands and agrees that he shall remain in the custody of the Virginia Department of Corrections for the rest of his natural life.

5. Defendant Williams agrees that this Plea Agreement and Waiver of Parole shall be read into the record in open court on a day scheduled by the Court. Defendant Williams further agrees that, on such day, in open court and on the record, he shall fully consent and agree to the terms of this Plea Agreement and Waiver of Parole.

Williams' "Plea Agreement and Waiver of Parole" was incorporated into sentencing judge James F. Ingram's final sentencing order, excerpts of which are reproduced below:

(SPACE LEFT INTENTIONALLY BLANK)

3. Defendant Williams was convicted of Armed Robbery on August 27, 1976 in the Circuit Court of Pittsylvania County, Virginia, and sentenced to eight (8) years in the penitentiary on October 12, 1976. As a result of the convictions and/or guilty pleas to the above-described crimes, and Defendant William's 1976 conviction for Armed Robbery, Defendant Williams constitutes a person convicted of three separate felony offenses of murder, rape or armed robbery and this is ineligible for parole under Va. Code Section 53.1-151(B1)(1982).

4. In addition to the above, Defendant Williams agrees that he shall now and forever waive any possibility of parole. Specifically, Defendant Williams agrees not to request or seek, in any way, or for any reason, directly or indirectly, parole or the possibility of parole. In expressly waiving the possibility of parole, now and forever, Defendant Williams understands and agrees that he shall remain in the custody of the Virginia Department of Corrections for the rest of his natural life.

We reviewed Parole Board and VADOC files on Terry Williams' sentences, and we discovered that Williams breached his "Plea Agreement and Waiver of Parole" by filing an "Appeal of Parole Ineligibility Pursuant to Sec. 53.1-151(B1)" with the Board in May 2018. This information notwithstanding, Chair Adrianne Bennett issued Terry Williams a letter[134] restoring him to parole eligibility dated March 12, 2019:

(SPACE LEFT INTENTIONALLY BLANK)

COMMONWEALTH of VIRGINIA

Virginia Parole Board

ADRIANNE L. BENNETT
Chairman

JEAN CUNNINGHAM
Vice-Chairman

A. LINCOLN JAMES
Member

SHERMAN P. LEA, SR
Member

LINDA L. BRYANT
Member

March 12, 2019

Mr. Terry Williams, # 1059154
GREENSVILLE CORRECTIONAL CENTER (GRCC)
901 Corrections Way
Jarratt, VA 23870-9614

Dear Mr. Terry Williams

The Virginia Parole Board has reviewed your case with regard to your parole ineligible status in accordance with the provision of Virginia Code Section 53.1-151 (B) and has determined you to be **eligible** for discretionary parole consideration.

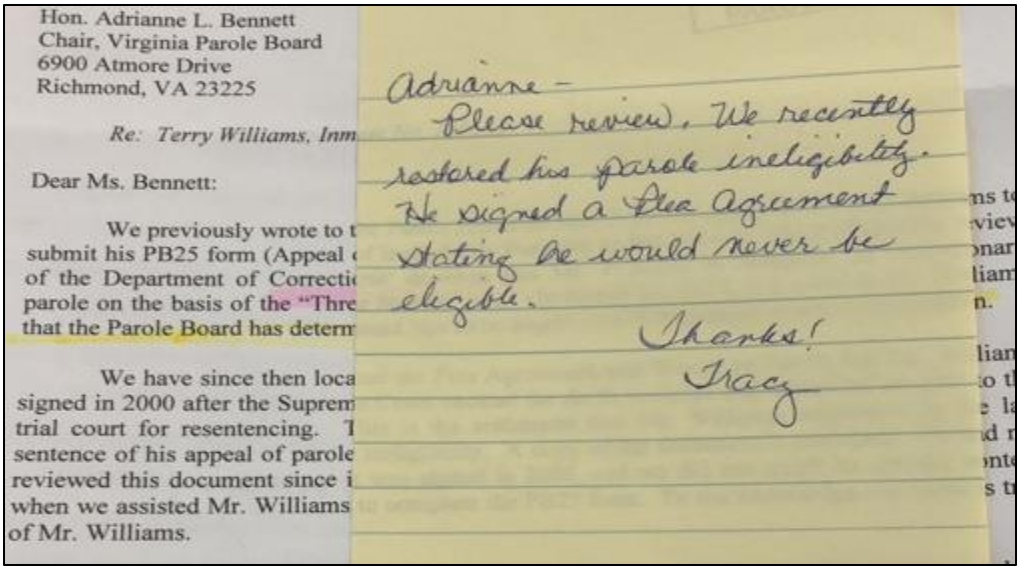
The Department of Corrections' Court and Legal Unit will re-compute your time. You will be scheduled for a discretionary parole interview in accordance with the Virginia Parole Board Policies and Procedures.

Sincerely,

Adrianne L. Bennett
Chair

In July 2019, Williams' attorneys mailed Chair Bennett a letter that contained the aforementioned "Plea Agreement and Waiver of Parole" and Judge Ingram's sentencing order. Williams' attorneys argued that "Mr. Williams should be considered for parole notwithstanding the Plea Agreement given the changes that the Parole Board had implemented in how the three strikes law is interpreted since the Plea Agreement was signed." However, Chair Bennett had already unlawfully restored Williams to parole eligibility.

It is unclear whether the Parole Board file on Williams contained the "Plea Agreement and Waiver of Parole" and Judge Ingram's sentencing order before Chair Bennett unlawfully restored Williams' parole eligibility. However, a Board administrator attached a concerned note to the attorneys' mailing of the plea agreement and sentencing order for Chair Bennett's consideration:



Hon. Adrianne L. Bennett
Chair, Virginia Parole Board
6900 Atmore Drive
Richmond, VA 23225

Re: Terry Williams, Inm

Dear Ms. Bennett:

We previously wrote to t
submit his PB25 form (Appeal
of the Department of Correcti
parole on the basis of the "Thre
that the Parole Board has determ

We have since then loca
signed in 2000 after the Suprem
trial court for resentencing. T
sentence of his appeal of parole
reviewed this document since i
when we assisted Mr. Williams
of Mr. Williams.

Adrianne –
Please review. We recently restored his parole ineligibility. He signed a Plea Agreement stating he would never be eligible.

Thanks!
Tracy

"Adrianne – Please review. We recently restored his parole eligibility. He signed a Plea Agreement stating he would never be eligible.

Thanks!
Tracy"

Chair Bennett acknowledged the plea agreement and sentencing order but ignored their legal effect, simply instructing a staff member to file them:

From: Bennett, Adrianne
To: Noakes, Crystal (VPB)
Subject: Terry Williams - 3 striker
Date: Monday, July 29, 2019 4:44:11 PM

Crystal -

Please make sure the letters, pleas agreement etc are uploaded into CORIS for this offender. '

Thank you!

Adrianne L. Bennett
Chair
Virginia Parole Board
6900 Atmore Drive
Richmond, Virginia 23225
(804) 674-3081

We conclude that Chair Adrianne Bennett's action to restore discretionary parole eligibility to Terry Williams under § 53.1-151(B1) violated a lawful order of the Danville Circuit Court.

3. EUGENE DOZIER

Eugene Dozier is serving three life sentences plus 181 years for 1993 convictions in Fairfax and Arlington for 2 rapes, 3 attempted rapes, forcible sodomy, abduction with intent to defile, 2 robberies, 2 burglaries, and armed robbery. Dozier's prior record includes convictions for rape and robbery in New York in 1977, from which he was paroled in 1989. Dozier has prior, unrelated New York convictions for 4 robberies, 3 burglaries, grand larceny, and petit larceny. Dozier also has an active detainer warrant to serve a life sentence for first-degree rape that he committed in Prince George County, MD. According to a parole examiner, if released, Dozier is "required to register as a Sexually Violent Predator." The parole examiner noted in 2022 that "Simply put, Dozier is a serial rapist who should be considered a threat to any community."

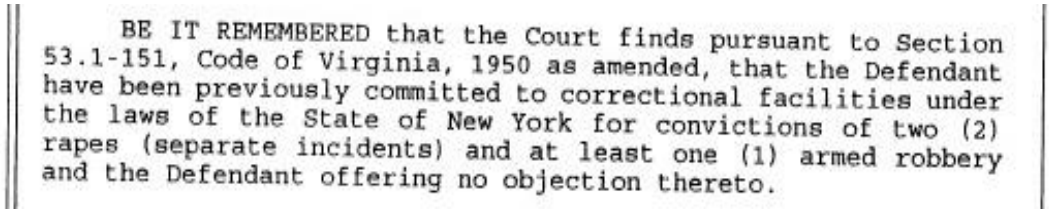
Chair Adrianne Bennett initially agreed, writing the following note in Dozier's CORIS file:

Adrianne Bennett	08/16/2018	Parole Board Note	Serial rapist who appears to meet be a properly classified three striker.

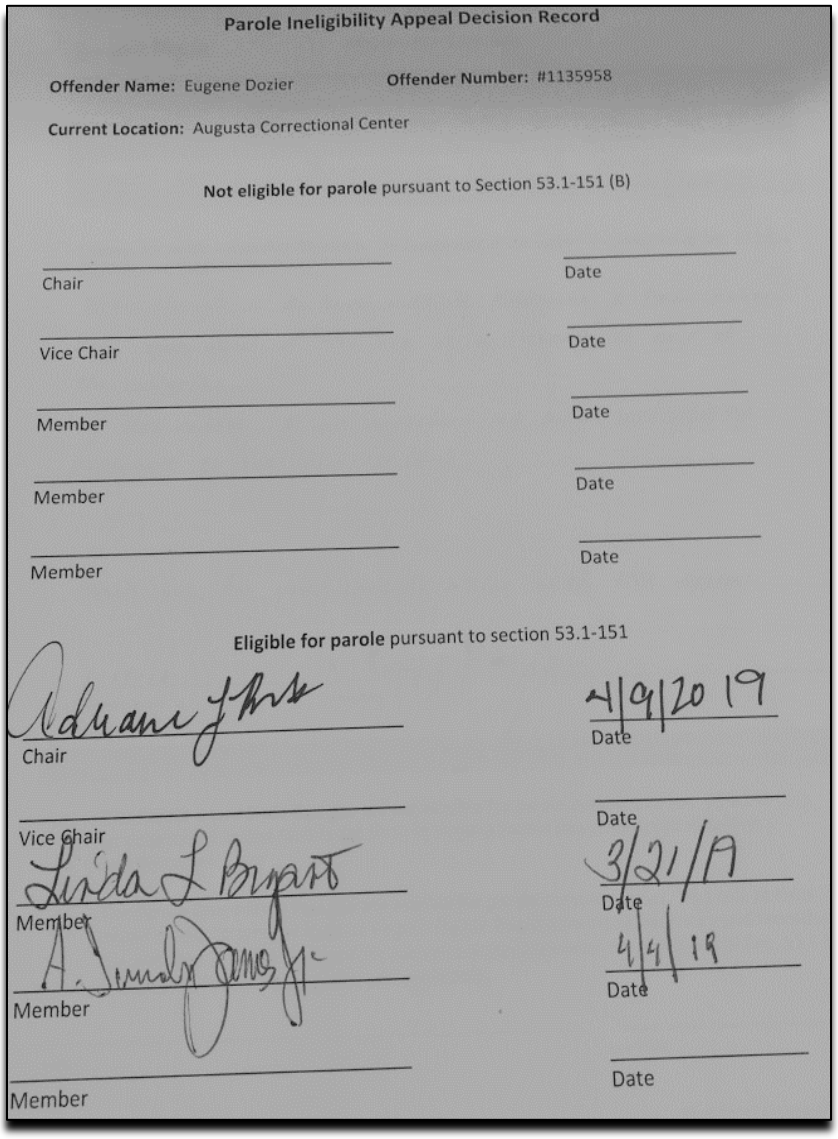
After viewing the Parole Board's file on Dozier's parole eligibility under § 53.1-151(B1), we examined the VADOC Court & Legal "central file" on Dozier. That file contained each of Dozier's sentencing orders. However, the Parole Board's paper file on Dozier's "three strikes" status did not contain these sentencing orders.

The 7 felony sentencing orders generated by Judge William T. Newman, Jr. of the Arlington County Circuit Court contain an explicit, agreed factual finding about Dozier's prior criminal history and his "three strikes" parole ineligibility:

> BE IT REMEMBERED that the Court finds pursuant to Section 53.1-151, Code of Virginia, 1950 as amended, that the Defendant have (sic) been previously committed to correctional facilities under the laws of the State of New York for convictions of two (2) rapes (separate incidents) and at least one (1) armed robbery and the Defendant offering no objection thereto.


BE IT REMEMBERED that the Court finds pursuant to Section 53.1-151, Code of Virginia, 1950 as amended, that the Defendant have been previously committed to correctional facilities under the laws of the State of New York for convictions of two (2) rapes (separate incidents) and at least one (1) armed robbery and the Defendant offering no objection thereto.

As previously mentioned, the Parole Board's file on Dozier did not contain the sentencing orders finding Dozier to be ineligible for parole because of multiple rape and armed robbery convictions. **This was despite the administrative procedure requiring the Board to "review . . . the Department of Correction[s'] central file, including the [presentence investigation reports,] Court Orders, Court and Legal Documents, etc."** Chair Bennett and two other Parole Board members proceeded to vote to restore Dozier's parole eligibility nonetheless:



Parole Ineligibility Appeal Decision Record

Offender Name: Eugene Dozier **Offender Number:** #1135958

Current Location: Augusta Correctional Center

Not eligible for parole pursuant to Section 53.1-151 (B)

Chair — Date

Vice Chair — Date

Member — Date

Member — Date

Member — Date

Eligible for parole pursuant to section 53.1-151

Chair — 4/9/2019

Vice Chair — Date

Member — 3/21/19

Member — 4/4/19

Member — Date

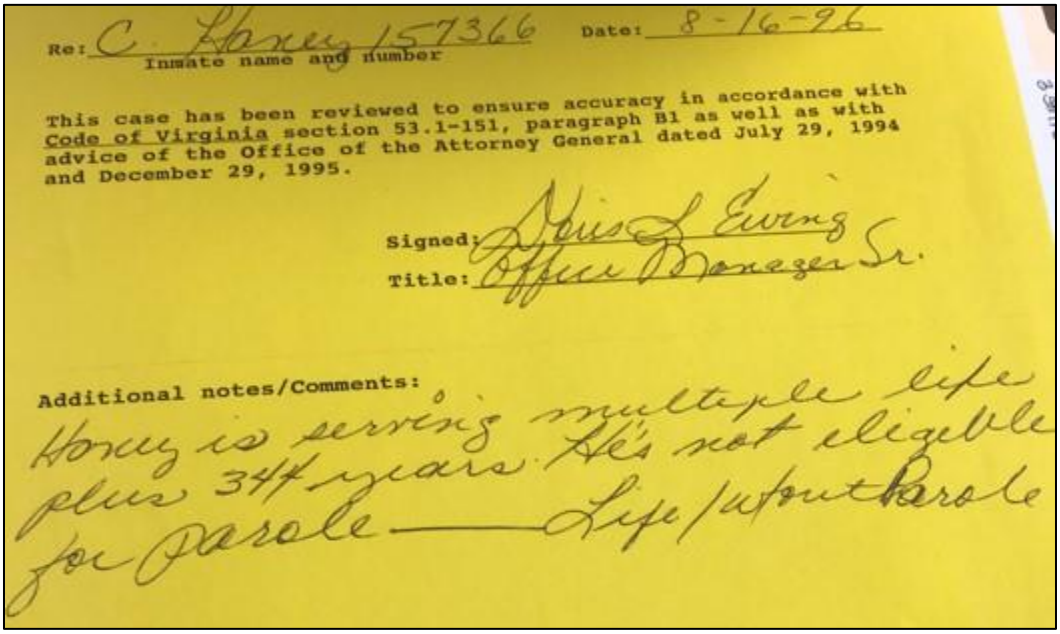
Chair Bennett subsequently restored Dozier's discretionary parole eligibility in an April 2019 letter. **Her restoration of discretionary parole eligibility to Eugene Dozier under § 53.1-151(B1) violated seven lawful orders of the Arlington Circuit Court.**

As a quasi-judicial entity, the Parole Board's decisions involve the exercise of discretion. While most government agencies' decisions can be reviewed by a court for abuse of discretion, the Parole Board's decisions are generally non-reviewable. However, Chair Bennett's restoration of parole eligibility to Eugene Dozier under these facts arguably constitutes an abuse of discretion.

4. CLEVELAND HANEY

Cleveland Haney was sentenced to serve four life sentences plus 344 years for 9 rapes, 9 counts of use of a firearm in the commission of a felony, 4 counts of abduction with intent to defile, 4 counts of forcible sodomy, 3 counts of abduction, 6 robberies, and malicious wounding. Haney raped nine separate female victims on 9 different days. A parole examiner noted in 2022 that **"Haney is a serial rapist with nine known victims who presents as a risk to any community."**

In 1996, in conjunction with advice from OAG, VADOC correctly determined that Haney was ineligible for discretionary parole under Va. Code § 53.1-151(B1):



Re: C. Haney 157366 Date: 8-16-96
Inmate name and number

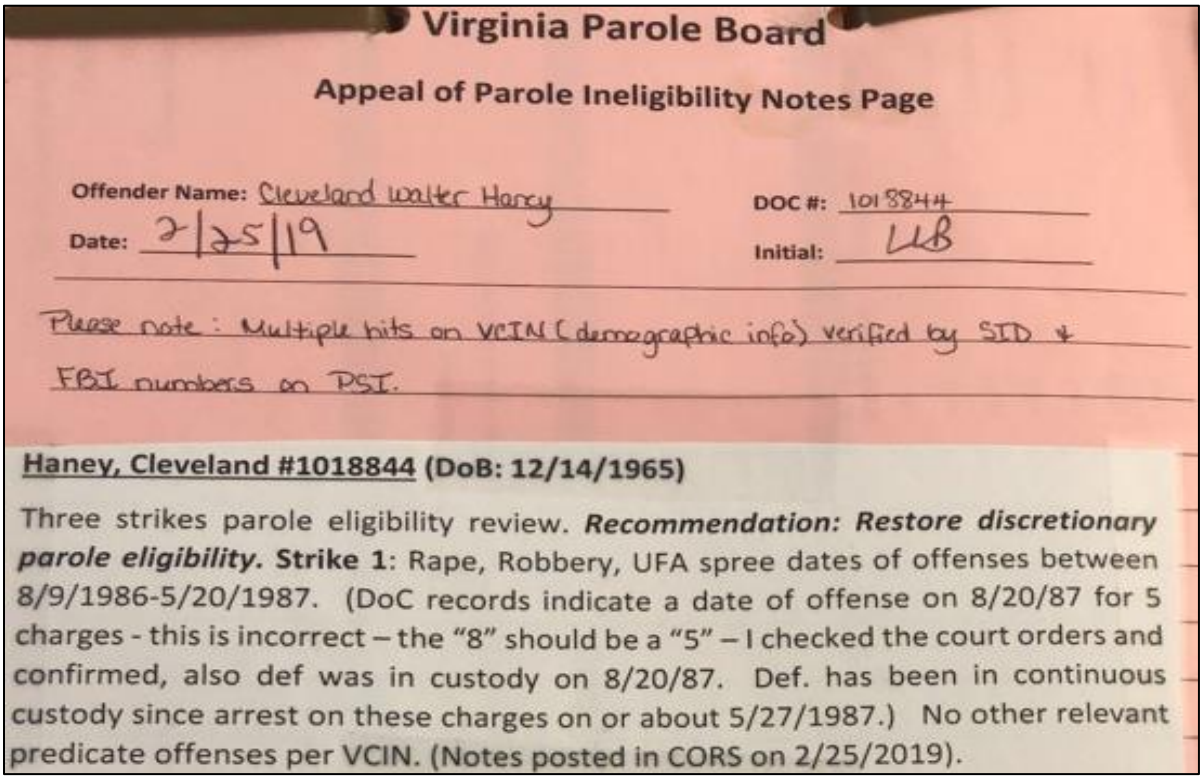
This case has been reviewed to ensure accuracy in accordance with Code of Virginia section 53.1-151, paragraph B1 as well as with advice of the Office of the Attorney General dated July 29, 1994 and December 29, 1995.

Signed: Doris L Ewing
Title: Office Manager Sr.

Additional notes/Comments:
Haney is serving multiple life plus 344 years. He's not eligible for parole ---- Life/ w/out Parole

"Haney is serving multiple life plus 344 years. He's not eligible for parole ---- Life/ w/out Parole"

The Parole Board's records clearly and unambiguously state that Haney's 9 rapes occurred on different days and involved different victims. Yet the Board inexplicably recommended restoration of Haney's discretionary parole eligibility:



Virginia Parole Board

Appeal of Parole Ineligibility Notes Page

Offender Name: Cleveland Walter Haney DOC #: 1018844
Date: 2/25/19 Initial: LLB

Please note: Multiple hits on VCIN (demographic info) verified by SID & FBI numbers on PSI.

Haney, Cleveland #1018844 (DoB: 12/14/1965)

Three strikes parole eligibility review. ***Recommendation: Restore discretionary parole eligibility.*** **Strike 1**: Rape, Robbery, UFA spree dates of offenses between 8/9/1986-5/20/1987. (DoC records indicate a date of offense on 8/20/87 for 5 charges - this is incorrect – the "8" should be a "5" – I checked the court orders and confirmed, also def was in custody on 8/20/87. Def. has been in continuous custody since arrest on these charges on or about 5/27/1987.) No other relevant predicate offenses per VCIN. (Notes posted in CORS on 2/25/2019).

Following voting by the Board, Chair Bennett subsequently restored Haney's discretionary parole eligibility in an April 2019 letter.

As a quasi-judicial entity, the Parole Board's decisions involve the exercise of discretion. While most government agencies' decisions can be reviewed by a court for abuse of discretion, Parole Board decisions are generally non-reviewable. However, Chair Bennett's restoration of parole eligibility to Cleveland Haney under these facts arguably constitutes an abuse of discretion.

5. EARL JOHNSON

Earl Johnson was convicted of 2 burglaries in Richmond City in 1974 and paroled shortly thereafter. Johnson was convicted of rape and 2 burglaries in Richmond City in 1975. He was paroled in 1985. **Between 1986 and 1991, Johnson committed the following offenses in Hampton: 7 rapes of 7 different women on 7 different days, 9 burglaries, aggravated sexual battery, possession of burglarious tools, and wearing a mask in public.** Johnson was sentenced to a total of 2 life sentences plus 218 years.

According to a parole examiner, Johnson "readily admits (almost in a bragging tone) that he raped seven women -- all elderly females." Johnson also admitted to the parole examiner that "had he not been arrested when he was, there would have been more victims." Parole Board records additionally reflect that Johnson also attempted to rape a 10-year-old girl. The parole examiner noted that Johnson, "almost methodically, stated, "My first victim was in August '86, second was in December '86, third was in May '87, fourth was in July '87, fifth was in February '88, sixth was in May '88, and seventh was in September '88."

Johnson was correctly determined to be parole-ineligible under Va. Code § 53.1-151(B1) by VADOC. Parole Board records, as well as Johnson's own statements, conclusively show that Johnson committed at least 3 rapes on different days and involving different victims. Johnson also had another disqualifying rape conviction from 1975. **Yet the Board inexplicably recommended restoration of Johnson's discretionary parole eligibility**:

> Three strikes parole eligibility. Recommendation: Restore parole eligibility. Strike 1: Rape, Robberies, Burglaries (date of offense, 2/19/1974, date of sentences range from 7/17/1994 to 3/28/1975, Richmond). Strike 2: Rapes (date of offenses 12/1/1986 through 5/10/1988 – total of 7 rapes and one attempted rape during that time period, Hampton). No other relevant predicates per VCIN. (Note: Date of offense for "Sex Assault, Rape" is 2/19/74, not 3/28/75; and date of offense for 2 Robberies should be 2/19/74, and not 7/17/74.)

Johnson's parole ineligibility had been upheld by prior Parole Boards, but Johnson sued the Parole Board in federal court over the determination that he was ineligible for parole under Va. Code § 53.1-151(B1).[135] Chair Bennett swore an affidavit and submitted it in Johnson's case. The affidavit detailed the unauthorized policy she and the Board used to reverse Johnson's parole ineligibility:

AFFIDAVIT

State of Virginia, City of Richmond, to-wit:

ADRIANNE BENNETT, first being duly sworn, states as follows:

1. I am the Chairman of the Virginia Parole Board ("VPB"). I assumed this position on January 1, 2017.

2. I base the information contained in this Affidavit on personal knowledge and records maintained in the regular and ordinary course of business.

3. I have been informed of this lawsuit filed by offender Earl Johnson (#1069354) in which he alleges that he was incorrectly found to be ineligible for discretionary parole pursuant to Va. Code § 53.1-151(B1).

4. Offender Johnson was received by the Virginia Department of Corrections ("VDOC") on August 21, 1992, to satisfy Multiple Life sentences plus 218 years. His current sentences include nine Sex offenses, nine Breaking and Entering offenses, Possession of Burglary Tools and Wearing a Mask. Specifically, out of those convictions, he received seven separate convictions for Rape, pursuant to Va. Code § 18.2-61. The dates the Rape offenses were committed are as follows: 8/22/1986, 9/5/1986, 12/1/1986, 5/28/1987, 7/29/1987, 2/11/1988, and 9/2/1988. On June 8, 1992, in the Hampton Circuit Court, he was sentenced to a total of two life sentences, plus 200 years with 100 years suspended, all to be served consecutively.

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Chair Bennett went on in her affidavit to describe how the Board had unlawfully applied the element of being "at liberty" between offenses in Johnson's case:

> 8. When reviewing a parole ineligible classification, the current VBP members consider qualifying predicate offenses part of a common scheme if the offender was not at liberty between the commission of each offense—meaning the offender was not previously arrested, detained, or convicted between the commission of the predicate offenses. Therefore, the current VPB members determined that in their judgment Johnson's qualifying predicate rape offenses were part of a common scheme because he had not been arrested, detained or convicted between the commission of the offenses.

No Virginia case law or statute holds that raping multiple different women on different dates and at different times and places is part of a "common scheme" simply because the offender was "at liberty" when he committed the crimes. To the contrary, merely committing the same type of crime repeatedly does not make those crimes part of a "common scheme."[136] **Chair Bennett's certification under oath that Earl Johnson's 9 unrelated rapes were part of a "common scheme" was legally, factually, and logically incorrect.**

Chair Bennett violated Va. Code § 53.1-136(1) by applying an unapproved policy regarding parole eligibility in Johnson's case. Because the Parole Board did not publicly "promulgate" its "three strikes" policy, Chair Bennett's action further violated Va. Code § 53.1-151(B1), which requires the Board's parole eligibility decisions to be made "pursuant to regulations promulgated."

As a quasi-judicial entity, the Parole Board's decisions involve the exercise of discretion. While most government agencies' decisions can be reviewed by a court for abuse of discretion, Parole Board decisions are generally non-reviewable. However, Chair Bennett's restoration of parole eligibility to Earl Johnson under these facts arguably constitutes an abuse of discretion.

6. ANTHONY MCGAHA

Between 1987 and 1989, Anthony Mcgaha was convicted of 6 rapes, 6 burglaries, and perjury in Norfolk and Virginia Beach. Each of the rape offenses occurred on a different day and involved a different victim. Mcgaha confessed the offenses, and he was sentenced to life in prison plus 236 years. Parole Board records indicate that Mcgaha falsely claims innocence despite his confession.

VADOC correctly determined that Mcgaha was ineligible for discretionary parole as a repeat rapist under Va. Code § 53.1-151(B1). Mcgaha initially appealed that determination to the Parole Board in 1996, and the Board unanimously determined that Mcgaha had been correctly deemed ineligible for parole.

Upon learning of Chair Bennett's "new interpretation" of Va. Code § 53.1-151(B1),

Mcgaha appealed again in 2018, incorrectly arguing that the Board should consider whether he was "at liberty between convictions." Chair Bennett and the Parole Board agreed with Mcgaha's legally incorrect argument and restored his discretionary parole eligibility in an April 2019 letter.

We conclude that Chair Bennett violated Va. Code § 53.1-136(1) by applying an unapproved policy regarding parole eligibility in Mcgaha's case. Because the Parole Board did not publicly "promulgate" its "three strikes" policy, Chair Bennett's action further violated Va. Code § 53.1-151(B1), which requires the Board's parole eligibility decisions to be made "pursuant to regulations promulgated." We further conclude that by suspending the lawfully enacted version of Va. Code § 53.1-151(B1), and instead applying a version that included the unauthorized consideration of whether Mcgaha was "at liberty," Chair Bennett violated Article I, Section 7 of the Virginia Constitution, prohibiting suspension of the laws.

As a quasi-judicial entity, the Parole Board's decisions involve the exercise of discretion. While most government agencies' decisions can be reviewed by a court for abuse of discretion, Parole Board decisions are generally non-reviewable. However, Chair Bennett's restoration of parole eligibility to Anthony Mcgaha under these facts arguably constitutes an abuse of discretion.

We finally conclude that Chair Bennett's restoration of Mcgaha's parole eligibility violated Parole Board Administrative Procedure 1.222, which permits only one appeal per offender unless significant new information is presented. Mcgaha presented no actual new information about his convictions in his 2018 appeal. Mcgaha argued in his 2018 appeal for the application of Chair Bennett's unlawful new "interpretation" of Va. Code § 53.1-151(B1) regarding being "at liberty" between offenses. This was not new "evidence." It was a recycled argument that prior Parole Board and VADOC administrators correctly rejected as legally frivolous and incorrect.

D. Further Review of All Offenders Restored to Parole Eligibility by Chair Bennett under § 53.1-151(B1) and Subsequently Released on Parole

We further examined VADOC records and identified at least 253 offenders who had been historically designated as parole-ineligible under Va. Code § 53.1-151(B1). Chair Bennett issued letters bearing her signature that restored parole eligibility to approximately 224 of those offenders. Of those 224 offenders, approximately 75 were granted discretionary parole during or shortly after Chair Bennett's tenure. The Parole Board's reasoning in overturning the parole ineligibility of these 75 offenders will be examined in the accompanying appendix.

The statistics related here demonstrate law and policy violations committed by Chair Bennett and the Board with respect to 75 offenders whose parole ineligibility under Va. Code § 53.1-151(B1) was reversed, and who were later released on parole. The Parole Board is advised to first confirm the status of its policy regarding parole ineligibility under Va. Code § 53.1-151(B1), and then to reevaluate the parole eligibility of the remaining "three strikes" offenders. These offenders may have been unlawfully restored to discretionary parole eligibility, but have not yet been released from prison.

Violations of Court Orders

There is probable cause to believe that Chair Adrianne Bennett violated eight (8) court orders finding that Terry Williams and Eugene Dozier were ineligible for discretionary parole. These offenses cannot be prosecuted because the applicable statute of limitations (Va. Code § 19.2-8) has lapsed.

VIOLATIONS OF ARTICLE I, SECTION 7 OF THE CONSTITUTION OF VIRGINIA

48 violations.

VIOLATIONS OF VA. CODE § 53.1-136(1)

48 violations.

VIOLATIONS OF VA. CODE § 53.1-151(B1)

48 violations.

CONCLUSION

Parole Board chairs cannot implement new policies on parole eligibility without the governor's approval, yet Chair Bennett ignored this statutory requirement. Parole Board chairs cannot supersede circuit court judges' findings that a criminal defendant agreed to be designated as parole ineligible, yet Chair Bennett violated court orders by ignoring such findings.

By enacting the "three strikes" statute, the Virginia General Assembly specifically intended that some repeat armed robbers would serve longer sentences than murderers, and the rationale makes sense. Killing one person is horrible enough and should result in a significant sentence. But using a firearm or knife to cause 3 or more people so much fear that they surrender their property demonstrates a more repetitive disregard for the law that should be strictly deterred. **This principle is borne out by the statistics of the 75 "three strikers" released on parole supervision, who averaged 6.2 armed robbery convictions and 5.32 use of a firearm convictions per offender.**

A second-degree murder conviction is punishable by a sentence between 5 and 40 years in prison. It is noncontroversial to suggest that an offender who commits an average of 6.2 armed robberies against different victims should receive at least 5 years, or more than the least-culpable second-degree murder.

Contrary to limited public reporting at the time, Chair Bennett's "three strikes" policy was not applied only to armed robbery defendants who did not hurt their victims and who were serving more time than murder defendants. As the appendix to Section V shows, Chair Bennett's unauthorized overhaul of Va. Code § 53.1-151(B1) was applied to, and specifically benefitted, serial rapists, capital murderers, offenders who attempted to murder police officers, and offenders who committed abduction, forcible sodomy, and malicious wounding in conjunction with an armed robbery. **Chair Bennett's actions specifically enabled David Simpkins and Freddie Ferrell to violently re-victimize more than ten innocent Virginians, as noted above.**

VI. THE NIXON PEABODY INVESTIGATION

The Office of the State Inspector General (OSIG) was established in 2012 to "investigate waste and identify inefficiencies in executive branch state government." In spring and summer 2020 OSIG "conducted an administrative investigation of the Virginia Parole Board" after receiving "several complaints alleging that VPB and former VPB Chair Adrianne Bennett violated . . . statutes and VPB policies and procedures regarding the parole of [Vincent Martin]." The OSIG investigation substantiated the allegations, specifically finding that:

1) "VPB did not initially provide notification" to the local commonwealth's attorney's office, as required by state code;
2) "VPB did not 'endeavor diligently' to contact victims prior to making the decision to release" Vincent Martin, as required by state code;
3) "VPB did not allow the victim's family or other interested parties to meet with VPB in accordance with VPB policy and procedures;" and
4) Chair Bennett "did not cause the keeping of meeting minutes" as required by Va. Code § 53.1-139.

The six-page July 28, 2020 OSIG report was met with headlines across the Commonwealth such as "Virginia Inspector General issues scathing report on Parole Board"[137] and questions such as, "Could Parole Board debacle cast a cloud over criminal justice reform?"[138] In February 2021, a longer, thirteen-page draft of the report was shared with news outlets. This longer draft was "loaded with details about violations of parole board policy and the law" and contained "allegations that the former chair, now Judge Adrianne Bennett, asked at least two employees to falsify a report and violate their own ethics."[139] Given that the final six-page report did not contain these details, state senators from both parties requested a select committee investigate the allegations.[140]

The leak of the longer draft prompted additional unwelcome headlines for the Parole Board, with some leaders in the General Assembly questioning the governor's office' awareness of the longer drafts. This imbroglio prompted the governor's chief of staff to note "there was bias and lack of objectivity in that report."[141] As such, some General Assembly members sought to change the narrative by commissioning their own report. On a strict party-line vote in both the House and Senate, legislators authorized spending $250,000 to investigate the OSIG investigation.

The contours of this second investigation, however, were intentionally and strictly limited to the OSIG investigation, and not a broader review of Parole Board actions.[142] As Governor Northam's counsel said, "[a]t least politically, we needed to investigate how this report got down to a 6-page report."[143] She noted that "[w]e did not want to have this turn into an indictment of parole generally. The question is, did the [Governor's Office] lean on OSIG regarding the drafts."[144] In other words, the partisan investigation of the independent investigation would be narrowly tailored to solely examine OSIG, not how the Parole Board decided to release Vincent Martin—despite the governor's counsel privately acknowledging that Chair Bennett "did not use her best judgement" (sic) and was "more aggressive than she should have been."[145]

On April 23, 2021, former Attorney General Mark Herring retained Nixon Peabody LLP as the third-party investigator. On June 14, 2021—after receiving nearly $5,000 per day from the Commonwealth of Virginia—Nixon Peabody issued a report on the OSIG investigation.

Unsurprisingly, the report supported the governor's chief of staff's public claims from several months earlier regarding alleged bias in the OSIG investigation.

The Nixon Peabody report gave the Northam administration the whitewash it sought by concluding that OSIG's investigation "should have been more thorough" and that "most likely [] OSIG's lead investigator was impaired by personal bias and that this bias likely had an impact on the tone and substance of the OSIG Parole Board Report." These conclusions were apparently based on "[i]nternal communications, the manner in which the investigation was conducted, the content of witness interviews, and the tone of report."

A close examination of over 9,000 documents gathered by Nixon Peabody and reports of their approximately 40 witness interviews, however, show that Nixon Peabody's conclusions are unsupported by the evidence. In fact, Nixon Peabody omitted significant, material information from its final report that skewed the outcome, deprived the public of the truth, and furthered the partisan narrative that served as the initial basis for the narrow investigation.

The $250,000 authorized for the Nixon Peabody report did not include subpoena authority, as had originally been contemplated.[146] As a result, Nixon Peabody did not interview three key individuals, including Chair Bennett, as part of its investigation. Nor did Nixon Peabody interview the lead OSIG investigator, Jennifer Moschetti, who had been fired shortly after the governor's chief of staff called her biased and was the main focus of bias in the Nixon Peabody report. The lack of these critical interviews—by design—adversely affected the thoroughness of the Nixon Peabody report.

Contrary to the findings in Nixon Peabody's final report, witnesses interviewed by Nixon Peabody expressed an overwhelming majority view that Jennifer Moschetti and the OSIG investigation into Vincent Martin were unbiased and professional. Of the 18 witnesses Nixon Peabody interviewed about OSIG's bias, eleven stated OSIG and Moschetti were unbiased and professional. Only five expressed a belief that the investigation was biased—and four of those were Northam administration appointees.

Michael Westfall, Virginia's Inspector General, told Nixon Peabody that Moschetti did not do or say anything during OSIG's investigation that made him think she was biased.[147] Parole Board Member Kemba Pradia told Nixon Peabody she "[d]id not sense any bias. [It] [s]eemed like they were empathetic on the position that parole board members are in and that the decisions we make are not easy ones."[148] OSIG's legal advisor in the Attorney General's office told Nixon Peabody that "it appear[ed] that the Governor's Office was putting pressure on OSIG" and that OSIG's investigation was "very independent and thorough."[149]

In addition, Nixon Peabody obtained information indicating Chair Bennett and the Parole Board treated the Vincent Martin case in an atypical manner—supporting the findings of the OSIG investigation. Board member Sherman Lea admitted "mistakes may have been made. Not in terms of judgment, because what we do is a judgment call. But when it comes to the mistakes we made regarding contacting family, victims, and Commonwealth's Attorneys, we care."[150] Board member A. Lincoln James said, "there may well have been some administrative errors in the departments."[151]

Even career Parole Board staff recognized the Vincent Martin parole case was being treated

differently. Board investigator Clyde King told Nixon Peabody that Bennett seemed to be rushing the Martin decision, leading him to discuss his concerns directly with Bennett.[152] King stated that Bennett truly believed Vincent Martin was innocent.[153] Board Administrator Tracy Schlagel told Nixon Peabody that with regard to the Vincent Martin case, "there may have been coercion from Bennett."[154] Schlagel also passed along a specific request by Bennett to the parole examiner, who refused to comply, "stating it was unethical to do so."[155] Schlagel told Nixon Peabody that Bennett had met Vincent Martin and "was really taken with him" and that Schlagel had never heard a Parole Board Chair speak of an inmate in the way Bennett spoke of Martin.[156]

Even Governor Northam's chief of staff criticized Chair Bennett in his Nixon Peabody interview, acknowledging Chair Bennett should be held accountable for her own actions and that she showed a lack of common sense and a lack of good judgment.[157] However, since the scope of the investigation was intentionally limited to OSIG's policies, process, and procedures, this information was not included in Nixon Peabody's final report.

Nixon Peabody omitted significant amounts of information that contradicted the Northam administration's positions on parole. The Northam administration also found a scapegoat in Jennifer Moschetti, an OSIG employee whose life has been unjustly ruined by partisan politics. Nixon Peabody's concealment of important facts skewed its report by hiding information that was politically harmful to the Northam administration, and ultimately resulted in a $250,000 whitewash using taxpayer money.

VII. LEGISLATIVE AND POLICY RECOMMENDATIONS

A. ETHICS AND TRANSPARENCY

1. THE PAROLE BOARD SHOULD DEVELOP AND REQUIRE EACH APPOINTED MEMBER TO ADHERE TO A UNIFORM CODE OF ETHICS, WHICH SHOULD BE INCORPORATED INTO THE BOARD'S POLICY MANUAL. THE CODE OF ETHICS SHOULD REQUIRE BOARD MEMBERS TO AFFIRM THE HOLDING OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT IN *BLOODGOOD V. GARRAGHTY*, WHICH CAUTIONS AGAINST RENDERING OPINIONS ABOUT A PAROLEE'S INNOCENCE DURING A PAROLE DECISION.

Our investigation revealed that instead of treating criminal convictions as settled fact, Chair Adrianne Bennett and other Parole Board members reinvestigated cases and formed opinions that certain offenders were not properly convicted. This is not the Parole Board's role.

Codes of ethics are standard for Parole Boards in many other states. Parole Board members should be required to affirm a uniform code of ethics defining their roles and responsibilities, as well as what Board members do not have the authority to do. The code of ethics should include an admonition that concerns about an offender's innocence should be referred to the Attorney General or the prosecutor in the local jurisdiction, not resolved in the offender's favor in secret by the Parole Board.

2. THE GENERAL ASSEMBLY SHOULD CONSIDER AMENDING VA. CODE § 53.1-154 TO PROVIDE FOR PUBLIC ACCESS TO PAROLE HEARINGS, AND THE PAROLE BOARD SHOULD CONSIDER DEVELOPING AN ADMINISTRATIVE PROCEDURE TO IMPLEMENT PUBLIC HEARINGS.

Currently, the Parole Board does not meet to hold "hearings" on parole decisions. The current Parole Board discusses parole cases at weekly meetings, but voting then proceeds with each member casting their vote separately, and remotely. Given the past transparency concerns surrounding the Board, we recommend that the General Assembly consider amending Va. Code § 53.1-154 to require the Board to hold public hearings on parole cases, during which evidence is presented and votes are cast. We further recommend that the Board create an administrative procedure to implement the format of such public hearings. **The Parole Board joins in this recommendation.**

B. VICTIM AND PROSECUTOR INPUT PROCEDURES

1. THE PAROLE BOARD SHOULD HIRE AT LEAST ONE ADDITIONAL FULL-TIME VICTIM INPUT CO-COORDINATOR, AND THE BOARD'S VICTIM INPUT POSITIONS SHOULD BE PAID FROM VIRGINIA'S GENERAL FUND.

We learned that multiple Victim Input Coordinators cycled in and out of the position at different times during the tenure of Chair Bennett, complicating victim contact efforts. Additional Parole Board staff who were not assigned to victim-related duties were required to pitch in and assist

when the single Coordinator could not manage all the work. Our investigation found that the Board's victim input personnel were hardworking and dedicated individuals, but by their own accounts—and the accounts of voting Board members, including Chair Bennett—**the Board simply does not have enough dedicated victim input staff.** It is recommended that the Parole Board allocate at least one additional full-time position to assist with victim contact duties.

The Board's Victim Input Coordinator position has historically been grant-funded, and the Board has struggled in the past to find a coordinator who has experience dealing with victims *and* managing a grant. We learned that the Board's victim services grant, administered by the Virginia Department of Criminal Justice Services, was in jeopardy during Chair Bennett's tenure due to a paperwork backlog. The Victim Input Coordinator should be able to focus solely on victim contact efforts, and it is therefore recommended that the Victim Input Coordinator position be funded by Virginia's General Fund, as opposed to through a grant requiring periodic re-certification. **The Parole Board joins in this recommendation.**

2. THE VIRGINIA GENERAL ASSEMBLY SHOULD AMEND VA. CODE § 53.1-155(B) TO CLARIFY THAT THE PAROLE BOARD MUST SEEK AND CONSIDER VICTIM INPUT BEFORE CASTING ANY VOTE TO RELEASE AN OFFENDER. THE AMENDMENT SHOULD ADDITIONALLY APPLY THE PRE-VOTING VICTIM CONTACT REQUIREMENT TO GERIATRIC CONDITIONAL RELEASE CASES.

We found that the Parole Board's decision-making process under Chair Bennett prioritized voting to release an offender before any victim input was considered. Board members rarely possessed information about victim input or contact when casting their votes, and victim research processes often began only after all votes had been cast. Existing law during 2020 did not require the Board to employ such a process in geriatric conditional release cases, but the General Assembly should consider amending Va. Code § 53.1-155(B) to reinforce the principle that Parole Board members cannot cast a fully informed vote in a parole or geriatric conditional release case unless and until the Board's "diligent endeavor" to contact victims has been completed.

3. THE PAROLE BOARD SHOULD UPDATE ITS ADMINISTRATIVE PROCEDURE TO CLEARLY DEFINE WHAT IT MEANS TO "ENDEAVOR DILIGENTLY" TO CONTACT THE VICTIM BEFORE MAKING ANY DECISION TO RELEASE AN OFFENDER ON DISCRETIONARY PAROLE.

We discovered that while offenders, their family members, and their supporters had every opportunity to provide their input to the Parole Board, victims did not. Board files contain voluminous notes detailing support input for offenders over the years, but victim research and input was noticeably sparse. Compounding this problem, as different employees cycled in and out of the Victim Input Coordinator role, they interpreted the "endeavor diligently" standard differently. Some victim researchers went to greater lengths than others, including searching multiple databases and sending multiple phone calls and emails to potential sources of information. Other victim researchers merely checked the VINE system, looked in CORIS, and ended the efforts there. The Parole Board must assure the public that the "endeavor diligently" standard means the same thing in every discretionary parole case. It is recommended that the Board promulgate a uniform victim contact policy to ensure victims have equal access to the Board as offenders and their supporters. Given the Board's widespread failure to notify victims in "parole

violator" cases, it is further recommended that the Board clarify as a matter of law and policy that victim contact efforts are required in cases in which an offender is being considered for discretionary parole after being reincarcerated on a parole violation.

4. THE PAROLE BOARD SHOULD UPDATE ITS ADMINISTRATIVE PROCEDURE TO REQUIRE ANY EMPLOYEE WHO PERFORMS VICTIM RESEARCH OR CONTACT ACTIVITIES TO DOCUMENT ALL ACTIONS TAKEN AND UPLOAD A "PAROLE BOARD NOTE" INTO CORIS DETAILING THE ACTIONS TAKEN.

Our investigation revealed that except in cases involving specific requests by voting members, non-leadership Board members voted cases based on the information available to them in CORIS. If the Parole Board's victim input staff had not uploaded any information regarding victim input or contact information, it was effectively as if the Board's voting members had no victim information either. Parole Board Administrative Procedure should require Victim Input staff to document all efforts taken toward researching and contacting victims in CORIS so that they are available to voting members. The Board should further consider obtaining software allowing for victim input staff's email contacts and inquiries to be seamlessly integrated into an offender's file, thus making such efforts visible to voting members.

5. PAROLE BOARD VICTIM INPUT STAFF SHOULD PERIODICALLY EXECUTE (OR REAFFIRM) A MEMORANDUM OF UNDERSTANDING WITH VADOC'S VICTIM SERVICES UNIT THAT DETAILS HOW THE AGENCIES WILL COOPERATE AND COLLABORATE REGARDING THE COMMON GOAL OF SERVING CRIME VICTIMS AND PRESERVING THEIR RIGHTS.

We discovered instances of isolation and non-cooperation between the victim services units of the Parole Board and VADOC that largely originated with the Board under Chair Bennett. These instances can be attributed in part to personality and staffing conflicts, and partly to Chair Bennett's instruction to VADOC senior management that VADOC victim input staff should not be assisting with parole-related questions. The staff of these two units have a concurrent goal: to ensure that offenders' victims have full information about when, how, and why the person who victimized them will be released from incarceration. To protect against communication breakdowns and ensure that victims' rights are honored, we recommend that Parole Board and VADOC victim services periodically execute a memorandum of understanding clarifying the agencies' roles, responsibilities, and how they will cooperatively work together to serve victims.

6. THE PAROLE BOARD SHOULD IMPLEMENT AN ADMINISTRATIVE PROCEDURE REQUIRING IT TO MAKE BEST EFFORTS TO OBTAIN VALID, CURRENT VICTIM CONTACT INFORMATION AT THE TIME AN OFFENDER FIRST BECOMES ELIGIBLE FOR DISCRETIONARY PAROLE OR GERIATRIC CONDITIONAL RELEASE.

In March and April 2020, the Parole Board granted release to many offenders who would not ordinarily have been considered for release due to the length of their sentences and the seriousness of their crimes. Many of these offenders had been parole-eligible for decades, but because no Parole Board ever voted to release them, the need to reach out to victims was never present. As such, the Board was often tasked with contacting victims in older cases in which original records might have been destroyed or archived. Victim research efforts in these cases were minimal, due

to the limited nature of information available and the Board's unsustainably high pace in March and April 2020. To protect against loss of victim information, it is recommended that the Board implement an Administrative Procedure requiring it to identify all potential statutory victims when the offender first becomes eligible for discretionary parole or geriatric conditional release.

7. THE GENERAL ASSEMBLY SHOULD AMEND VA. CODE § 53.1-155(B) TO REQUIRE THE PAROLE BOARD TO SEEK INPUT FROM COMMONWEALTH'S ATTORNEYS BEFORE MAKING ANY DECISION TO GRANT DISCRETIONARY PAROLE OR GERIATRIC CONDITIONAL RELEASE.

Our review of hundreds of Parole Board decisions over multiple years revealed that Board members often questioned offenders' guilt and formed their own opinions that they had not been properly convicted. Notable examples in this report are Vincent Martin, Debra Scribner, and Clinton Jacobs. While offenders who are actually innocent should receive prompt relief, the officials responsible by law for making such decisions are the local Commonwealth's Attorneys, in conjunction with the Office of the Attorney General. It is neither inappropriate nor unlawful for the Parole Board to express concerns about an offender's guilt, but those concerns must be addressed in the appropriate forum. The Board has neither the authority nor the capacity to reinvestigate parolees' convictions and make alternate determinations about their guilt.

To ensure that the Virginia Parole Board has a full, fair picture of the facts supporting convictions, as well as to enable the Board to appropriately refer any concerns about convictions to the appropriate officials, we recommend that the General Assembly amend Va. Code § 53.1-155(B) to require that the Board seek input from Commonwealth's Attorneys before making any decision to release an offender. **The Parole Board joins in this recommendation.**

C. PAROLE BOARD OPERATIONS

1. THE GENERAL ASSEMBLY SHOULD CONSIDER AMENDING VA. CODE § 53.1-136 TO INCREASE THE PAROLE BOARD'S TOTAL NUMBER OF FULL-TIME VOTING MEMBERS.

By law, the Virginia Parole Board is currently composed of 5 voting members. Two of those members are full-time employees, and three are part-time. While the number of offenders eligible for discretionary parole in Virginia has decreased since 1995, the number of offenders eligible for geriatric conditional release tripled between 2014 and 2021. New legislation in 2020 increased discretionary parole eligibility for younger offenders and "Fishback" offenders sentenced between 1995 and 2000. As a result, the pool of eligible offenders continues to increase, but the Board's funding and staffing have not been commensurately adjusted. To enable the Board to timely and thoroughly address all eligible offenders, we recommend that the General Assembly amend Va. Code § 53.1-136 to increase the number of voting Board members to 6 full-time members. **The Parole Board joins in this recommendation.**

2. THE GENERAL ASSEMBLY SHOULD STUDY THE COST AND FEASIBILITY OF PROVIDING THE PAROLE BOARD WITH A DEDICATED FACILITY AND STAFF.

Evidence shows that the Parole Board does not have the dedicated space or resources to allow it to function properly. The Board is almost entirely dependent on VADOC, which has accommodated and supported it for many years. The Board depends on VADOC for human resources, information technology, and even office supplies. However, Board offices occupy a

small portion of the VADOC headquarters that is inadequate for the operation of an independent state agency. While the Board has welcomed VADOC's support over the years, it is recommended that the General Assembly study the cost and feasibility of providing the Board with its own office space, as well as dedicated human resources and information technology personnel. **The Parole Board joins in this recommendation.**

3. THE PAROLE BOARD SHOULD DEVELOP A STANDARDIZED TRAINING PLAN FOR NEW BOARD MEMBERS.

Our investigation revealed that new Parole Board members' training process was relatively nonexistent. Witness accounts state that new Board members were generally not trained on the Board's policy or administrative procedure manuals. There was no official "onboarding" or training for the specific duties of a Board member; most training was informal and involved the members experimenting with the CORIS system themselves or asking questions as they went. Each member, therefore, learned how to do their job slightly differently depending on which Parole Board staff were around to answer their queries on a particular day. To ensure that Board members discharge their sensitive duties uniformly and in accordance with policy and procedure, it is recommended that the Parole Board develop a basic, standardized training plan for all new voting members. **The Parole Board joins in this recommendation.**

4. THE PAROLE BOARD SHOULD WORK WITH VADOC TO CAUSE ITS "PAROLE BOARD MEMBER SUMMARY" TO INCLUDE A FULL, UPDATED LIST OF OFFENDERS' INSTITUTIONAL INFRACTIONS.

We learned that many offenders released in March and April 2020 had not only been convicted of serious offenses such as murder, rape, and robbery, but had a lengthy institutional disciplinary record demonstrating further criminal activity and disregard for authority. These offenses included inciting prison riots, possessing weapons, setting fires, assaulting and injuring other inmates and correctional staff, committing forcible sexual advances and indecent exposure, and possessing illegal drugs and intoxicants.

Many offenders' institutional behavior improved over the years, and their disciplinary offenses tapered off. However, unless Parole Board members specifically queried a different module of the CORIS system to investigate, they would have been unaware of an offender's complete disciplinary history. Unless specifically reported by the parole examiner, Parole Board records only contain a section describing the offender's disciplinary infractions in the last 24 months. Examination of hundreds of records found that the report section titled "disciplinary offenses in the last 24 months" section *never* contained any data.

To ensure that Parole Board members have a full understanding of an offender's institutional disciplinary history, **it is recommended that the Board update its Administrative Procedure to specifically require voting members to consider the offender's entire institutional disciplinary history.** It is further recommended that until the Board can obtain an electronic system better suited to its needs, it should work with VADOC to modify the CORIS system so that the offender's complete disciplinary history becomes a part of the Parole Board Member Summary.

5. THE GENERAL ASSEMBLY SHOULD IMMEDIATELY APPROPRIATE FUNDS TO ALLOW THE PAROLE BOARD TO OBTAIN AN ALTERNATE ELECTRONIC FILING SYSTEM DESIGNED TO MEET ITS SPECIFIC NEEDS.

Parole Board members and staff unanimously agreed that VADOC's CORIS system was not suitable for Parole Board use, stating that the CORIS system frequently caused issues with Board processes and slowed the Board down. While the CORIS system has been modified over the years to allow for Parole Board functionality, CORIS is designed for the management of offenders who are still in custody—not for the unique process of determining whether an offender's release is compatible with public safety. We therefore recommend that the General Assembly appropriate funds immediately to allow the Parole Board to replace the CORIS system with an electronic data management system better suited for its unique needs. **The Parole Board joins in this recommendation.**

6. THE PAROLE BOARD CHAIR AND THE DIRECTOR OF VADOC SHOULD EXECUTE A MEMORANDUM OF UNDERSTANDING DEFINING THE TWO AGENCIES' ROLES AND RESPONSIBILITIES WITH RESPECT TO RELEASE AND SUPERVISION DECISIONS.

While the Parole Board's policy manual delegates the day-to-day supervision of offenders to the Department of Corrections, we found that Chair Bennett nevertheless unilaterally discharged many violent offenders from parole supervision without consultation with the parole officer or with other VADOC personnel. Witnesses interviewed also confirmed that Chair Bennett showed no interest in VADOC operating procedures or policies. However, the Parole Board is almost exclusively dependent on VADOC for human resources, information technology, and office space. It is extremely important that the agencies work well together, and witness accounts suggest that they simply did not under the tenure of Chair Bennett. It is therefore recommended that the Parole Board update its policy manual to require the Chair of the Board to execute a memorandum of understanding with the VADOC Director that defines the agencies' roles and reasonable expectations.

D. GENERAL RECOMMENDATIONS

1. THE GENERAL ASSEMBLY SHOULD ENACT LEGISLATION REQUIRING THE GOVERNOR TO SEEK VICTIM INPUT ON PARDONS.

In November 2021, the Northam administration began granting pardons to many offenders without victim input or investigation by the Parole Board as a matter of course, as had been the historical practice. As a result, incoming Board members fielded calls for several weeks in 2022 from upset victims who had abruptly learned that the offender who victimized them was being granted a pardon without their input. Many of the pardons granted by the departing Northam administration benefitted offenders accused of serious, violent offenses, as well as elected officials convicted of various crimes. To ensure that victims have a permanent voice in the pardon process, we therefore recommend that the General Assembly enact legislation requiring the Governor to seek victim input before granting pardons. **The Parole Board joins in this recommendation.**

2. THE GENERAL ASSEMBLY SHOULD AMEND VA. CODE § 19.2-295.2(B) TO DIVEST THE PAROLE BOARD OF THE AUTHORITY TO SENTENCE OFFENDERS WHO VIOLATE "POST-RELEASE SUPERVISION" AND RETURN THAT AUTHORITY TO VIRGINIA'S CIRCUIT COURTS.

There are three types of post-conviction supervision in Virginia: parole, probation, and post-release supervision. The great majority of post-1995 offenders are on probation, not parole, and the local circuit court has jurisdiction over their supervision—not the Virginia Parole Board. However, circuit court judges have the option to sentence post-1995 offenders to up to 3 years of "post-release supervision." Post-release supervision is, for all intents and purposes, identical to probation or parole, yet the Parole Board, not the local circuit court, is given jurisdiction over post-release supervision. This delegation of authority does not make functional sense. The Parole Board does not have the same sentencing expertise or factual knowledge of post-release supervision cases as the local circuit court judge who heard the trial and imposed the sentence. The General Assembly should amend Va. Code § 19.2-295.2 to return sentencing jurisdiction in post-release supervision cases to the local circuit court, while permitting the Parole Board to retain the authority to monitor the supervision of post-release cases, and to revoke supervision if deemed necessary. The result would be functionally the same as Virginia's probation system. **The Parole Board joins in this recommendation.**

3. THE GENERAL ASSEMBLY SHOULD AMEND VA. CODE § 53.1-136 TO REQUIRE PUBLIC DISCLOSURE OF INFORMATION RELATED TO THE EARLY DISCHARGE OF PAROLEES FROM SUPERVISION.

Recent legislation obligates the Parole Board to publicly disclose more information about its parole decisions. However, nothing obligates the Board to disclose information about its decisions to end parolees' supervision early, decisions we found were made unilaterally by Chair Bennett in violation of Board policy and the law. We recommend that to avoid a single official unilaterally discharging parolees from supervision without oversight, the General Assembly amend Va. Code § 53.1-136 to require public disclosure of information regarding early discharges from parole supervision.

4. THE GENERAL ASSEMBLY SHOULD AMEND VA. CODE § 53.1-136 TO REQUIRE THE PAROLE BOARD TO CAUSE ITS POLICY AND ADMINISTRATIVE PROCEDURE MANUALS TO BE UPDATED AND APPROVED BY THE GOVERNOR EVERY FOUR YEARS TO CONFORM WITH EXISTING LAW.

Our investigation revealed that as different gubernatorial administrations came and went, new Parole Board chairs attempted to update the policy and administrative procedure manuals, but those attempts fell by the wayside as the Board's day-to-day operations took precedence. As a result, many portions of the Board's existing policy and administrative procedure manuals are outdated. Some sections refer to technological processes that existed in the 1990s but have since given way to newer methods. Some sections refer to portions of the Virginia Code that have been superseded or amended. In either case, the Board cannot operate based on outdated manuals. It is therefore recommended that the General Assembly amend Va. Code § 53.1-136 to require the Parole Board to update its policy and administrative procedure manuals at least once every four

years to ensure conformance with existing law.

5. THE PAROLE BOARD SHOULD PROMULGATE RULES FOR REFERRING OFFENDERS TO VADOC WHO "APPEAR TO MEET THE DEFINITION OF A SEXUALLY VIOLENT PREDATOR" UNDER VA. CODE § 37.2-903.

We learned that the Parole Board periodically evaluates offenders for release who have been convicted of offenses that are "sexually violent" under Virginia law, including rape, forcible sodomy, aggravated sexual battery, and other such offenses. Va. Code § 37.2-903 contemplates a scenario in which sexually violent offenders "have been referred to the Director [of the Department of Corrections] by the Virginia Parole Board under rules adopted by the Board who appear to meet the definition of a sexually violent predator." Multiple instances of such referrals were observed during the investigation.

However, the Parole Board has never promulgated a policy or administrative procedure setting out the rules for when an offender "appears to meet the definition of a sexually violent predator." The absence of such rules nearly resulted in the parole release of convicted rapist and sexually violent predator Charles Sheppard, to whom the Board granted parole in March 2020, later rescinding its decision. Multiple other cases have been identified in which the Parole Board voted to grant parole to offenders whose status as sexually violent predators was at issue.

It is therefore recommended that the Parole Board immediately promulgate the "rules" required by Va. Code § 37.2-903 to define when an offender may meet the definition of a sexually violent predator. It is further recommended that any such rules require consideration of whether the offender has committed institutional infractions of a sexual nature. **The Parole Board joins in this recommendation.**

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[1] As of July 1, 2020, but not during the time periods examined in this report, parole eligibility was extended to offenders sentenced by juries between 1995 and 2000 ("Fishback" offenders) and offenders sentenced as juveniles after 1995 who have served more than 20 years of their sentence. *See* Va. Code § 53.1-165.1.

[2] Va. Code § 53.1-40.01 grants eligibility for geriatric conditional release to offenders who have reached age 60 and served at least ten years of their sentence, as well as offenders who have reached age 65 and served at least 5 years of their sentence.

[3] While no witness refused to cooperate or be interviewed, this investigation was not without interference. During an interview, instead of answering valid questions about her actions as Parole Board Chair, Judge Adrianne Bennett and her attorney inappropriately interjected demands that we investigate certain actions of previous (and current) Parole Boards. Judge Bennett's attorney later sent a letter instructing OAG about "the need for this investigation to include Parole Board practices and procedures prior to and since the Northam Parole Board," and other admonishments about "arbitrarily narrow[ing] the investigation" to "score political points." Our investigation has been properly predicated for the reasons discussed throughout this report.

[4] *See* Va. Const. Art. I, § 2 ("all power is vested in, and consequently derived from, the people"); Art. I, § 3 ("government is, or ought to be, instituted for the common benefit, protection, and security of the people"); Art. I, § 6 ("all men . . . have the right of suffrage, and cannot be . . . bound to any law to which they have not, in like manner, assented for the public good.")

[5] https://lis.virginia.gov/cgi-bin/legp604.exe?181+sum+SB93.

[6] Appendix 1 to Section III at 42–43.

[7] *Id.* at 43.

[8] *Id.*

[9] *Id.*

[10] *Id.* at 43–44.

[11] *Id.* at 44.
[12] *Id.*
[13] *Id.* at 123–24.
[14] *Id.*
[15] *Id.* at 124–25.
[16] *Id.* at 124.
[17] *Id.*
[18] *Id.* at 20.
[19] The Parole Board uses a statistically-validated recidivism instrument called COMPAS to calculate the level of institutional programming and intervention an offender needs in order to prepare them to reenter society. Based on historical and environmental information collected from the offender, COMPAS assigns levels of "low," "medium," or "high" to an offender's recidivism risk.
[20] *Id.* at 20–21.
[21] *Id.* at 21.
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] Appendix 2 to Section III at 45.
[26] *Id.* at 46.
[27] Public Norfolk Circuit Court Case Information for Linwood Scott Jr.
[28] *Id.*
[29] Appendix 2 to Section III at 47.
[30] Appendix 1 to Section III at 160.
[31] *Id.*
[32] *Id.* at 161–62.
[33] *Id.* at 163–64.
[34] *Id.*
[35] *Id.* at 163.
[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] *Id.* at 136.
[40] *Id.*
[41] *Id.* at 137.
[42] *Id.*
[43] *Id.* at 137–38.
[44] *Id.* at 138.
[45] *Id.* at 129–30.
[46] *Id.* at 130.
[47] *Id.*
[48] *Id.* at 130–31.
[49] *Id.* at 131.
[50] *Id.* at 83.
[51] *Id.*
[52] *Id.* at 83–85.
[53] *Id.* at 85.
[54] *Id.* at 38.
[55] *Id.* at 39.
[56] *Id.* at 40–41.
[57] *Id.* at 41.
[58] *Id.* at 28–29.
[59] *Id.* at 29.
[60] *Id.* at 30–31.
[61] *Id.* at 30.
[62] *Id.*at 31–34.
[63] Appendix 2 to Section III at 68.

[64] *Id.* at 69.
[65] *Id.* at 65; *see also id.* at 66.
[66] *Id.* at 65.
[67] *Id.*
[68] *Id.* at 63.
[69] *Id.* at 64.
[70] *Id.* at 66.
[71] *Id.* at 64.
[72] *Id.* at 67–68.
[73] *Id.* at 69.
[74] *Id.* at 31.
[75] *Id.* at 32.
[76] *Id.* at 32–33.
[77] *Id.* at 32.
[78] *Id.* at 33.
[79] Appendix 1 to Section III at 169.
[80] *Id.* at 170.
[81] *Id.* at 171.
[82] *Id.*
[83] *Id.* at 165.
[84] *Id.* at 166.
[85] *Id.*
[86] *Id.* at 166–67.
[87] *Id.* at 78.
[88] *Id.*
[89] *Id.* at 80.
[90] *Id.*
[91] *Id.* at 133.
[92] *Id.*
[93] *Id.* at 134.
[94] *Id.* at 137–38.
[95] *Id.* at 134–35.
[96] *Id.* at 120.
[97] *Id.*
[98] *Id.* at 121.
[99] *Id.* at 147.
[100] *Id.*
[101] *Id.* at 148.
[102] *Id.* at 148–49.
[103] https://budget.lis.virginia.gov/amendment/2020/1/HB30/Enrolled/GE/
[104] https://vadoc.virginia.gov/media/1512/vadoc-covid19-early-release-plan-local.pdf
[105] Code § 53.1-155(B).
[106] OAG discovered numerous emails in which a Parole Board employee conducted an "after-action" review of March and April 2020 parole cases and flagged many cases because no victim research or contact had been attempted.
[107] Chair Bennett partially confirmed this sentiment during her interview with OAG, claiming a desire to avoid further trauma to rape victims or their families.

Review of Early Discharges from Parole Supervision
[108] Virginia Parole Board Policy Manual, Section IV.E (2006)
[109] Va. Code 53.1-136(5).
[110] Virginia Parole Board Policy Manual, Section VI.C.2 (2006)
[111] Virginia Parole Board Administrative Procedure Manual, Section 1.402 (1997)
[112] The offender with whom Chair Bennett was emailing late at night, Keron Turner, was arrested for domestic assault & battery of his wife seven months after being discharged from parole supervision; he pled guilty shortly thereafter.
[113] *See* Appendix to Section IV.
[114] Appendix to Section IV at 8.

[115] *Id.* at 11.
[116] *Id.* at 30.
[117] *Id.* at 40.
[118] *Id.* at 45.
[119] Va. Code § 53.1-176.1 *et seq.*
[120] In multiple emails, Chair Bennett addressed Victim Input Coordinator Lisa Bowen using the nickname "Joe."
[121] Average sentences are calculated by assigning the 2021 CDC average life expectancy of 76 years (rounded from the actual average of 76.1 years) to offenders sentenced to life in prison. Active sentences were then added together and divided by 136. Sentences of less than a full year were not counted.
[122] *See* Appendix to Section IV at 46–47.
[123] https://vadoc.virginia.gov/media/1512/vadoc-covid19-early-release-plan-local.pdf
[124] Appendix to Section IV at 36, 38, 47.

Review of "Three Strikes" Parole Ineligibility Decisions
[125] *Vaughan v. Murray*, 247 Va. 194, 198 (1994).
[126] *Walker v. Commonwealth*, 289 Va. 410, 419 (2015) (selling cocaine on four different occasions in the same county was not part of a common scheme or plan); *Sutphin v. Commonwealth*, 1 Va. App. 241, 246 (1985) (committing two burglaries two hours apart in the same city by throwing cinderblocks through the businesses' windows was not part of a common scheme, because although the offenses were similar, nothing uniquely identified the defendant as the sole perpetrator)
[127] *See, e.g.*, *Scott v. Commonwealth*, 274 Va. 636 (2007) (holding that a common scheme can be found when the crimes "share features idiosyncratic in character, which permit an inference that each individual offense was committed by the same person or persons as part of a pattern of criminal activity involving certain identified crimes"); *Satcher v. Commonwealth*, 244 Va. 220, 229 (1992) (holding that a common scheme can be found when the crimes are "closely connected in time, place, and means of commission.")
[128] *Vaughan*, 247 Va. at 198.
[129] *Minter v. Bennett*, No. 7:20cv00426, 2021 WL 5150660, at *4 n. 6 (E.D. Va. Nov. 5, 2021); *Rodriguez v. Fahey*, No. 1:05CV1503, 2006 WL 5363182, at *1 n. 4 (E.D. Va. Apr. 3, 2006).
[130] Code § 53.1-136(1). 2013 Acts of Assembly 708, *available at* https://lis.virginia.gov/cgi-bin/legp604.exe?131+ful+CHAP0708+pdf, reflects the version of Code § 53.1-136(1) that was in effect during Chair Bennett's relevant actions.
[131] https://lis.virginia.gov/cgi-bin/legp604.exe?181+sum+SB93.
[132] *Burnette v. Fahey*, 687 F.3d 171, 175 (4th Cir. 2012) ("The Virginia Code entrusts the administration of the discretionary parole system to the Board, and it vests the Board with broad discretion in carrying out its responsibilities.").
[133] Williams was previously sentenced to death for capital murder, but the United States Supreme Court reversed his sentencing due because Williams' defense attorneys had been constitutionally ineffective in failing to present evidence regarding Williams' upbringing and mental health concerns. *Williams v. Taylor*, 529 U.S. 362 (2000).
[134] Chair Bennett's letter erroneously lists § 53.1-151(B) as the provision under which she was restoring Terry Williams' parole ineligibility. However, § 53.1-151(B) provides that people sentenced to die, or who escape from custody after being sentenced to life in prison, shall be ineligible for parole; as of November 2000, Terry Williams was neither.
[135] *Johnson v. Bennett*, No. 1:19cv270 (E.D.Va. 2019).
[136] *See Walker v. Commonwealth*, 289 Va. 410, 417 (noting that four counts of selling cocaine were not part of a "common scheme," because the profit motive in drug dealing was "intrinsic" to the offense.). Similarly, raping 9 different women on 9 different occasions is "intrinsic" to the offense of rape. The rapes were not part of a "common scheme" simply because Earl Johnson committed the same crime repeatedly.
[137] Leeanna Scachetti, *Virginia's Inspector General issues scathing report on Parole Board*, WDBJ7 (Aug. 20, 2020, 5:37 PM), https://www.wdbj7.com/2020/08/20/virginias-inspector-general-issues-scathing-report-on-parole-board/
[138] Bob Lewis, *Could Parole Board debacle cast a cloud over criminal justice reform?*, Virginia Mercury (Aug. 7, 2020, 12:01 AM), https://www.virginiamercury.com/2020/08/07/oig-report-parole-board-violated-state-law-and-its-own-policies-in-vincent-martin-case/
[139] Jon Burkett, *Report details violations made granting parole to a man who killed a Richmond Police Officer*, 6 News Richmond (Feb. 25, 2021 3:13 PM), https://www.wtvr.com/news/problem-solvers/problem-solvers-investigations/parole-violations-vincent-martin-case

[140] Patrick Larsen, *Leaked Draft of Parole Board Investigation Raises Questions*, VPM News (Feb. 25, 2021, 4:17 AM), https://vpm.org/news/articles/20645/leaked-draft-of-parole-board-investigation-raises-questions
[141] Jon Burkett, *Northam's chief of staff says OSIG's parole board investigation was biased* (Mar. 10, 2021, 9:54 AM), https://www.wtvr.com/news/local-news/northams-chief-of-staff-defends-shorter-osig-report-as-factual-says-longer-draft-report-was-biased
[142] Patrick Wilson, *Democrats reject broad parole board probe in favor of limited investigation*, Richmond Times-Dispatch (Apr. 7, 2021), https://richmond.com/news/state-and-regional/govt-and-politics/democrats-reject-broad-parole-board-probe-in-favor-of-limited-investigation/article_7e524208-17b7-5115-8338-ff2472deb39c.html
[143] Nixon Peabody Interview of Former Counsel to Governor Ralph Northam, Rita Davis, Esq.
[144] *Id.*
[145] *Id.*
[146] Patrick Larsen, *Leaked Draft of Parole Board Investigation Raises Questions*, VPM News (Feb. 25, 2021, 4:17 AM), https://vpm.org/news/articles/20645/leaked-draft-of-parole-board-investigation-raises-questions
[147] Nixon Peabody Interview of Inspector General Michael Westfall
[148] Nixon Peabody Interview of Former Virginia Parole Board Member Kemba Smith Pradia
[149] Nixon Peabody Interview of Former Senior Assistant Attorney General Michael Jagels
[150] Nixon Peabody Interview of Former Virginia Parole Board Member Sherman Lea
[151] Nixon Peabody Interview of Former Virginia Parole Board Member A. Lincoln James
[152] Nixon Peabody Interview of Virginia Parole Board Investigator Clyde King
[153] *Id.*
[154] Nixon Peabody Interview of Virginia Parole Board Administrator Tracy Schlagel
[155] *Id.*
[156] *Id.*
[157] Nixon Peabody Interview of Former Chief of Staff to Governor Ralph Northam, Clark Mercer