

Adult Corrections

**Senate Finance Committee
November 19-20, 2009**

Introduction

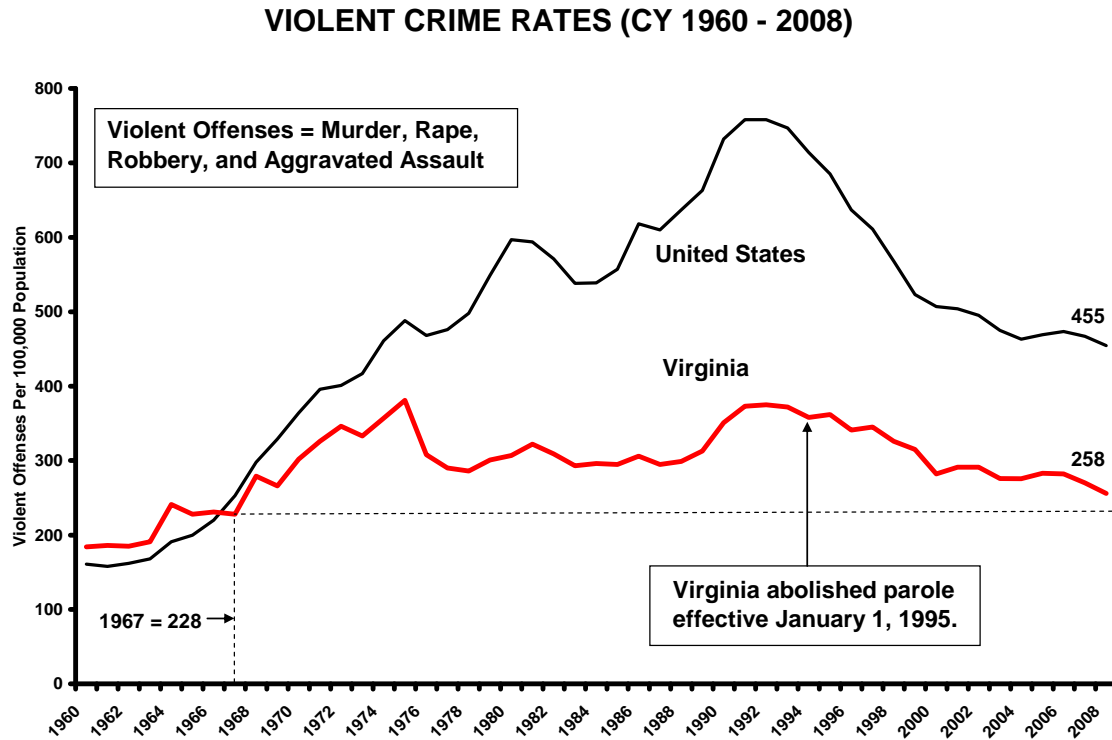
- Virginia is out of the business of authorizing construction of more prisons or jails, at least temporarily.
- Current trends could change, but for the time being a drop in the number of offenders is occurring at the same time the Department of Corrections (DOC) has had to cut spending by over \$50 million below the FY 2008 level.
 - Over the past year, DOC has closed eight facilities (2,560 beds), and has sharply reduced community corrections and treatment programs.
 - However, a drop in the local-responsible population in Virginia's jails has created space to hold the growing backlog of state prisoners.
- Given the current fiscal outlook, the 2010 General Assembly will have to decide whether DOC can absorb any further reductions.
- Even with no additional reductions, the Commonwealth will have to balance the use of the remaining prison beds with the availability of jail space, and consider the impact of these decisions on localities, within available resources.

Where Does Virginia Stand in Corrections?

- Felony sentencing guidelines, authorized by the General Assembly in 1994 and effective January 1, 1995, provide the framework for determining which offenders go to prison (and for how long) and which receive alternative sanctions.
- Since 1995, the proportion of violent offenders (as defined in statute) in state correctional facilities has increased from about 70 to 80 percent.
- On the eve of parole abolition (December 31, 1994), Virginia ranked 10th highest in the rate of incarceration. By 2006, Virginia's rank had dropped to 17th.
- In 2005 Virginia ranked just above the average on state corrections spending per capita (19th) and per inmate (24th).
- Virginia has expanded prison and jail capacity, adding 22,000 beds in state facilities since 1990 at a capital cost of \$1.1 billion, and adding over 22,000 jail beds since 1993 at a total state and local capital cost of over \$1.5 billion.
- Virginia has also expanded both state and local community corrections, to provide alternative sanctions for nonviolent, lower-risk offenders.
- Virginia ranks sixth lowest among the 40 states that measure recidivism according to the same definition, with a three-year return-to-prison rate of only 28 percent.

Virginia's Crime Rate Remains Low

- The last time that Virginia's violent crime rate was lower than the rate experienced in 2008 was in 1967.



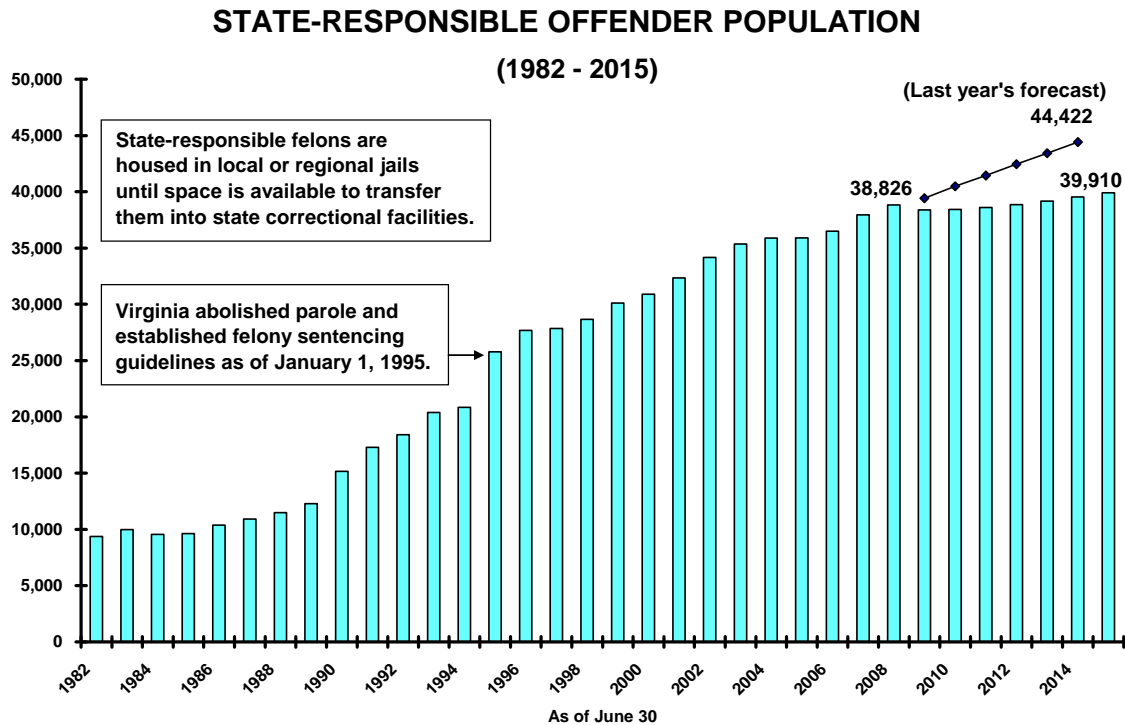
- Virginia consistently ranks among the low-crime states in offenses per 100,000 population -- 41st out of the 50 states for violent and 39th for property offenses in 2008.
- The property crime rate rose two percent from 2007 to 2008, primarily due to an increase in larceny (up three percent).
- The recession and rising unemployment do not appear to have affected the violent crime rate.

The Offender Forecasting Process

- The Secretary of Public Safety updates four offender forecasts each year, with a report in October:
 - 1) Adult state-responsible offenders with sentences of one year or more;
 - 2) Adult local-responsible offenders with sentences of twelve months or less;
 - 3) Juvenile state-responsible offenders sentenced to state juvenile correctional centers, which are operated by the Department of Juvenile Justice; and,
 - 4) Juvenile local-responsible offenders held in local or regional juvenile detention facilities.
- The forecasting process includes a policy committee of stakeholders, which reviews alternative forecasts prepared by a technical committee of agency specialists.
- Two different kinds of mathematical models are used in developing the forecasts: time-series models, which look at changes in the data over time, and simulation models, which predict future admissions and releases (inputs and outputs) and the resulting system-wide populations.
- Ultimately, the selection of the most likely scenario reflects the best judgment of the policy committee, with input from the technical committee.

State-Responsible Offender Forecast

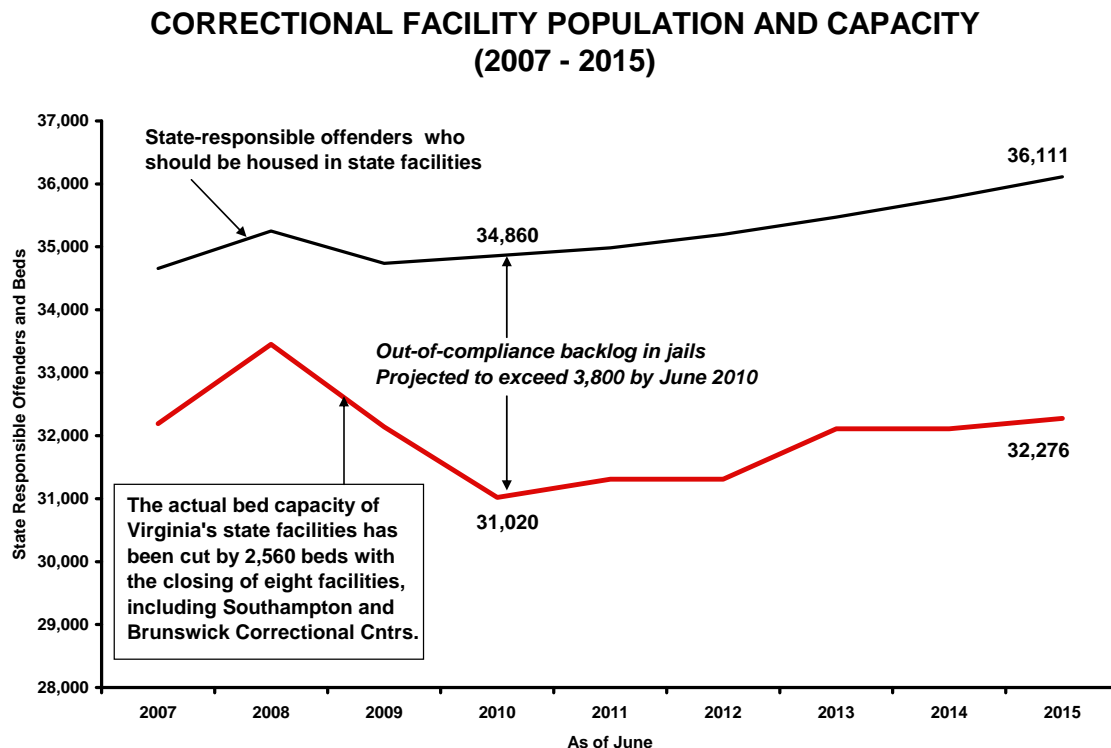
- The most recent forecast projects significantly slower growth in the adult state-responsible offender population:



- The actual population declined by one percent from 2008 to 2009 – the first decline since 1984.
- The most recent forecast projects 39,910 offenders by 2015, an increase of only 1,084 offenders (2.8 percent) over the actual number in 2008 (38,826).
 - In contrast, last year's forecast projected 44,422 offenders by 2014.

Forecast Compared to Facility Capacity

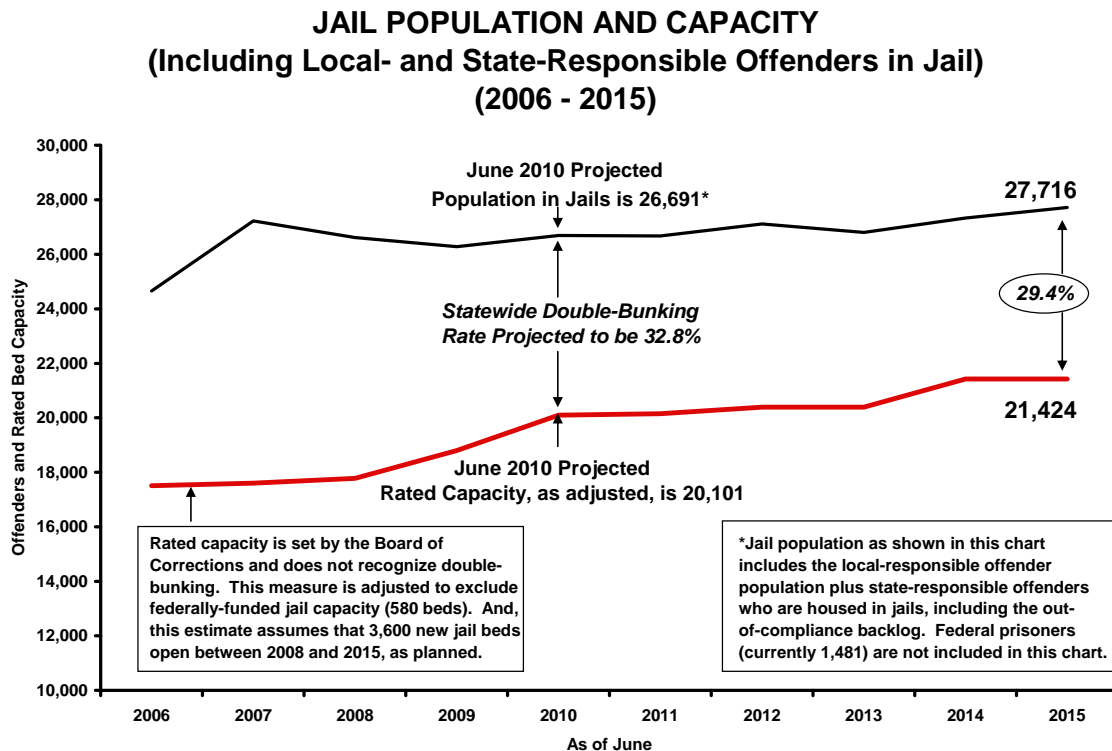
- With slower projected growth, the gap between the capacity of state correctional facilities and the number of state-responsible offenders to be housed in those facilities appears to be stable -- at just under 4,000 beds -- through 2015.



- When space in state facilities is not available, sentenced felons remain in local or regional jails longer before being transferred to DOC.
- The “out-of-compliance” backlog is the number of state-responsible offenders still in jail, beyond the statutory limit of 60 days following receipt by DOC of the full and complete sentencing order from the court.

Local-Responsible Offender Forecast

- The local-responsible population has fallen for two years in a row (from 20,622 in 2007 to 19,671 this year), which results in another reduction in the six-year forecast.



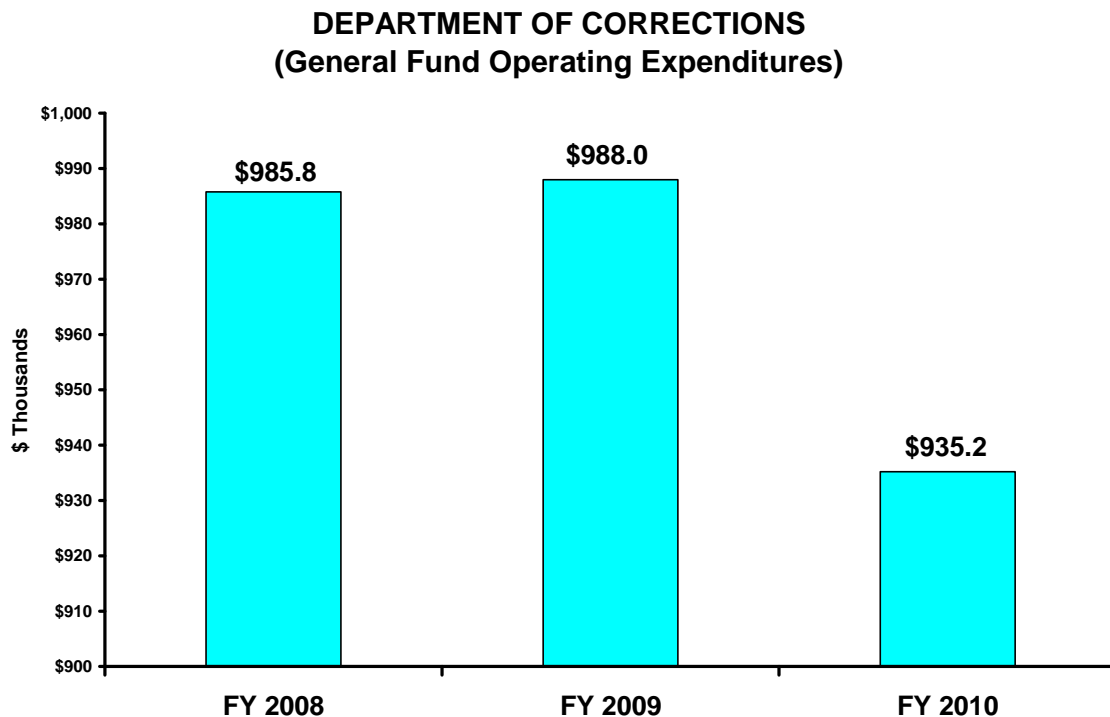
- Most of the jails built over the past 20 years were designed to accommodate double-bunking.
- Even with the increase in the “out-of-compliance” backlog, double-bunking is expected to decline from the peak of 55 percent in 2007 to just under 30 percent in 2015.
- This suggests there is still some level of available capacity in the jails, at least temporarily, assuming double-bunking.

Budget Implications of Lower Forecasts

- **Forecasts will change.** There are no guarantees that the current lower rates of crime will continue. Judgments must be made as to how best to prepare for the future.
- Given the most recent forecast, even with closing 2,560 beds, DOC should not have to add any more beds during the 2010-12 biennium. However, this assumes:
 - The remaining facilities continue to operate with 872 temporary emergency beds; and,
 - An “out-of-compliance” backlog of up to 4,000 state-responsible offenders in jail is acceptable.
- Unless the forecast changes, the new beds already built, but held vacant due to lack of funds, should be sufficient to meet Virginia’s needs for the next several years:
 - Phase II at St. Brides in the City of Chesapeake (800 beds, already completed); and,
 - The new facility in Grayson County (1,038 beds which will be completed in the spring of 2010).
- The PPEA agreement with Geo Corporation to build a private prison in Charlotte County has not been finalized.
- The 2010 General Assembly will have to consider how best to balance the needs for bed space with the impact of vacant facilities on localities and regions of the state.

Outlook for DOC 2010-12 Biennial Budget

- The DOC operating budget for FY 2010 is \$50.6 million (5.1 percent) less than actual expenditures two years earlier.



- If the budget stays at the same level as in 2010, DOC may have to absorb an additional \$20.0 million in further reductions in each year of the next biennium, just to make up for one-time reductions and revenue losses:
 - A one-time reduction of \$9 million in FY 2010 virtually eliminates the equipment budget. DOC cannot continue to operate facilities without replacing equipment;
 - Transfers from the Correctional Enterprise Fund in FY 2010 may not be available in FY 2011; and,

Impact of Additional Budget Reductions

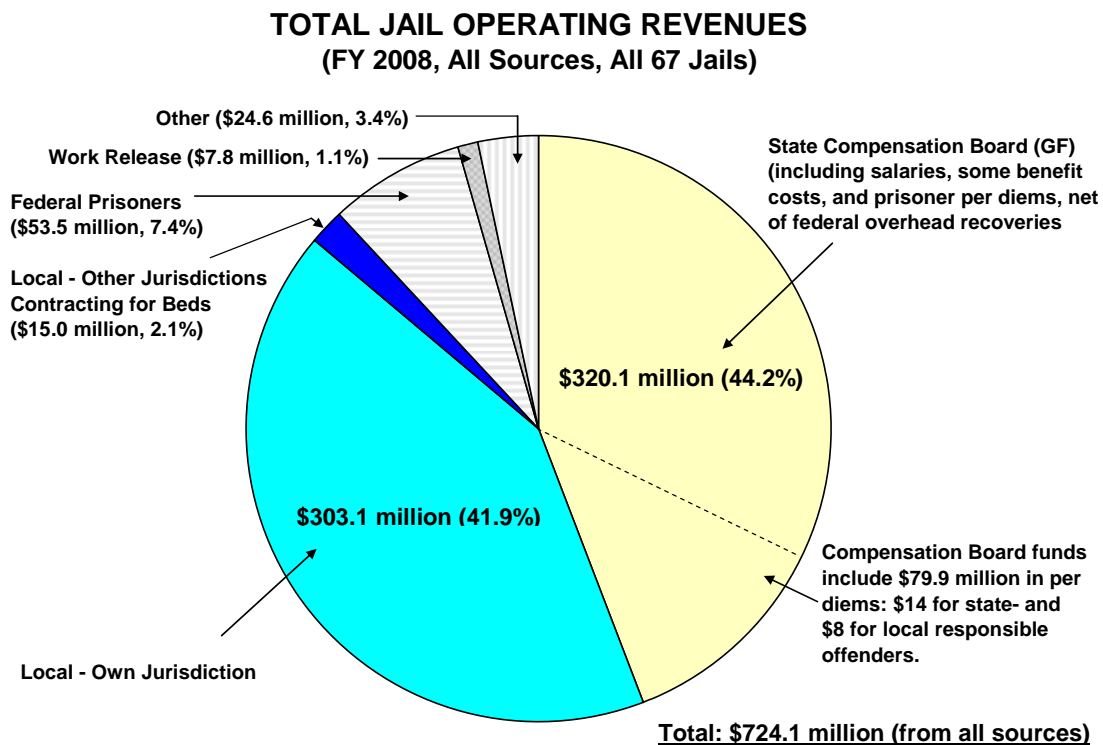
- The loss of out-of-state prisoners from Wyoming results in a revenue loss of \$7.2 million for FY 2011 which will have to be made up with additional cuts (unless there are additional contract prisoners).
- DOC cannot absorb additional budget cuts, and absorb the projected increases in the cost of inmate medical care, and continue to operate the current number of facilities.
 - State facilities now average 63 percent double-bunking compared to 33 percent for jails statewide in 2010;
 - Increased crowding in state facilities is not feasible, assuming the stress associated with continued use of 872 temporary emergency beds and the effective limits of water supply and sewage treatment plants; and,
 - Layoffs in the district probation offices (given the reductions already made in community corrections) would seriously diminish DOC's ability to supervise the probation and parole caseload.
- The 2009 General Assembly considered but did not approve a proposed early release program.
- Most likely, another round of budget reductions would result in more facility closings, which would mean even greater use of jails to hold state-responsible offenders.
 - Which additional facilities should be closed?

Balancing Prison and Jail Capacity

- Closing additional state facilities increases jail population statewide, which some, but not all of the jails are able to accommodate, up to a point.
- Assuming the closures so far, the out-of-compliance backlog approaches 4,000 by June 2010, but the statewide rate of jail double-bunking declines to under 30 percent by 2015.
- Closing additional facilities by June 2010, just to cover an expected \$20 million base budget shortfall in FY 2011, would likely result in closing about 1,000 more beds.
- More felons with sentences of two or more years would be held in jails, as the remaining state facilities would hold a higher proportion of longer-term offenders. As a result:
 - The out-of-compliance backlog nears 5,000; and,
 - The statewide jail double-bunking rate increases from about 33 to 38 percent through the next biennium, which is still lower than the 2007 peak of 55 percent.
- If this choice is made, it may be appropriate to consider adjusting the statutory definition of “state-responsible” offenders, to reflect, for example, felony sentences of 24 months or more.
 - However, unless the current “per diems” (\$8 and \$14) are adjusted, there will be a cost shift to localities.

Statewide Jail Operating Revenues

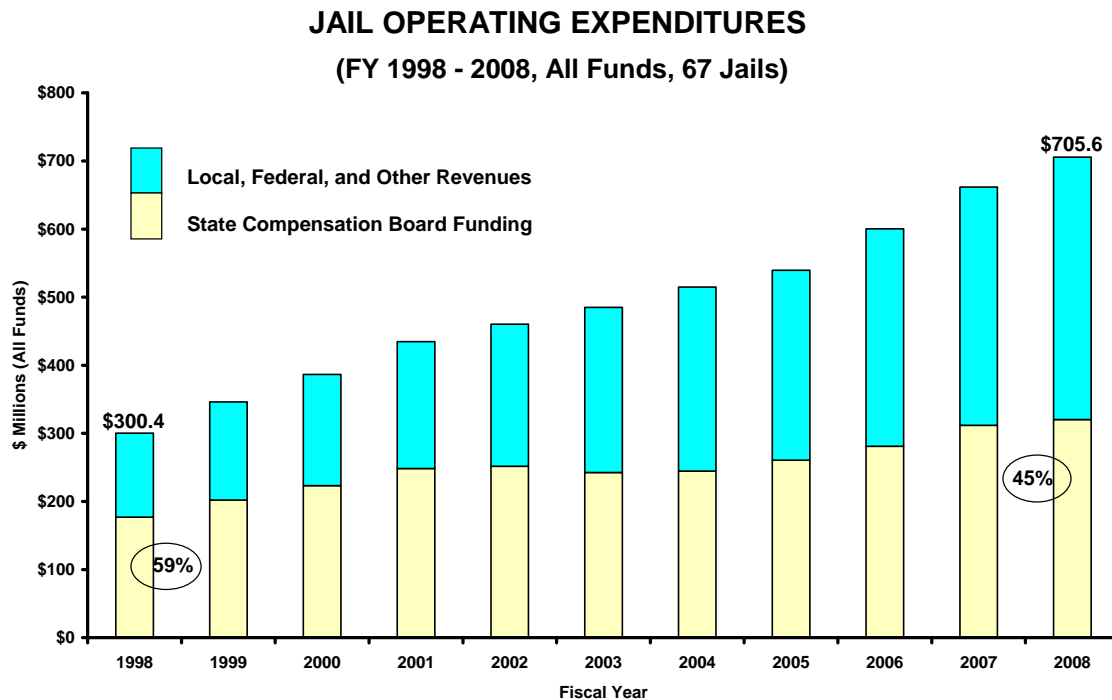
- Operating revenues for all 67 jails in Virginia totaled \$724.1 million (from all funds) in FY 2008:



- Of the total revenues, the Compensation Board paid \$320.1 million, representing 44.2 percent of total revenues (or 45 percent of total operating costs).
- Total revenues exceeded total operating expenses of \$705.6 million by \$18.5 million (2.6 percent).
- Virginia ranks second highest in the nation in per capita state expenditures for local and regional jail operations.

The State Share Has Dropped

- From 1998 to 2008, state funding for jail operations grew from \$177 to \$320 million, but the percentage paid by the Commonwealth dropped from 59 to 45 percent:



- The FY 2010 budget includes \$23 million in federal stimulus (Byrne Justice Assistance Grant) funds for one time only, to support sheriffs and jail operations.
- The average cost per bed per year in jails (\$22,940) is higher than DOC's medium security dormitory (MSD) facilities.
- Is it more or less expensive to close state facilities and make greater use of jails to house state prisoners?

Policy Implications for Corrections

- Revenue shortfalls are forcing state and local governments to reduce prison and jail capacity.
- So far, the choice has been made to close state facilities and maintain funding for jail capacity. This was sustainable in FY 2010 only by using federal stimulus funds.
- For the short term, with excess capacity in jails, the marginal cost of holding more state-responsible felons in jail is low.
- Long term savings could be realized by closing older, higher-cost facilities and moving inmates into newer, more efficient facilities which have already been built.
- No additional jail capital projects have to be approved for the time being. Statewide jail capacity appears to be sufficient, and the Commonwealth has limited additional debt capacity.
- This may be an appropriate time for the Board of Corrections to redefine rated capacity to include double-bunking.
- It may be appropriate to encourage DOC to take active steps to move state-responsible prisoners from jails with more crowding to jails with less crowding.
- At this point, it may also be appropriate to consider long-term savings which might be realized by expanding alternative sanctions for lower-risk, non-violent offenders.

Alternatives for Non-Violent Offenders

- The 2009 General Assembly directed the Secretary of Public Safety to form a task force to consider ways to expand alternatives for non-violent offenders. The task force, which included judges, commonwealth's attorneys, police chiefs, sheriffs, and others, met four times this year.
- Consensus was not reached in every area, but the task force preliminary recommendations included:
 - Codifying probation violation sentencing guidelines;
 - Providing authority for DOC to use short jail stays as an intermediate sanction for probation violators;
 - Focusing available resources up-front on higher risk probationers, while reducing the length of time on supervised probation for most offenders;
 - Expanding drug courts that target moderate to higher risk offenders rather than first-time drug offenders;
 - Expanding electronic incarceration and negotiating a statewide contract for purchase of the equipment;
 - Expanding use of detention and diversion centers; and,
 - Restoring funds for treatment and day reporting centers.
- It may be appropriate to continue the task force next year.

Local-Responsible Community Corrections

- Local community corrections and pre-trial release programs offer an effective means for relieving population pressure on jails at relatively low cost.
- As authorized by the 1994 Special Session of the General Assembly, these programs are directed by locally-appointed community corrections boards made up of representatives of the various parts of the criminal justice system.
- The 37 community-based probation agencies divert the lowest-risk offenders, mainly misdemeanants, from jail, both pre- and post-trial.
- In FY 2009, average caseloads included over 21,000 for community corrections and over 4,500 for pre-trial release.
- State funding increased from \$21.9 million in FY 2009 to \$23.4 million in 2010.
 - The additional \$1.5 million was added to hire 24 new local probation officers (each with a caseload of 125).
 - The additional positions are expected to increase the capacity statewide to divert up to 3,000 lower-risk offenders through existing programs.
- It may be appropriate to consider further expansion to free-up space in jail for more state-responsible offenders.

Update on Mentally Ill Offenders in Jail

- In previous retreats, members of the Senate have expressed concerns regarding the large numbers of offenders with mental illness held in jail.
- The 2008 General Assembly directed the Compensation Board to continue each year the survey of offenders in jail with mental illness. The update for July 2009 represents the third such survey.
- The new survey identified a total of 4,775 inmates with mental illness in 64 jails, representing 18.1 percent of the average daily population of 26,423 in July 2009.
 - Of these, 2,280 inmates had serious mental illness (schizophrenia, bipolar disorder, and major depression), representing 8.6 percent of the population.
- The 2008 General Assembly provided \$3.5 million each year for jail diversion and mental health services. With cutbacks, this has been reduced to \$3.2 million in FY 2009 and \$2.9 million in FY 2010.
 - Included within these amounts is \$270,000 each year for expansion of Crisis Intervention Teams (CIT).
- The ten jurisdictions or regions receiving these funds reported significantly shorter lengths of stay in jail for the mentally ill, and fewer days spent in isolation cells.

State Grants for Jail MH Diversion

- Ten grants for jail/mental health diversion programs have been awarded, representing 17 jails (and over one third of Virginia's total jail population).
 - Alexandria (Alexandria Detention Center);
 - Arlington County (Arlington Detention Center);
 - Chesterfield County (Chesterfield County Jail and the Riverside Regional Jail);
 - Fairfax County (Fairfax Co. Adult Detention Center);
 - Hampton/Newport News (Hampton City Jail and Jail Annex and the Newport News City Jail);
 - Middle Peninsula (Middle Peninsula and Northern Neck Regional Jails);
 - New River Valley (Montgomery County Jail and the New River and Western Virginia Regional Jails);
 - Portsmouth (Portsmouth City Jail and the Hampton Roads Regional Jail);
 - Rappahannock Area (Rappahannock Reg. Jail); and,
 - Virginia Beach (Virginia Beach Correctional Center).

Federal Grants for Jail MH Diversion

- Three federal grants totaling \$143,190 have been awarded for jail diversion programs for mentally ill offenders, through the Byrne Justice Assistance grant program. There are no state funds involved, but local matching funds total \$47,732.
 - 1) The City of Hopewell and Surrey and Prince George Counties, with the Riverside Regional Jail, Riverside Criminal Justice Agency, District 19 CSB, and local courts, will provide on-site mental health treatment services and medications to offenders in jail with co-occurring disorders (“frequent flyers”).
 - 2) The City of Lynchburg, with Blue Ridge Regional Jail, Lynchburg Community Corrections and Pretrial Services, Lynchburg CSB, the Lynchburg Community Jail Diversion Alliance, and local courts, has hired one person (a “boundary spanner”) to purchase targeted services for seriously mentally ill clients who can be diverted from the criminal justice system.
 - 3) Rockingham County and 27 other localities, their Community Criminal Justice Boards, CSBs, and 19 local and regional jails in Health Planning Region 1, along with Western State Hospital, have begun a study of the impact of persons with serious mental illness on local criminal justice systems with a focus on jails. The effort includes developing a single screening instrument and information management systems.

Conclusion

- Over the past 30 years Virginia has made significant progress in adult corrections:
 - Prison and jail capacity has expanded;
 - Felony sentencing guidelines have been successfully implemented; and,
 - State and local community corrections programs have expanded alternatives to incarceration for lower-risk, non-violent offenders.
- Continued low rates of violent crime and slower growth in the offender forecasts suggest Virginia is out of the business of authorizing construction of more prisons or jails, at least temporarily.
- For the time being, jails have sufficient space to absorb the inmates that the Commonwealth can no longer afford to house in state correctional facilities.
- Even if there are no additional reductions, the 2010 General Assembly will have to balance the use of the remaining prison beds with the availability of jail space, and consider the impact of these decisions on localities.