
Joint Subcommittee on Public Safety

Staff Briefing

May 21, 2009

Why Are We Meeting Today?

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- Major budget cuts in current biennium
- Gap between projected revenues and cost of current services for 2010-12 biennium (and beyond)
- \$23.3 million annual “hole” in base budget for 2010-12 for Sheriffs and local and regional jails after federal stimulus funds in FY 2010 have been spent
- Insufficient funds available to open new prisons when construction is complete
- Limited debt capacity

Authority for the Joint Subcommittee

- Two language amendments in the 2009 Appropriation Act each authorized joint subcommittees of the Senate Finance and House Appropriations Committees to review two distinct but related topics: (1) nonviolent, lower risk offenders; and (2) jail finance
 - Representatives from Courts of Justice Committees
- These two topics were combined by the chairmen under a single Joint Subcommittee on Public Safety

(1) Nonviolent Lower Risk Offenders

- Language in Item 387 creates a joint subcommittee to consider steps which may be appropriate to reduce the numbers of nonviolent lower risk offenders entering state correctional facilities. The language specifies that the consideration of these steps should:
 - Recognize the need to protect public safety
 - Enable the courts to sentence offenders to appropriate alternative punishment options
 - Provide DOC, jails, and community corrections with appropriate programs and management tools to operate within available resources

Secretary's Task Force

- Item 387 also directs the Secretary of Public Safety to form a task force to develop recommendations to expand utilization of alternative methods for punishment of lower risk, nonviolent offenders sentenced to incarceration, in cooperation with key stakeholders:
 - Supreme Court of Virginia
 - Virginia Sheriffs Association
 - Virginia Association of Regional Jails
 - Virginia Association of Commonwealth's Attorneys
 - Virginia Criminal Sentencing Commission

(2) Jail Finance

- Item 388 creates a joint subcommittee to review the Commonwealth's policies with respect to the oversight, approval and financing of local and regional jail capital projects and operational expenses, with a view towards defining and meeting the Commonwealth's long-term obligations for jails and related programs

Fiscal Context

- The Commonwealth's level of support for operating and capital expenses for jails is unique in the nation
- Since 1993, Virginia has provided an essentially open-ended commitment of capital funds for jail modernization
- In today's economy, with limited resources, can Virginia afford to maintain an open-ended commitment?
- The money committees may wish to consider adjusting the process for approving jail projects in the future
- Conditions in most jails are good; the challenge is to maintain public safety when resources are limited

Proposed Additional Meetings

- Tuesday, June 16
 - Statutory framework (Legislative Services)
 - Jail capital project approval by BOC (DOC)
 - Jail operating budget assistance (Compensation Board)
 - Local community corrections and pre-trial release (DCJS)
- Thursday, September 17
 - Secretary's Task Force on Lower Risk Nonviolent Offenders
 - Virginia Criminal Sentencing Commission
 - Jail Mental Health Survey (DMHMRSAS/Comp Board)
- Monday, October 19
 - TBD/public input/key stakeholders

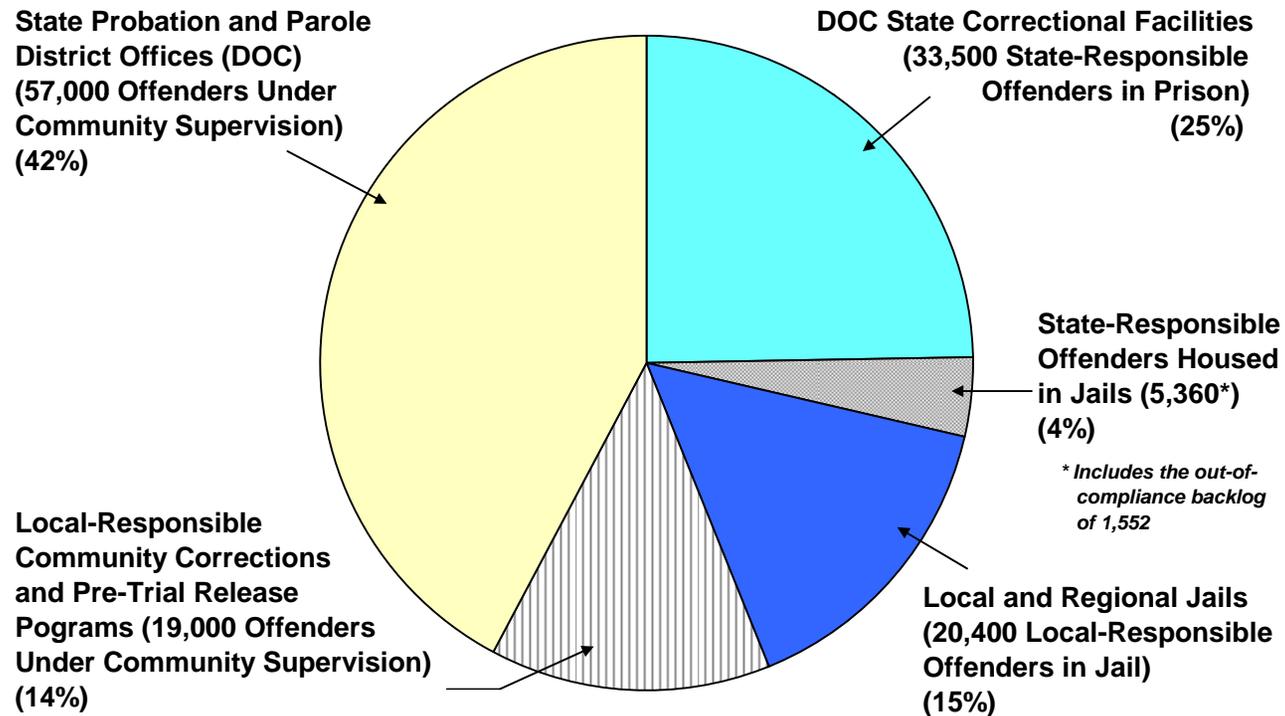
Background – General Information

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- Offender Population Trends
- Incarceration Rate
- Violent Crime Rate
- Recidivism Rate
- Where Does Virginia Stand?

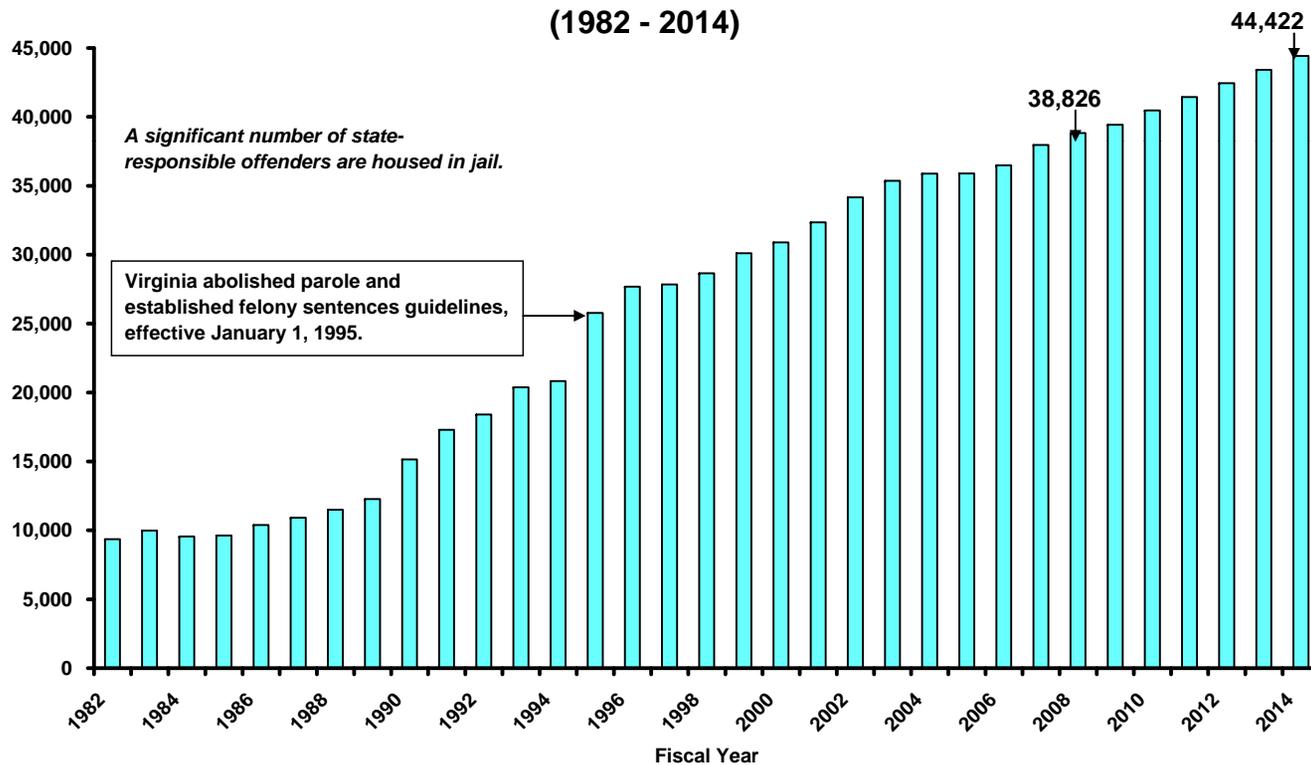
1 in 44 Adult Virginians Under Supervision

**OVER 135,000 OFFENDERS UNDER CORRECTIONAL SUPERVISION
(As of June 2008)**

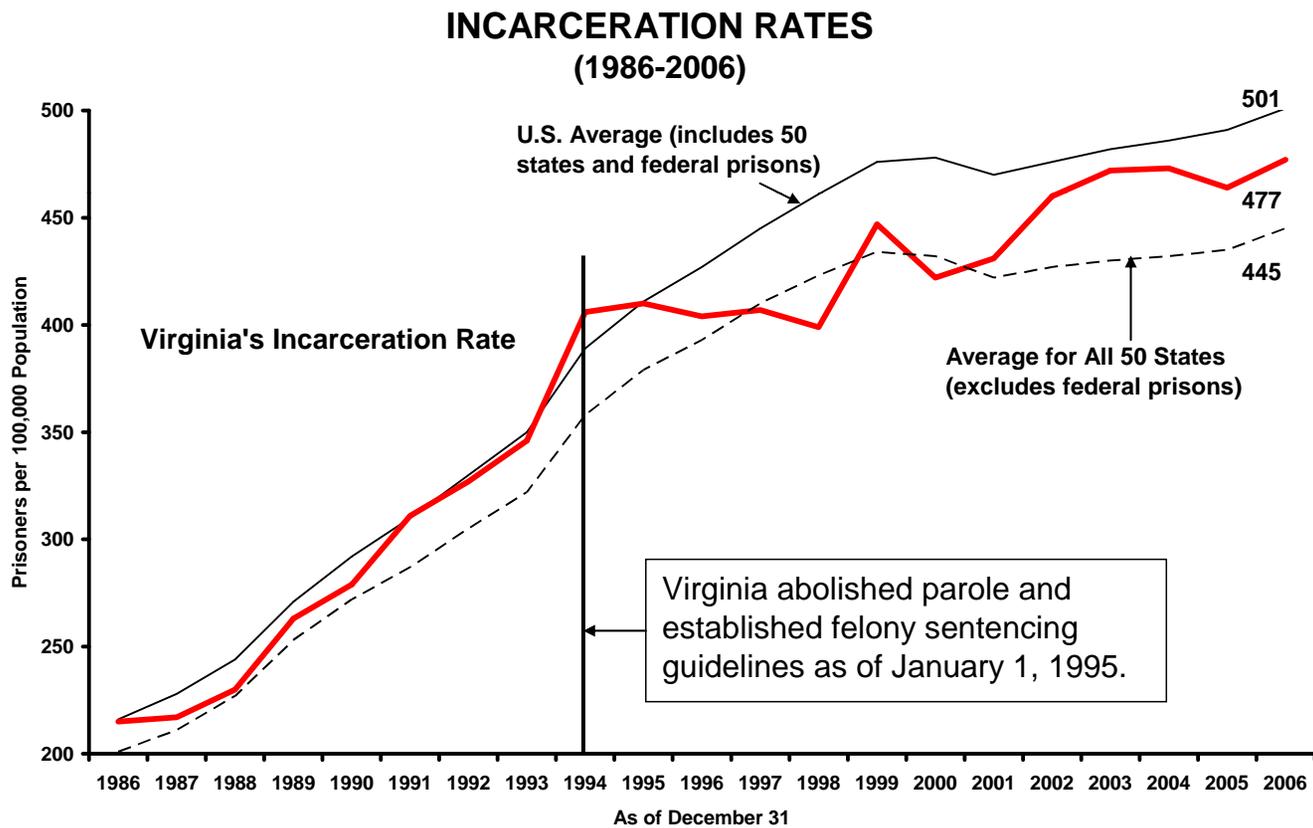


Offender Population Growth is Slowing

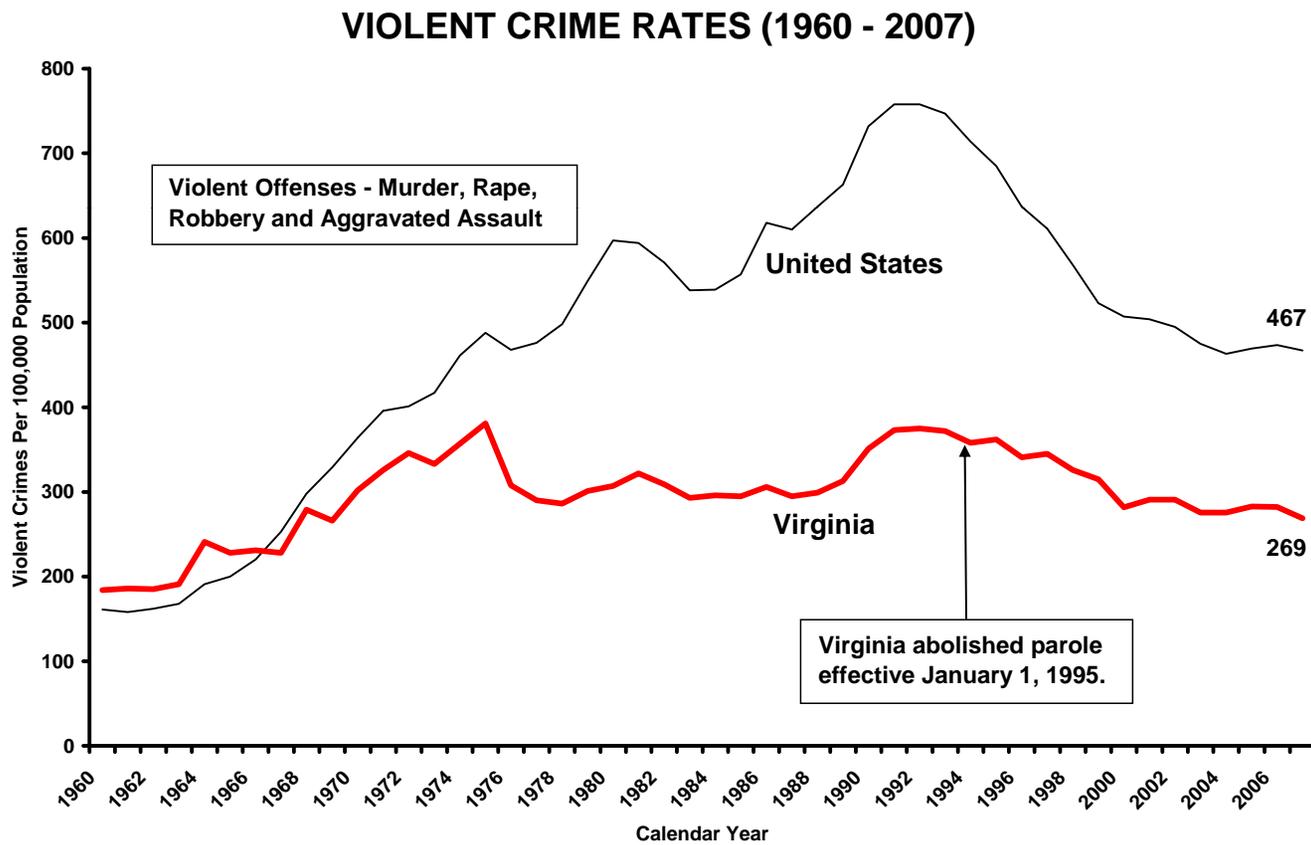
STATE-RESPONSIBLE OFFENDER POPULATION (1982 - 2014)



Virginia's Incarceration Rate Has Slowed

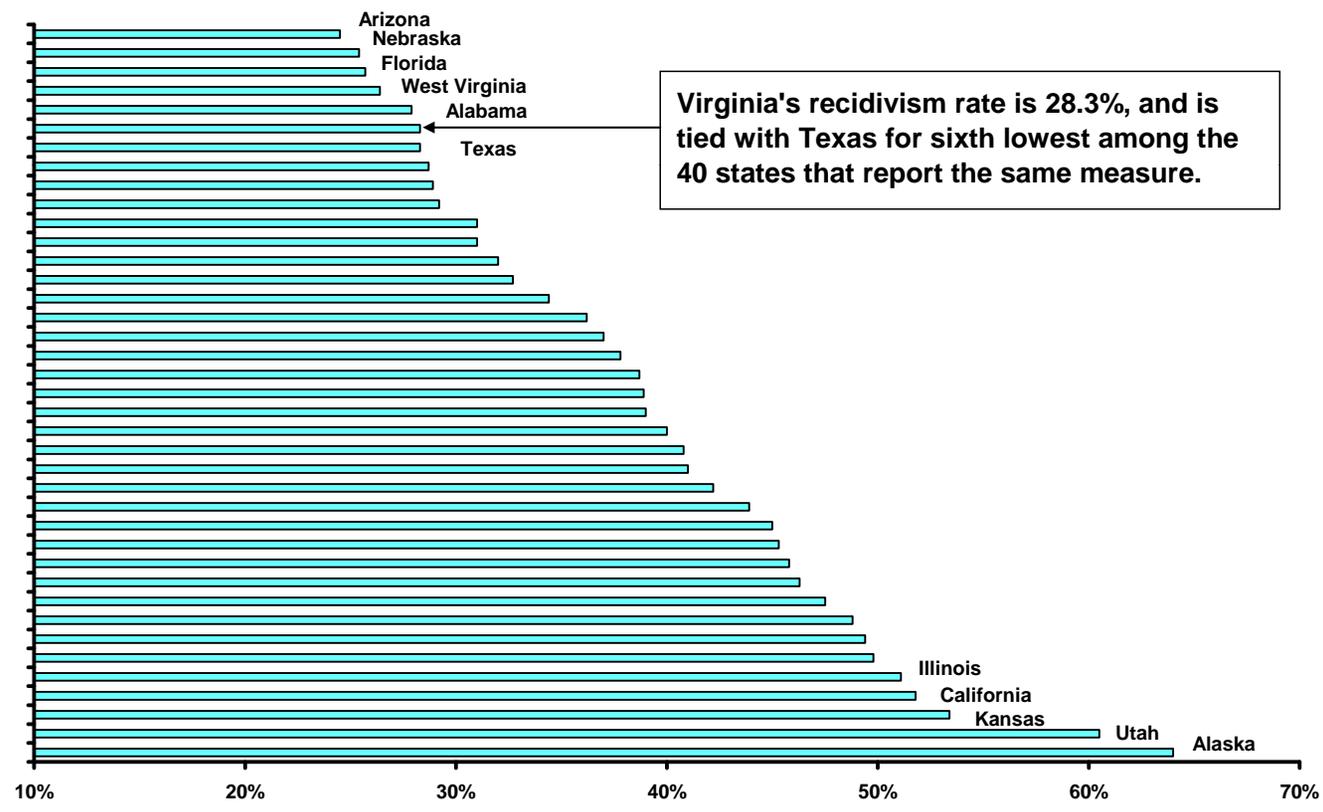


Virginia's Violent Crime Remains Low



Virginia's Recidivism Rate Remains Low

THREE YEAR RE-IMPRISONMENT RATES



Background – State Support for Jails

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- Historical Context
- Who Pays For Virginia's Jails?
- 50-State Survey of State Spending on Jails
- State Funding for Virginia's Jails
 - Capital Projects
 - Operating Expenses
- Questions for Consideration

Historical Context

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- Virginia has a long history of state support for jails
- State aid for constitutional officers, including Sheriffs, who provide law enforcement and court security as well as the operation of jails, dates to colonial times
- The first “per diem” was approved in 1613: five pounds of tobacco for the daily confinement of prisoners in jail
- The first act dealing with the construction of jails was passed by the House of Burgesses in 1642

Virginia's System Is Unique

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- The 1937 Report of the Legislative Jail Commission:
 - *“The Virginia system is the most peculiar one in the nation. The grounds and buildings are owned by the counties and cities, the jails are operated by the sheriffs and city sergeants, authority is divided between these officials and the county supervisors or town councils and the circuit or corporation courts, and the state pays the cost of keeping the prisoners”*
- The Commonwealth, while paying the bills, had no actual authority over the jails other than the power of inspection vested in the Board of Public Welfare
 - In certain respects, this situation persists today

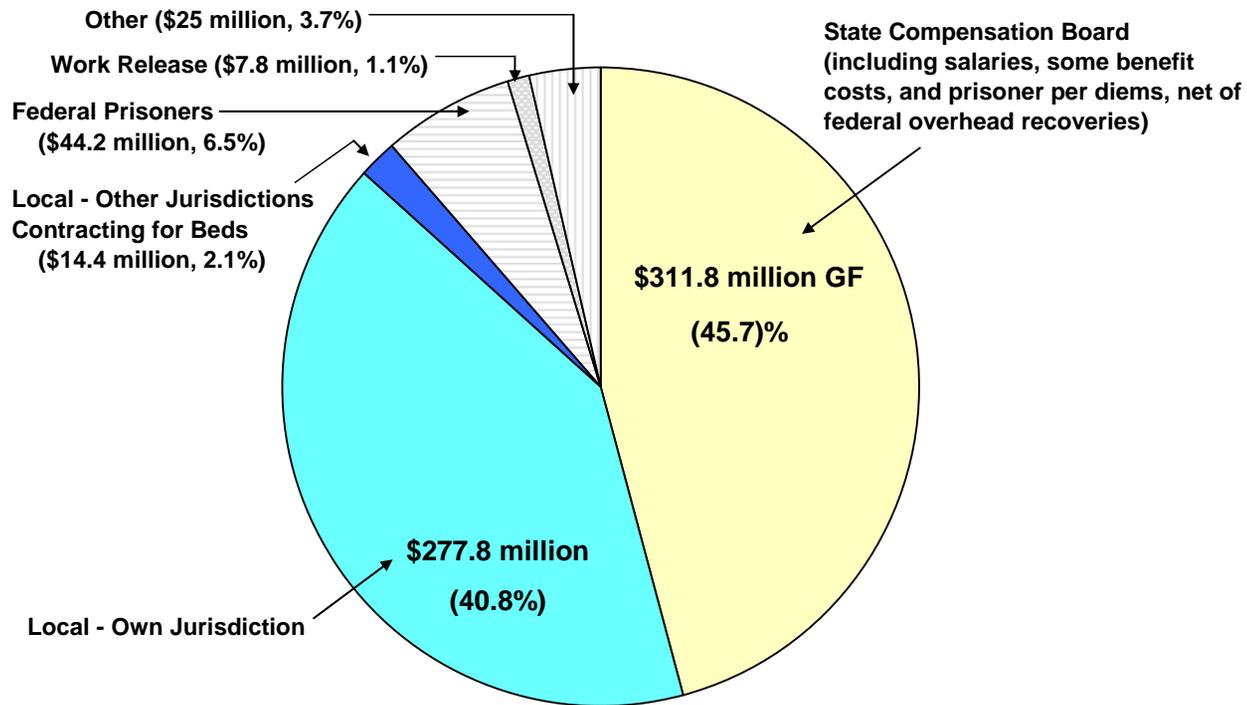
Current System Dates to 1942

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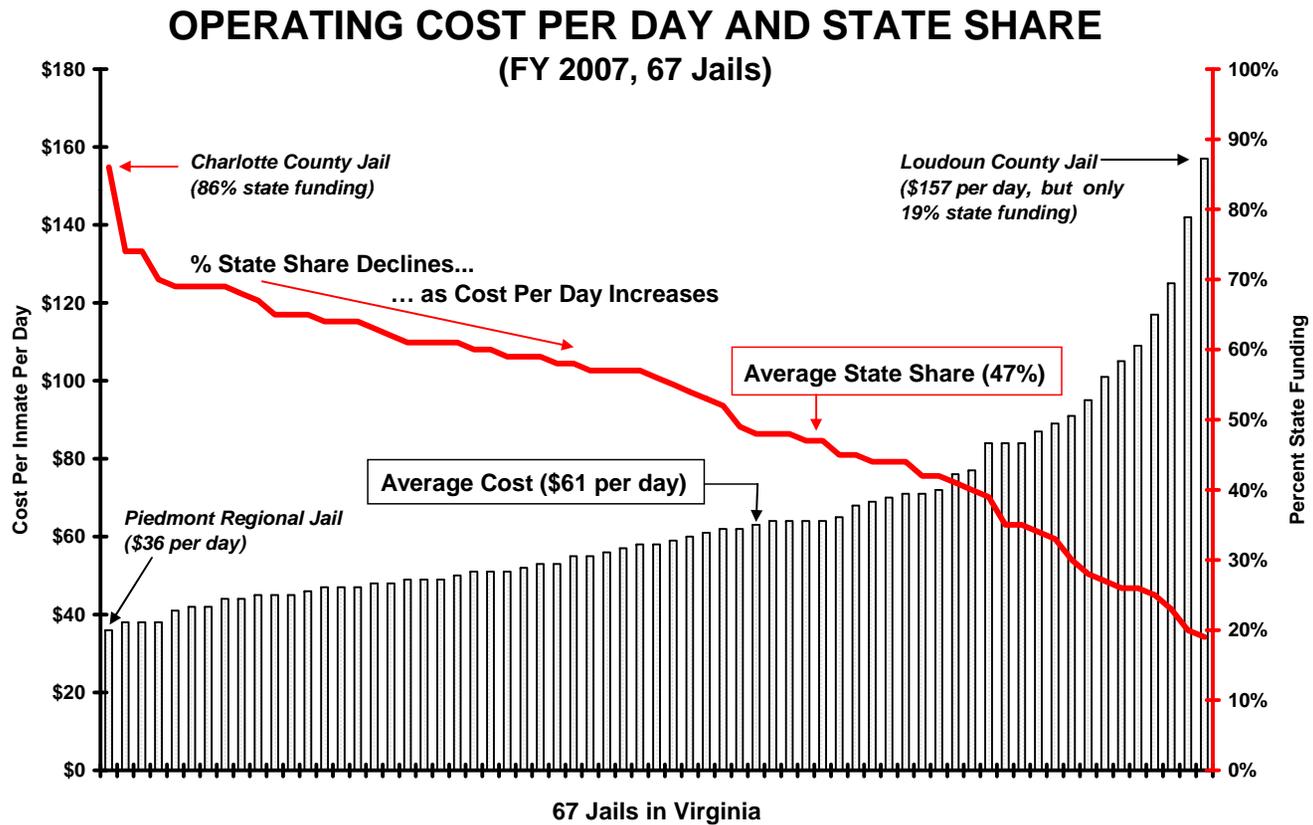
- Six studies in the 1930's expressed concerns over rapid growth in prison and jail populations from 1918 – 1938, and all six made similar recommendations. No action was taken until 1942, when the General Assembly set the framework for today's system:
 - Department and Board of Corrections (1942, 1948, 1974)
 - State probation system and separate Parole Board
 - Board of Corrections (BOC) to fix standards for jails
 - Fee system abolished
 - Salary ranges for County Sheriffs (and City Sergeants), with 2/3 state funding and 1/3 local funding; and, state funding centralized under the Compensation Board (created in 1934). *The state now pays 100% of approved salaries.*

Who Pays the Operating Costs?

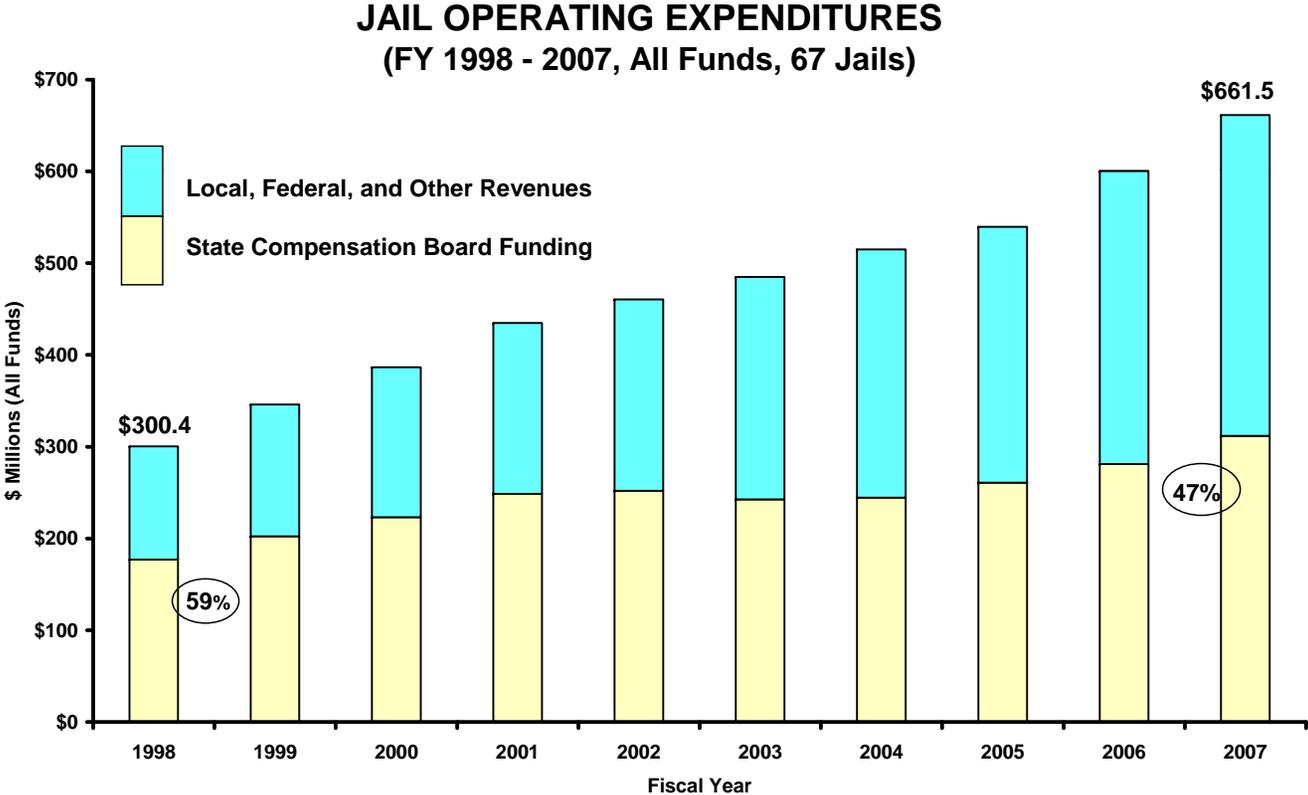
JAIL OPERATING REVENUES TOTALED \$681 MILLION (In FY 2007, From All Funds, For All 67 Jails)



The State Share Varies By Jail



The State Share Has Declined Since 1998



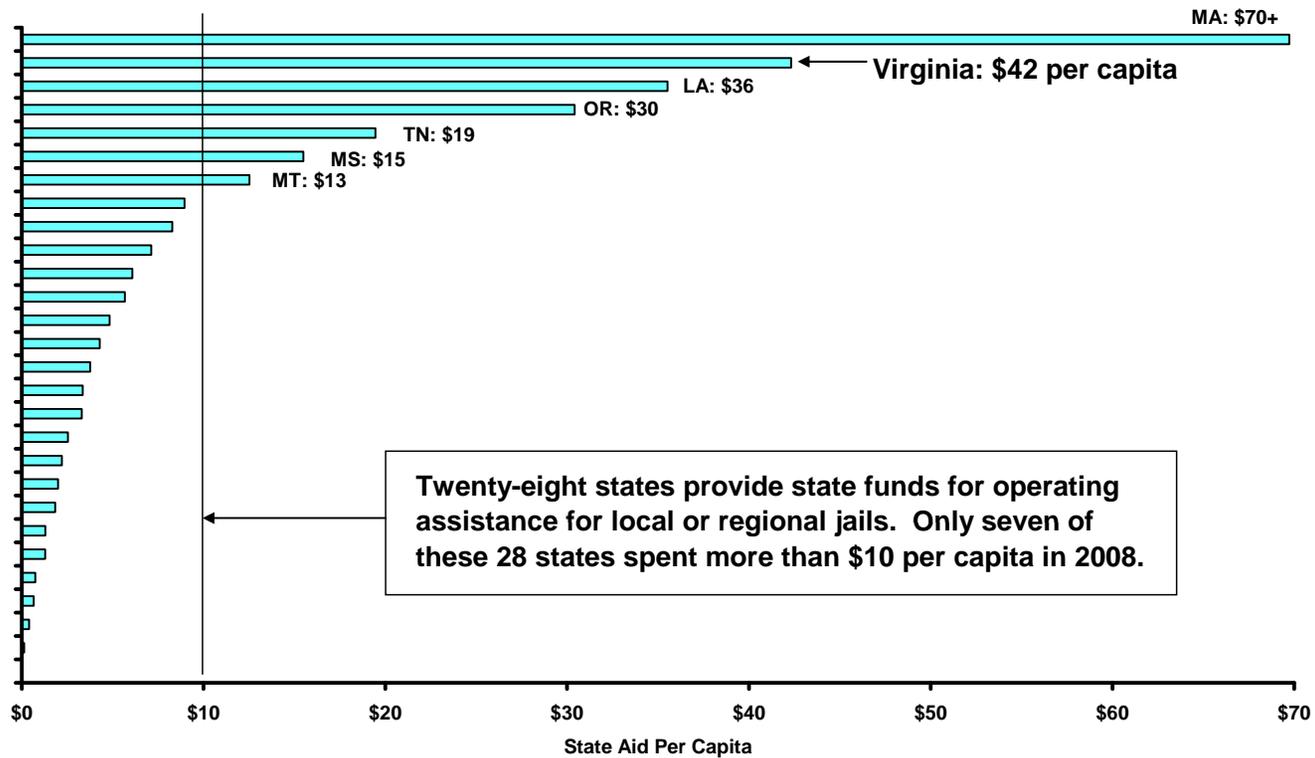
Summary of Jail Operating Subsidies

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- The Commonwealth provided over 45 percent of the operating revenues of local and regional jails in FY 2007, while localities contributed over 40 percent
- The state share of operating expenses declined from 59 to 47 percent from FY 1998 to 2007
- Generally, the state share is lower, on a percentage basis, in Northern Virginia, where localities pay salary supplements to attract and retain employees, and higher in rural areas, where there typically are no salary supplements

Per Capita Expenditures For Jails

STATE OPERATING ASSISTANCE FOR JAILS
(FY 2008, State General Funds Per Capita)



Virginia Compared To Other States

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- Virginia spent \$42 per capita on jail operations in FY 2008, second only to Massachusetts (\$70+).
- Only 28 states provided any state assistance for jail operations, and only seven of those provided more than \$10 per capita.
- Virginia is only one of seven states which provides state funds for construction, enlargement or renovation of jails.
- Virginia is one of only six states which publishes an annual report on jail operating costs.

Oversight

- Jails are not operated as a system in Virginia, but are a collection of independent, locally- and regionally-operated facilities, under the management of locally-elected Sheriffs and appointed regional authorities.
- Within the executive branch of state government, the responsibility for funding and oversight of jails is split between the Compensation Board and the Department and Board of Corrections (DOC and BOC).

Funding for Local and Regional Jail Capital Projects and Operating Costs

History of Jail Construction Funding

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- 1968: State reimbursement begins
- 1970: Additional funding for regional jail projects
- 1981: Funding linked to facility size
- 1989: Up to 50% of regional project costs
 - Local projects still subject to caps based on facility size
- 1993: Up to 25% for local and up to 50% for regional
- 1996: Moratorium on jail projects (requiring legislative approval in budget language prior to BOC review)
 - BOC previously approved projects without legislative approval
 - The General Assembly still does not approve project costs; therefore, there is no effective legislative cost review prior to a project moving forward to construction

Jail Construction Project Costs

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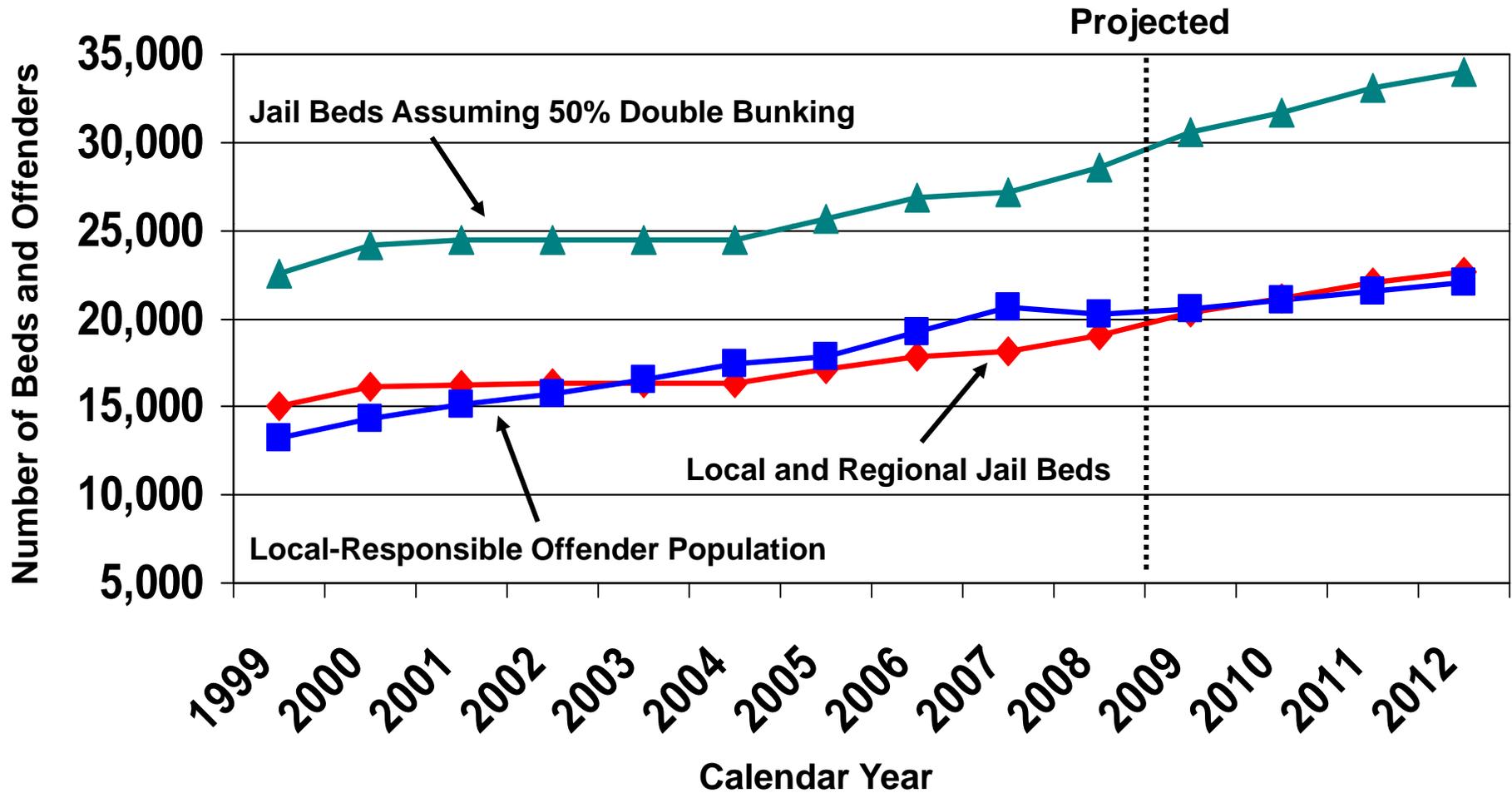
- Since the reimbursement changes enacted by the General Assembly in 1993, the costs of jail construction, expansion, and renovation projects have totaled \$1.0 billion (including state and local funds, but excluding federal funds)
 - Includes 48 jail projects opened from 1993 through October 2009
 - These projects increased jail bed capacity by 9,994 beds (108.5 percent)
 - BOC “rated capacity” does not include double-bunking
- The Commonwealth’s share of the capital costs for these 48 projects totaled \$469.1 million
 - State share equaled 45.6 percent of total construction costs

Additional Capacity Approved

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- The General Assembly has also approved exemptions for 19 other projects which have not yet opened
- Eight of these projects have been approved by BOC
 - These include 2,548 beds and estimated costs of \$325.7 million
 - The state share could be \$151.5 million (46.5 percent)
- Eleven other projects have not yet been approved by BOC
 - While estimates do not exist for all of these projects, the estimates for five of these projects include an additional 2,268 beds and estimated costs of \$395.8 million
 - The state share for these five projects could be \$149.4 million (37.7 percent)

Impact of Jail Construction on Total Bed Capacity



Federal Government Has Also Built Local and Regional Jail Bed Capacity

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- In addition to state and local funding, the federal government has paid for the construction of 580 beds in four facilities to house federal prisoners
 - Alexandria City Jail, Central Virginia Regional Jail, Northern Neck Regional Jail, and Western Tidewater Regional Jail
- These beds may potentially be used to house other prisoners, but federal prisoners have priority use
- If Virginia employed a similar policy for those local and regional jail beds built since 1993 with state funding, the Commonwealth would have priority use of 5,277 beds
 - These beds would equal the capacity of five additional medium security prisons (1,024 beds per facility)

Local and Regional Jail Operational Funding

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- 1970: General Assembly authorizes regional jails to reduce operating costs by replacing small, inefficient local jails
 - Between 1988 and 2007, the number of local jails dropped from 90 to 45, while the number of regional jails increased from six to 19
- 1983: General Assembly revises per diem payments
 - Transfers responsibility for payments from DOC to Compensation Board
 - Compensation Board to provide jail per diems using a defined procedure for calculating those payments
- 1988: General Assembly adopts staffing standards for jail deputies and regional jail correctional officers
 - Prior to the creation of these staffing standards, positions were not always related to inmate population or facility requirements

Current Funding Policies

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- Reimbursement to localities for operating expenses of local and regional jails is based on several factors, including:
 - The number of positions employed by local and regional jails:
 - Positions are allocated by the Compensation Board based on the lesser of one correctional officer per three offenders or the staffing level recommended by DOC
 - New positions are normally allocated only when new facilities are constructed or existing facilities are expanded
 - The Compensation Board pays 100 percent of the salaries for “recognized” local jail deputies and regional jail correctional officers
 - By Code, jail deputy and regional correctional officer salaries can be no less than DOC correctional officer salaries
 - Localities are responsible for 100 percent of any salary supplements for recognized positions or additional positions beyond those recognized by the Compensation Board

Payment of Per Diems

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- In addition to salaries, and office and vehicle allowances, per diems are provided for the care and feeding of prisoners
- Per diem payments are determined by the types of prisoners held by each local and regional jail
 - Local-responsible - sentenced to 12 months or less
 - State-responsible - sentenced to one year or more
- Per diems for local-responsible offenders = \$8 per day
 - Payment made for all local-responsible prisoners and those state-responsible prisoners held for up to 90 days
- Per diems for state-responsible offenders = \$14 per day
 - Paid for those state-responsible prisoners considered “out-of-compliance,” usually meaning they have been held more than 90 days

State Provides Significant Funding But Has Little Control

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- The Commonwealth provides significant financial support for local and regional jails, including:
 - Reimbursements for the capital costs of jail construction
 - Average of 46 percent paid by state
 - Funding for 100 percent of state salaries (for recognized positions) and per diem payments for local and state-responsible prisoners
 - These state funds represents 45.7 percent of all operating costs – greater than any other source of operating support
 - Localities provide 40.8 percent of the total for local supplements and positions, while federal prisoner per diems provide 6.5 percent
- Despite this sizable financial commitment, the Commonwealth does not have substantial input into the management and use of local or regional jails

Little Coordination Between Local and Regional Jails and Prisons

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- No mechanism exists to move state-responsible offenders between jail facilities to better utilize empty beds
 - Compensation Board reported in March that 11 jails had 530 vacancies
- No mechanism exists to move state-responsible offenders out of prison and into vacant beds or into new local or regional jail beds without additional payments above state out-of-compliance rate
 - Jail Contract Bed Program
 - Allows for use of up to 500 local and regional jail beds for state inmates
 - Participating facilities receive \$14 per day “out-of-compliance” state inmate payment plus an additional \$14 per day for JCB participation
 - As of July 1, 2008, use of 440 local beds cost an additional \$2.2 million
- Typically, the coordination that exists involves removal of state offenders from jails into DOC facilities
 - The number of out-of-compliance state inmates is reviewed monthly by Secretary of Public Safety, DOC, and Compensation Board
 - Purpose is to move state inmates into prison based on local and regional jail populations or complaints from sheriffs and regional jail superintendents

Out-of-Compliance Inmates and Federal Prisoners

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- Often the presence of out-of-compliance state-responsible prisoners leads to complaints about overcrowding in jail facilities
 - Most notably, the Commonwealth was sued by a sheriff in 2008
- No complaints ever seem to be raised about federal prisoners in jails
 - Although federal per diem rates vary, the federal government generally pays a higher per diem for its prisoners than Virginia does for state-responsible prisoners
- Based on Compensation Board analysis, local and regional jails were housing 2,482 out-of-compliance state-responsible and 1,888 federal prisoners in March 2009
 - As late as October 31, 2008, there were more federal prisoners in Virginia's local and regional jails than out-of-compliance state-responsible prisoners
 - Federal inmates occupy beds that could be used for local and state-responsible offenders

Questions for Consideration

Project Review

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- Should review and approval of jail capital projects by BOC be completed prior to consideration by the General Assembly?
 - Currently, “exemptions” to the moratorium (in budget language) are approved to allow planning for projects and the review of those plans by BOC
 - The “exemption” is approved prior to the development of project costs
 - Projects must meet BOC standards
- Should jail construction projects be included in the capital outlay process developed during the 2008 Session?
 - Should these projects be reviewed by the Capital Outlay Subcommittees?
- Should authorization for jail projects be time-limited?
 - Some projects for which exemptions were previously provided did not move forward for years – and costs increased substantially as a result

How Should the Process Work?

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- Is a “moratorium” the best way to define this process?
 - Debt capacity is limited for the next several years
 - Should the General Assembly simply approve jail projects as part of the normal competition for limited capital outlay dollars?
- Should there be a policy regarding housing federal prisoners?
 - Federal prisoners limit bed capacity for both local-responsible and state-responsible prisoners
- Should reimbursements for all jail construction projects be provided at local jail rate (25 percent)?
 - Only a few counties are not part of regional jail authorities
 - Incentives for additional regional jails may no longer be needed

Community Corrections and Mental Health

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- What kinds of facilities will be needed in the future?
 - Should jails be encouraged to develop minimum-security, work release, pre-release or return-to-custody facilities, or treatment facilities, as opposed to maximum-security facilities?
- Should approval of jail projects be conditioned on the maximum use of community corrections and pre-trial release programs, consistent with best practices?
- Should approval of jail projects be conditioned on plans developed jointly with CSB's to divert the mentally ill to alternative facilities or programs, where appropriate?
 - Are fiscal incentives needed to accomplish this?

Funding for Jail Operations

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- Should jails hold state-responsible prisoners given the significant funding provided for construction and operation?
- Should DOC Director transfer prisoners from one jail to another based on jail capacity and available resources?
 - The Code merely authorizes the director to perform this function
- Do current budgeting procedures for reimbursing localities for jail operating costs represent the best possible approach?
 - Example: Localities receive the \$14 per day out-of-compliance fee and an additional \$14 per day for each state-responsible prisoner held through participation in the Jail Contract Bed (JCB) program
 - If the locality has agreed to take the prisoner, why is that prisoner considered out-of-compliance? That distinction could reduce the cost of the JCB program by \$6 per day

Conclusions

- Virginia's state support for jails dates to the colonial era; the current framework dates to 1942
- Major improvements have been made in Virginia's jail facilities and staffing over the past two decades
- Virginia is now entering a period in which resources for expansion and improvements will be limited
- Development of policies for construction and operations of jails can improve decision-making and reduce future costs increases in Virginia's state support for jails
- What different kinds of jail facilities or programs will be needed in the future? The answers will suggest the types of fiscal incentives that will be required

State Expenditures for Jail Operations (FY 1998 - 2007)

Fiscal Year	Salaries	Per Diems	Office and Vehicles	Other	TOTAL
1998	\$119.9	\$50.1	\$3.6	\$0.5	\$174.1
1999	\$145.1	\$51.2	\$4.1	\$0.5	\$200.9
2000	\$162.6	\$53.8	\$3.9	\$2.2	\$222.6
2001	\$179.0	\$62.8	\$4.0	\$1.0	\$246.7
2002	\$178.4	\$68.3	\$3.2	\$0.4	\$250.2
2003	\$179.1	\$59.3	\$1.7	\$0.4	\$240.5
2004	\$182.6	\$56.7	\$2.9	\$0.9	\$243.1
2005	\$188.3	\$67.8	\$2.8	\$1.1	\$260.0
2006	\$205.3	\$69.7	\$4.7	\$0.6	\$280.3
2007	\$225.7	\$83.3	\$1.8	\$0.3	\$311.1

Note: Dollars in millions