

**SENATE OF VIRGINIA**

# **Senate Finance Committee**

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## **Jails in Virginia: Where Do We Go From Here?**

**November 17, 2016**



# The Key Point

- Over the past generation, the General Assembly has provided a strong fiscal incentive to expand the physical capacity of jails, but jails have continued to house too many of the seriously mentally ill.
  - Jails are not designed and do not have adequate resources to provide care for the seriously mentally ill (i.e., schizophrenia/delusional disorder, bipolar disorder, major depression or PTSD).
  - Jails are holding more than 3,000 persons with serious mental illness, most of whom should either be in the mental health system or housed in state correctional facilities.
- The high number of the mentally ill in jails is symptomatic of a larger issue: inadequate capacity in Virginia's mental health system.
  - The Joint Subcommittee on Mental Health Services in the 21<sup>st</sup> Century is addressing this issue (SJR 47 of 2014).



# New Jails in the 21<sup>st</sup> Century



# Overview - Jails in Virginia

- There are 60 local and regional jails in Virginia (68 locations).
  - 37 jails (including one jail farm) -- operated by locally-elected Sheriffs.
  - 23 regional jails -- operated by appointed regional authorities.
- Jails are holding over 28,000 offenders, including state-responsible (SR), local-responsible (LR), and federal prisoners.
  - SR offenders are those with sentences of one year or more.
- Growing numbers of SR offenders are being held in jail for their entire sentence – due to the lack of sufficient bed space in state facilities.
  - Holding more state prisoners in jail has helped balance the state budget by enabling the Department of Corrections (DOC) to close older state facilities to address budget cuts, without having to build new facilities.
    - However, recidivism for SR prisoners held in jail for their entire sentence is one-third higher than for SR prisoners released from state facilities.

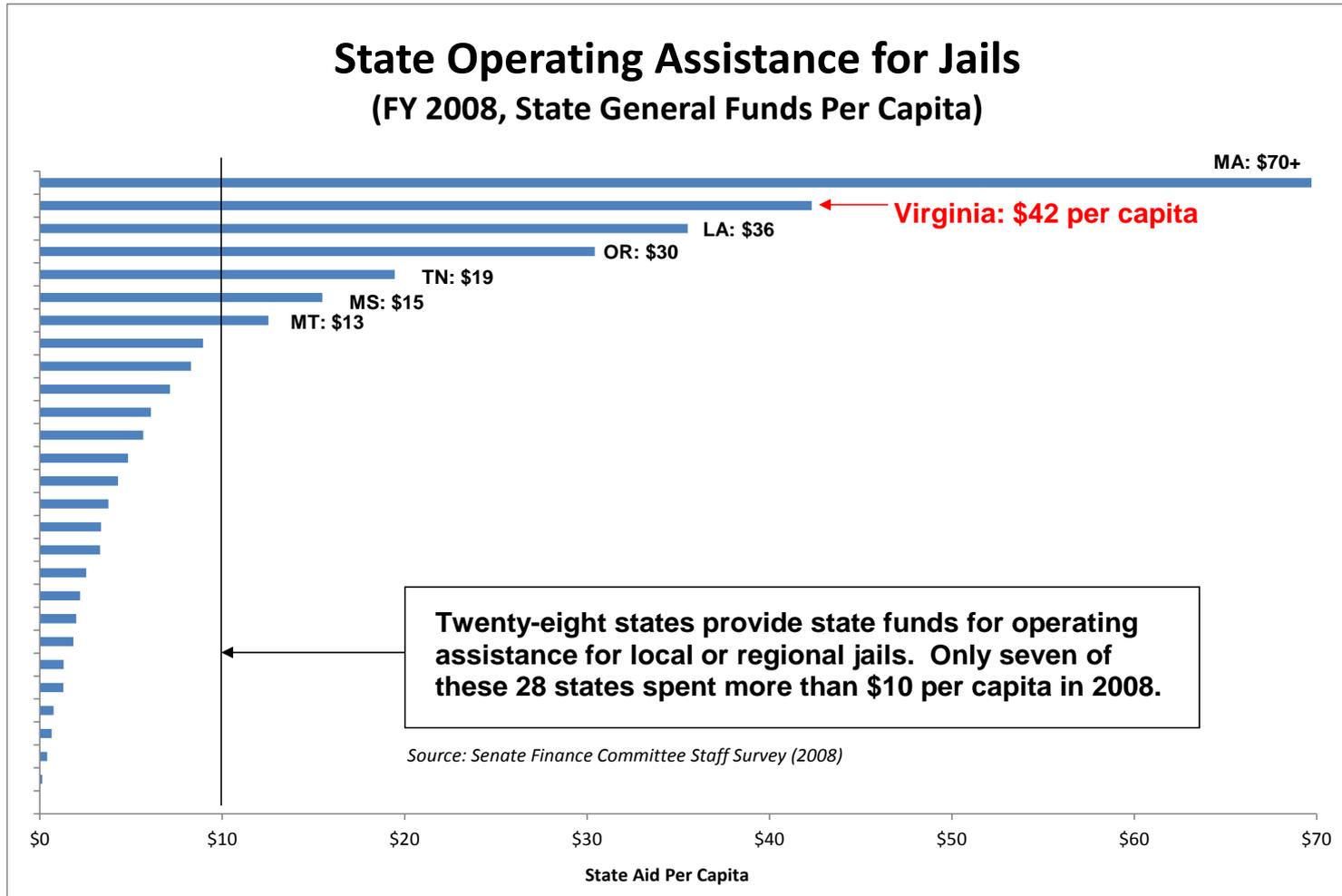


# Who Pays for Jails?

- The Commonwealth has made a commitment to share the capital costs of jails – this has been a powerful fiscal incentive.
  - Over \$1.6 billion total (state and local) since 1993.
- Virginia contributed more per capita in 2008 than any other state except Massachusetts to the operating costs of jails.
- On average, the Commonwealth reimbursed 39.6 percent of total jail operating costs in FY 2015 (including salaries and per diems).
  - Down from 58.8 percent in 1998 – a cost shift to localities.
- The marginal cost (to the state) for one additional state prisoner in jail is only \$12 (the SR per diem).
  - However, with higher recidivism, long-term costs will also be higher.

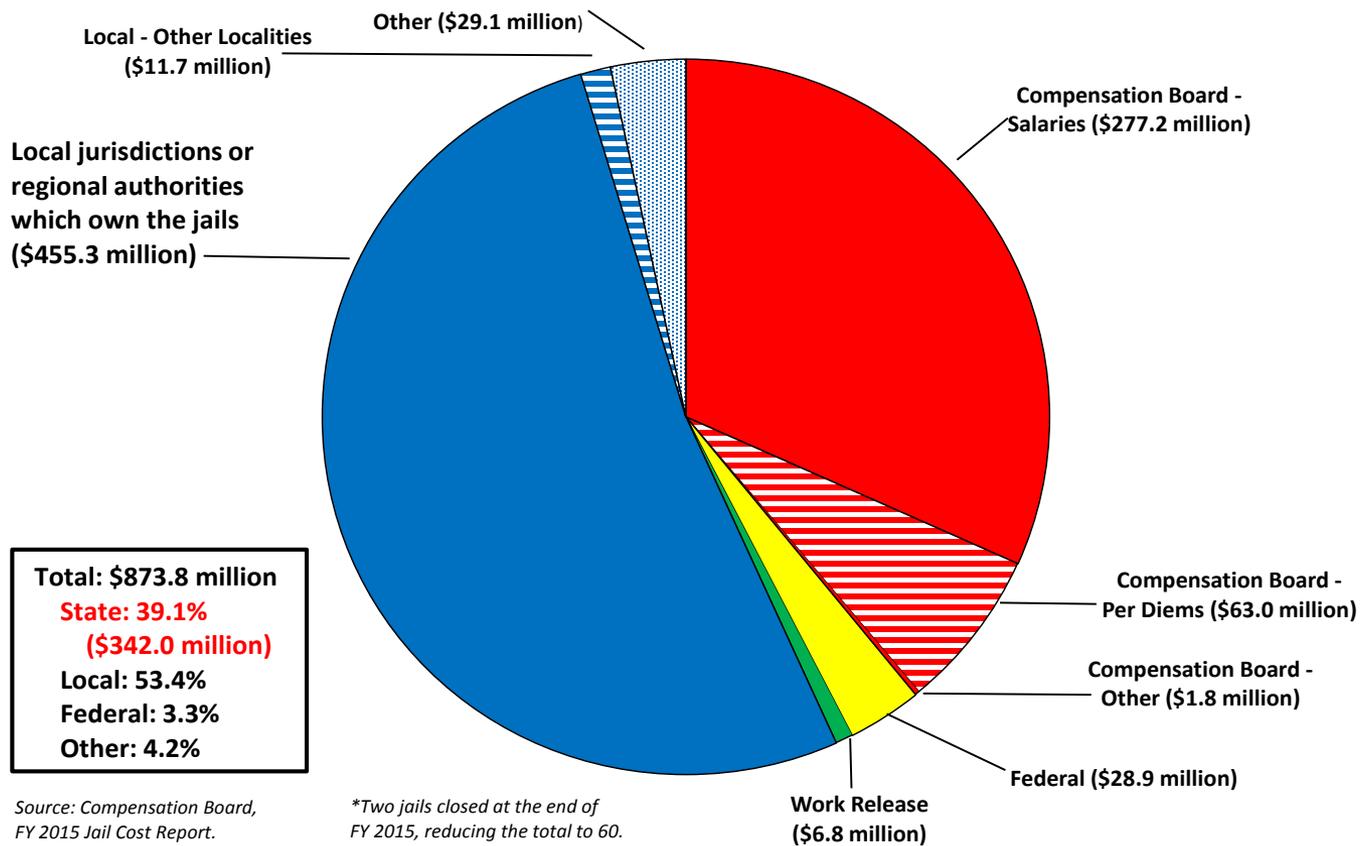


# State Aid Per Capita

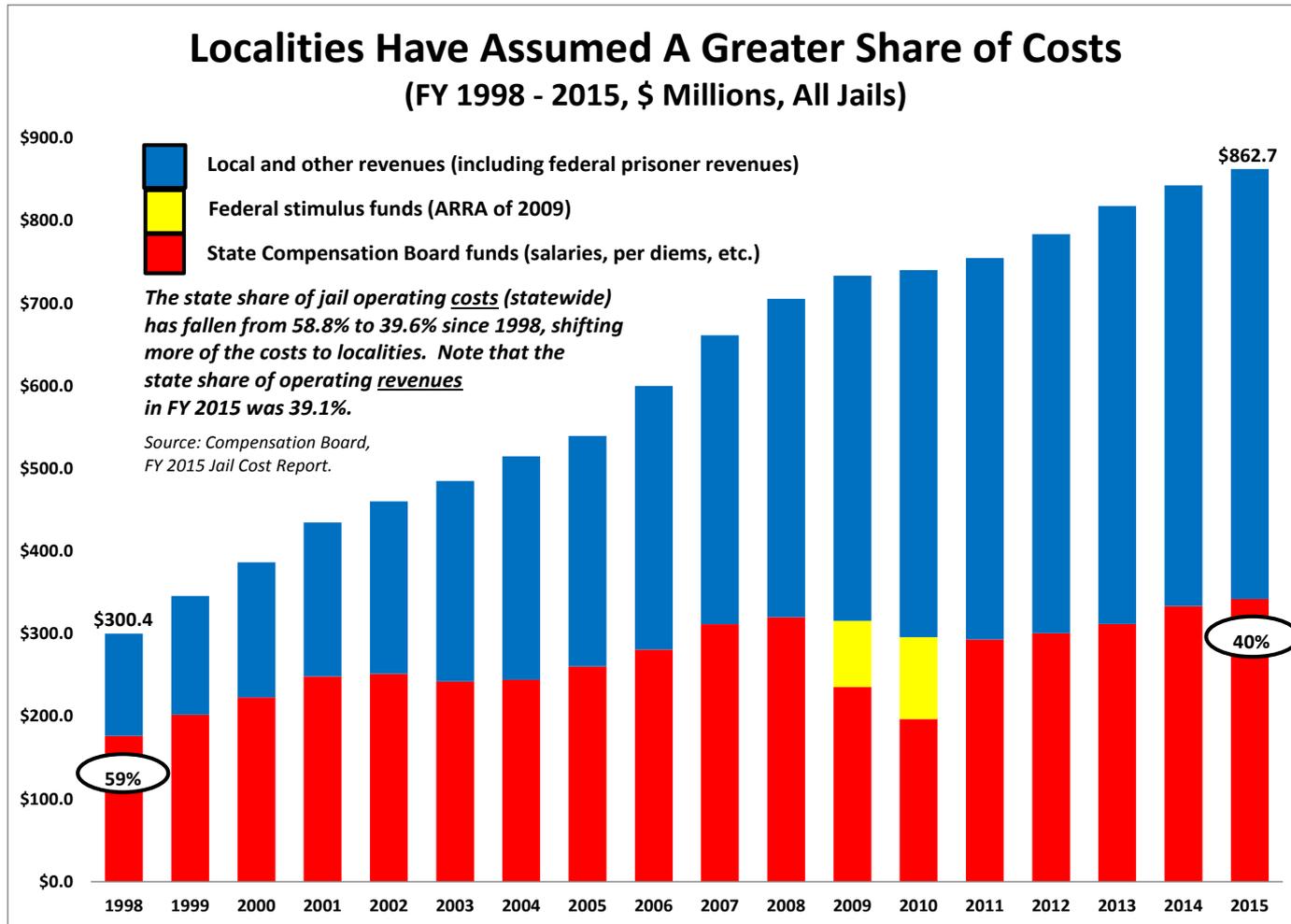


# Jail Operating Revenues

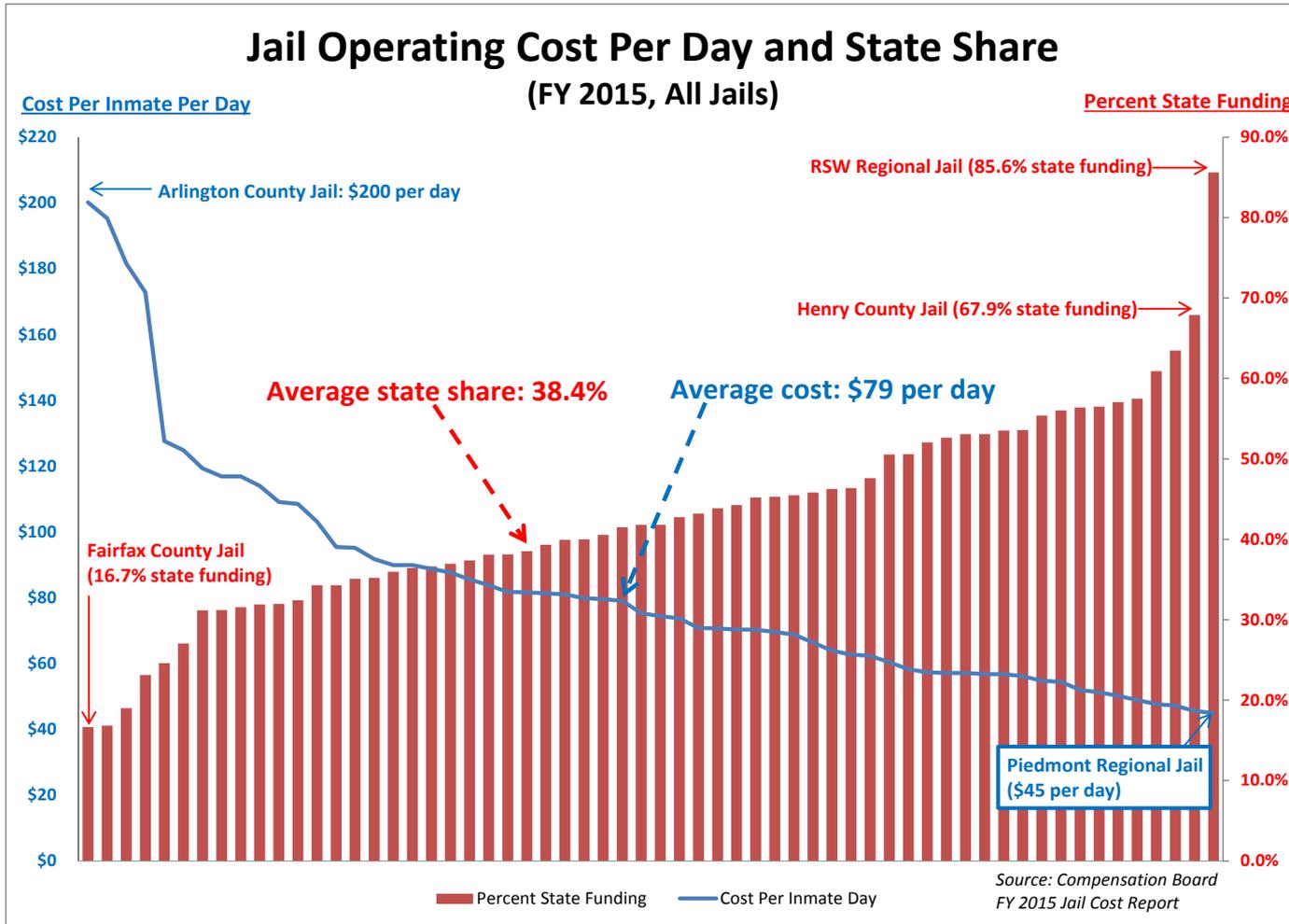
## Localities Provided 53.4% of Total Operating Revenues (FY 2015, Statewide Average for all 62\* Jails)



# State Share Has Declined



# Costs Vary by Locality



# Incentives to Build Capacity

- Since 1989, the Commonwealth has reimbursed localities for up to 50 percent of the capital cost of regional jails (three or more localities), and (since 1993) up to 25 percent for local-only jails.
  - Legislation adopted in 2015 was intended to reimburse all jail capital costs at 25 percent, but additional clarification may be required.
- The mentally ill cannot be diverted from jail unless there is sufficient capacity elsewhere (in DOC or the mental health system).
  - Should fiscal incentives be designed to encourage mental health capacity?
- How can Virginia achieve the optimal balance between prison and jail capacity, and the appropriate levels of capacity in the MH system?
  - Requires careful analysis of population trends, facility capacity, and service capacity, and the right mix of fiscal incentives.

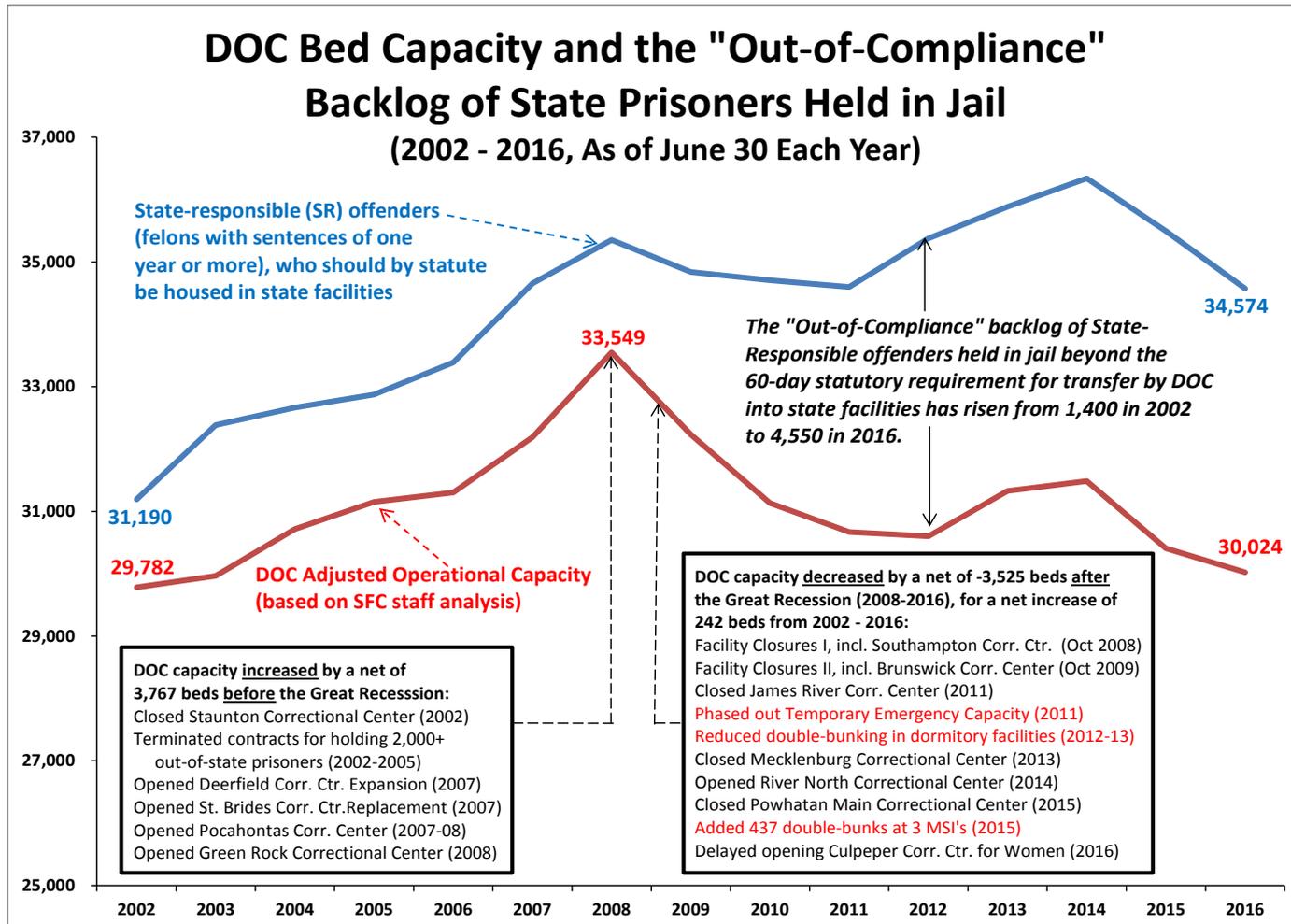


# State DOC Capacity is Limited

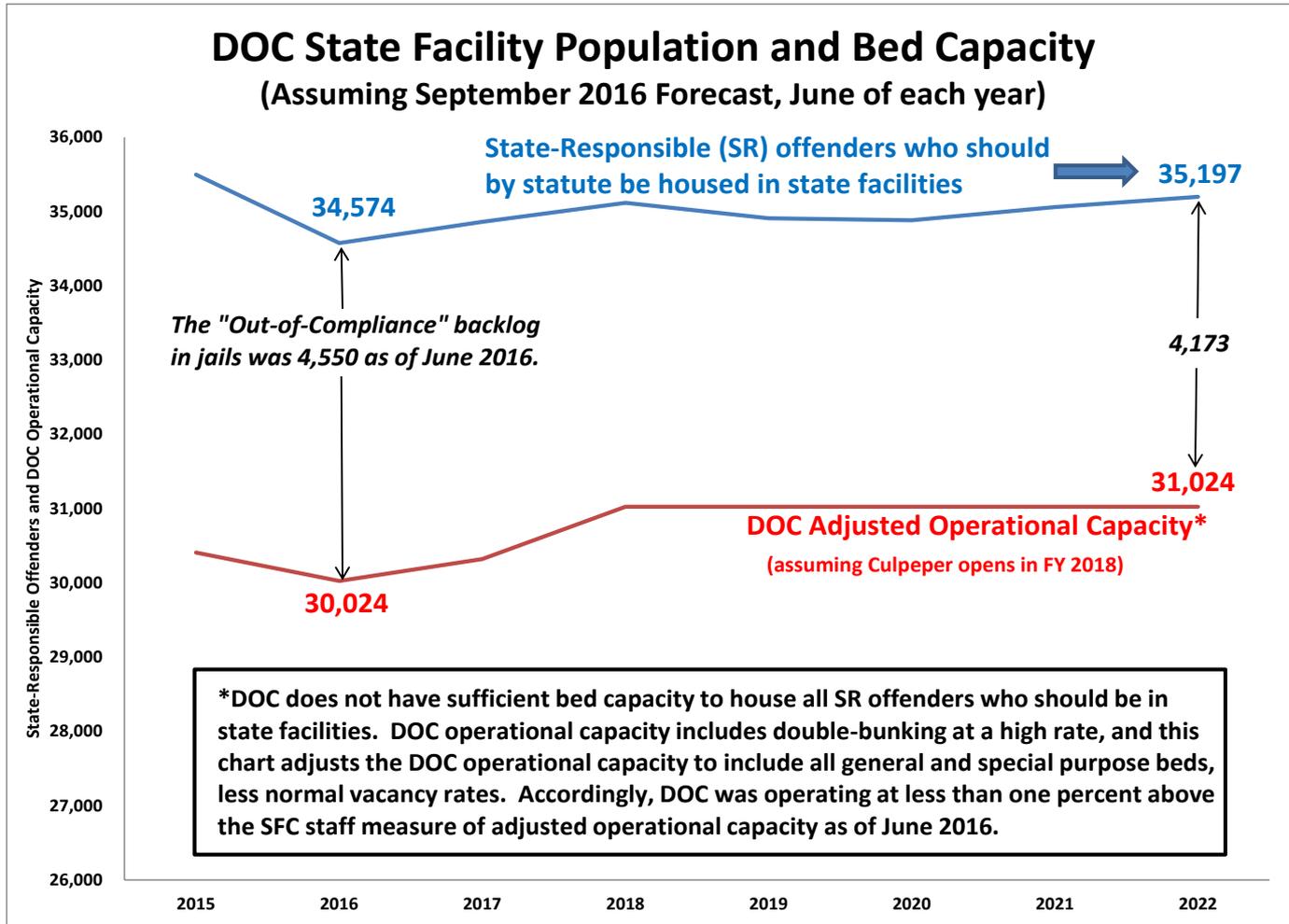
- Since 2008, DOC has closed older facilities and reduced bed capacity to meet budget reduction targets.
  - Closing facilities has been possible for two reasons:
    - Slower growth in the offender population; and,
    - Increased capacity in local and regional jails.
  - Generally, the older, less efficient state prison facilities have been closed, so on average the remaining facilities are newer and more efficient – and more secure.
- With less bed capacity, the state has shifted a greater share of the cost of housing SR offenders to jails – and to localities.
  - DOC has increased its capacity by only about 250 beds since 2002.
    - As of June 2016, DOC inmate population was less than one percent above the SFC staff measure of adjusted operational capacity (and 24.3 percent over DOC’s measure of design capacity). Additional review is needed in this area.



# More SR Offenders in Jails Since 2008



# Forecast for 2022

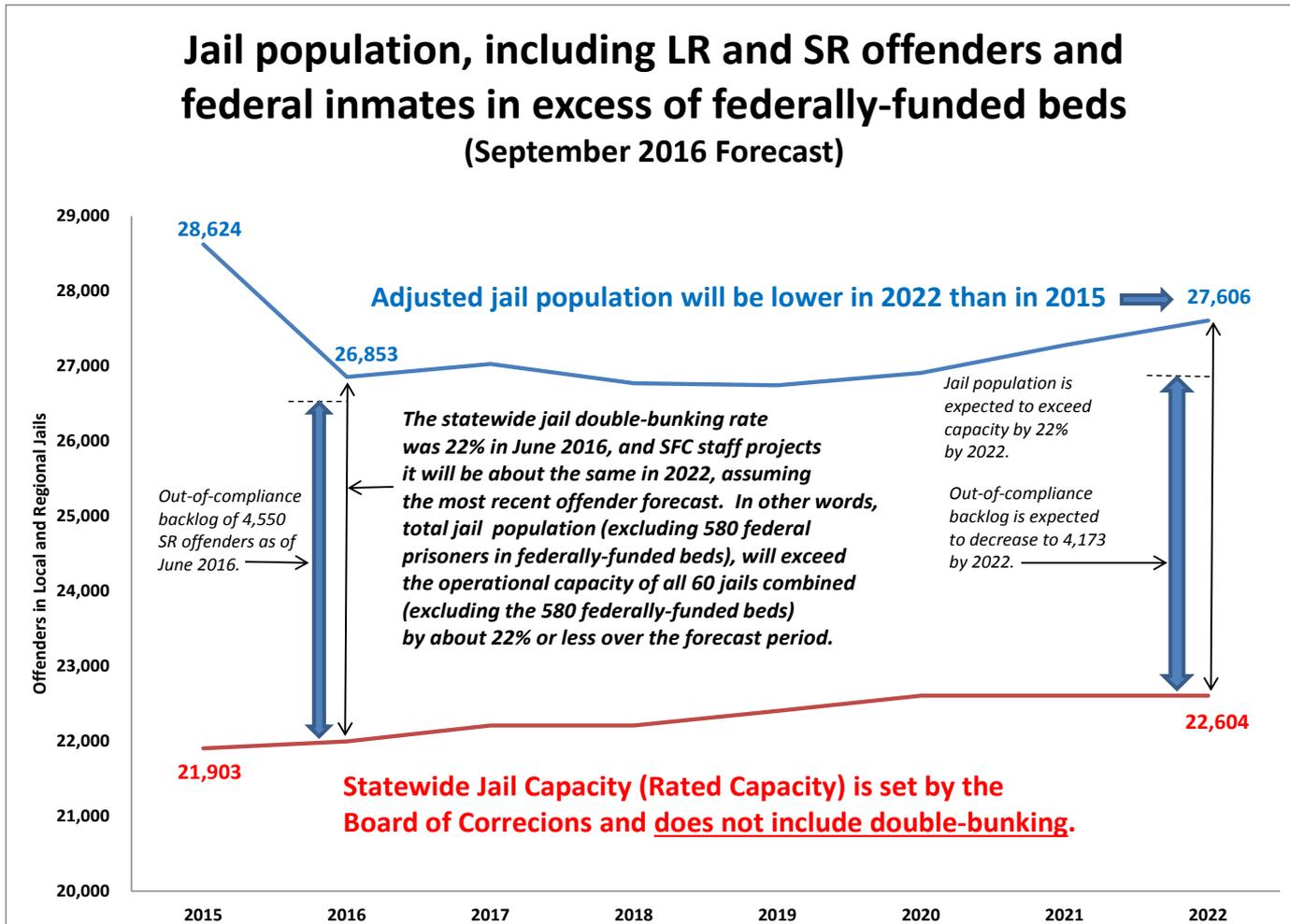


# What is the Real Jail Capacity?

- The actual number of beds, as reported by the Board of Corrections, substantially exceeds the average daily population of the jails.
  - 35,055 permanent beds, not including temporary or special purpose beds.
  - This is 53% higher than the rated capacity of 22,827 (which is set by the Board of Corrections and does not include double-bunking).
    - Suggests that jails statewide may be set up for 53% double-bunking.
    - However, jails are not staffed to hold 35,000 offenders safely.
- Neither measure (permanent beds or rated capacity) is adequate.
  - A comprehensive study is needed to develop a baseline capacity for each jail assuming realistic staffing, programming, and double-bunking.
- If offender population forecasts are accurate, jails have sufficient bed capacity for the next several years.



# Jail Population and Capacity



# Who Oversees the Jails?

- Local and regional jails do not operate as a system – each jail is independent.
  - Sheriffs are elected constitutional officers.
  - Regional jail superintendents are appointed by their authority boards, composed of Sheriffs and appointed representatives from each of the participating jurisdictions.
- By statute, the State Board of Corrections (SBOC) has clear authority over all local and regional jails – and the power to set standards.
  - In contrast, the board only has an advisory role with respect to overseeing the Department of Corrections (DOC) and state correctional facilities.
  - It may be appropriate to clarify the role of the board with respect to the level and quality of mental health treatment in Virginia's jails.
- DOC has fewer staff to oversee jails in Virginia.
  - Two FT and two PT employees to inspect jails, compared to five in 1996.
- SBOC standards do not mandate specific minimum levels of treatment.



# SBOC Statutory Authority

- 53.1-5 of the Code gives SBOC the powers and duty to develop and establish operational and fiscal standards governing jails.
  - Promulgated under Title 6 of Virginia’s Administrative Code.
- 53.1-68 directs SBOC to establish minimum standards for construction, equipment, administration and operation of jails.
  - The Code requires that standards governing sanitation be set by SBOC with the advice and guidance of the State Health Commissioner.
  - SBOC, in conjunction with the State Board of Health, required to establish procedures for at least one unannounced annual health inspection by the State Health Commissioner or his agents.
- The Code was amended in 2011 to remove the authority of SBOC to set operational standards for state correctional facilities.



# SBOC Standards

- Title 6 regulatory framework as adopted by SBOC for jail oversight:
  - Chapter 20 – Certification and Inspection.
  - Chapter 40 – Minimum Standards for Jails and Lockups (148 standards).
  - Chapter 80 – Planning, Design, Construction and Reimbursement.
- DOC conducts a certification audit of each jail every three years, and these triennial audits are reviewed and approved by the Board.
  - At least one unannounced annual inspection is required for every jail, but may be waived for certified jails.
- 53.1-6 of the Code authorizes the Board to conduct hearings, issue subpoenas requiring the attendance of witnesses and the production of records, and administer oaths and take testimony.



# Role of the Director of DOC

- The Director has authority to implement the standards and goals of the Board as formulated for jails (53.1-10.2.).
  - When an investigation is ordered by the Board concerning a jail, the Director, by order of the Board, may issue a summons to the Sheriff of the county or city in which the jail is located to summon any person to give evidence to the Board (53.1-15).
- DOC regularly inspects all of its state facilities, which are also subject to accreditation by the American Correctional Association (ACA).
- Marion Correctional Treatment Center (the DOC mental hospital) is accredited by the Joint Commission on Accreditation of Hospitals for inpatient psychiatry.
  - All other DOC psychiatric units licensed by the Department of Behavioral Health and Developmental Services (DBHDS).



# Jail Mental Health Standards

- Jails determine the level of mental health treatment provided.
  - SBOC standards only require that jails have a written policy specifying the handling of mental health inmates, including a current agreement to utilize MH services from either a private contractor or CSB.
- SBOC standards also require:
  - Medical screening upon admission, including mental health status;
  - Minimum of one licensed or qualified health care provider who is available at least one time per week;
  - Written procedures for management of pharmaceuticals; and,
  - 24-hour emergency medical and mental health care availability.
- 9.1-102.9. of the Code gives Department of Criminal Justice Services, under direction of its board, power to establish minimum entry-level, in-service and advanced training standards for jail deputies and officers.



# Compliance

- For the year ending September, 2016, DOC conducted 26 triennial jail certification audits.
  - 11 jails (42%) found to be 100% in compliance.
- During the same period, DOC conducted 55 unannounced annual jail inspections (six jails not inspected due to DOC staff shortages).
  - 31 jails (56%) were 100% in compliance.
  - One jail placed on probationary certification in June, certified in September.
- All DOC state facilities and district probation and parole offices are ACA accredited and meet ACA standards (except for those currently undergoing the accreditation process).
  - DOC has operated all facilities under ACA standards since 1995.
  - Some ACA physical plant standards are not met due to age of facility.



# Strengthening the Standards

- Under current standards, if a jail has a written agreement with a CSB or private provider, it is in compliance, regardless of the level of actual treatment provided for the seriously mentally ill.
  - The standard does not specify a minimum level of treatment required.
- The Board and Department of Behavioral Health and Developmental Services (DBHDS) should assist in strengthening standards.
  - Any revisions to state standards will increase costs to jails (and DBHDS) and would therefore have a fiscal impact.
- There is no specific SBOC mental health training standard for jail deputies and regional jail officers.
  - Minimum training standards established by the Board of Criminal Justice Services should be updated. Any update would have a fiscal impact.

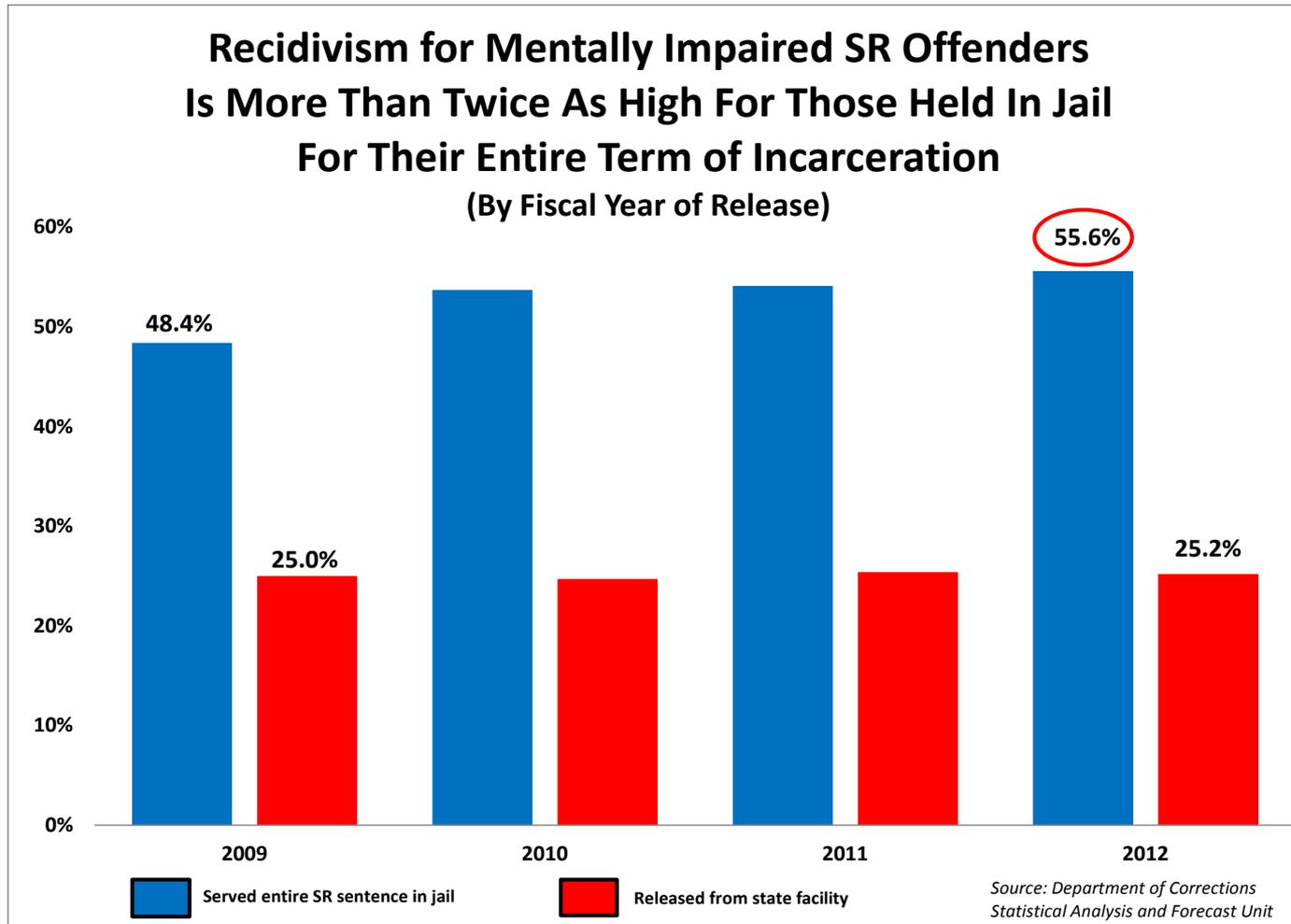


# Recidivism

- Virginia has a relatively low rate of recidivism (lowest in U.S.).
  - 46 states report the percentage of SR releases re-incarcerated (with a state-responsible sentence, either in prison or jail) within three years.
- Virginia's recidivism rate increased slightly from 22.8% (for FY 2009 releases) to 23.4% (for FY 2012 releases) – due to MH issues.
- With limited state bed capacity, more SR offenders are serving their entire sentence in jail.
  - The percentage of SR releases who are “jail only” has almost doubled from FY 2009 – 2016 (from 25% to 49%).
    - Recidivism for offenders released in FY 2012 was 27.7% for “jail only” releases, compared to 20.9% for releases from DOC state facilities.
    - **FY 2012 SR releases included 466 mentally impaired offenders who spent their entire time in jail – by FY 2015, 259 had been sentenced to another SR term of incarceration (55.6% recidivism).**



# Recidivism: The Mentally Impaired



# Jail Mental Health Survey

- The Compensation Board has conducted a survey since 2005 (annually since 2009) to determine the number of mentally ill offenders in jail.
  - No other state has a comprehensive, annual source of MH data for all of its jails.
- With all jails reporting, Virginia's local and regional jails held 3,356 seriously mentally ill (SMI) offenders during June 2016.
  - Represented 8.4% of total jail head count for the month.
- Twelve jails accounted for almost three-fifths (1,992) of SMI offenders.
  - Represented 11.1% of the combined head count for these 12 jails.
    - Range: 26.6% for Hampton Roads Regional to 4.8% for Virginia Beach.
  - Reported 722 designated mental health beds -- but needed a total of 1,644.
  - Six of these 12 jails reported a mental health training requirement of one hour or less (pre-service).
    - Many jail officers may work for several months before entering their local or regional criminal justice academy for required training.



# 12 Jails

Accounted for almost two-thirds of the seriously mentally ill in jails

Jail	Seriously Mentally Ill Offenders			June 2016 Head Count	2016 % SMI
	2014	2015	2016		
Hampton Roads Regional Jail	307	244	359	1,350	26.6%
Riverside Regional Jail	327	250	230	1,918	12.0%
Southwest VA Regional Jail	131	187	186	2,442	7.6%
Blue Ridge Regional Jail	87	131	172	1,634	10.5%
Chesapeake City Jail	321	228	165	1,091	15.1%
Richmond City Jail	90	114	165	1,438	11.5%
Roanoke City Jail	75	66	140	808	17.3%
Arlington County Jail	96	85	135	863	15.6%
Virginia Beach Correctional Center	257	100	117	2,443	4.8%
Western VA Regional Jail	140	142	114	970	11.8%
Middle River Regional Jail	79	104	105	1,032	10.2%
Fairfax County Adult Detention Ctr.	311	188	104	1,887	5.5%
Sub-Total (These 12 Jails)	2,221	1,839	1,992	17,876	11.1%
Plus: The Other 48 Jails in Virginia	1,428	1,463	1,364	22,012	6.2%
<b>Total All Jails</b>	<b>3,649</b>	<b>3,302</b>	<b>3,356</b>	<b>39,888</b>	<b>8.4%</b>

Source: Compensation Board, Annual Jail Mental Health Survey.



# What are we doing?

- Do Compensation Board staffing standards address mental health?
  - 1 position per 25 inmates (classification, records, medical, and treatment).
    - State pays \$21,387 per position (two-thirds of \$32,080); 245 positions short.
  - DOC conducts staffing studies at the time of original construction.
- Crisis Intervention Teams (CIT).
  - 35 operational (July 2016); over 7,700 first responders currently trained.
- CIT assessment sites and jail diversion programs.
  - Assessment sites: \$10.3 million per year; 31 CSBs.
    - FY 2016: Over 6,000 discretionary handoffs by law enforcement to MH.
  - Jail diversion: \$2.96 million per year; 17 funded sites.
    - FY 2015 – 16: 83% remained arrest-free during their entire enrollment.
- 2016 General Assembly – pilot projects to improve jail MH services.



# Pilot Jail MH Projects

- Six jails selected to receive grants through DCJS to improve jail MH services (total of \$3.5 million over 2016-18 biennium).
  - Chesterfield County Jail
    - *Part-time psychiatrist, senior clinician, clinician case manager*
  - Hampton Roads Regional Jail
    - *Clinician, 2 care coordinators, 2 counselors, 1 MH systems manager*
  - Middle River Regional Jail
    - *Case manager, special therapeutic pod, expanded psychiatry screening*
  - Prince William-Manassas Regional Adult Detention Center
    - *Case manager, group therapy, discharge planning for women*
  - Richmond City Justice Center
    - *Therapeutic housing pod; therapy groups; 2 clinicians and one re-entry planner*
  - Western Virginia Regional Jail
    - *Licensed therapist and peer advocate*



# Center for Behavioral Health & Justice

- Created by Executive Order 4 of 2015.
- Executive Committee includes Lieutenant Governor, Secretaries of Public Safety and HHR, Commissioner DBHDS, and Director DCJS.
- Advisory Group includes 34 key stakeholders.
- Coordinator -- in DBHDS central office.
  - Data collection, education, outreach, training, technical assistance.
- Action Committees:
  - Criminal Justice/Behavioral Health Facilities (jail MH services)
  - Diversion & Re-entry (community alternatives, mental health dockets)
  - Technology, Data & Information Sharing (transmission of treatment orders)
- Recommending standardized screening and assessment for jails.



# Diversion From Jail

- The General Assembly may wish to consider the costs and benefits of diverting a significant portion of the mentally ill from jail.
- Key question: what types of facilities will this population be diverted to, after they have been assessed, and who will pay for the capital and operating costs for those facilities?
  - State-responsible offenders who are mentally impaired should be in state DOC facilities, given the nature of their offense.
    - Will require additional bed capacity, with treatment programs.
  - Many other offenders should be diverted into the mental health system.
    - Will require additional bed capacity, in state hospitals, or in transitional facilities or group homes, and other services.
  - Some of these offenders will always remain in jail.
    - State jail standards for MH training and treatment should be strengthened.



# MH Population Forecast

- Additional capacity is needed in the mental health system.
- A mental health population forecast could help to identify how much, what kind, and where the additional capacity is needed.
- Since the mid-1980's, the Secretary of Public Safety has prepared an annual six-year forecast of the projected number of state- and local-responsible offenders.
  - This process has encouraged technical staff, policy-makers, and other stakeholders to reach consensus around the numbers of beds required (or other alternatives) to address the forecast – based on empirical data.
- A similar process might be applied by the Secretary of HHR.



# Conclusions

- Virginia has sufficient traditional jail capacity for the next several years.
  - However, the lack of bed capacity in the Department of Corrections and in the mental health system has forced jails to become the default option for confining the seriously mentally ill.
- The General Assembly may wish to clarify the role of the State Board of Corrections with respect to addressing both the minimum level and quality of treatment programs in jail.
- Any steps Virginia takes to address mental health treatment will have a fiscal impact, and will need to be phased-in over time, given current resource constraints.

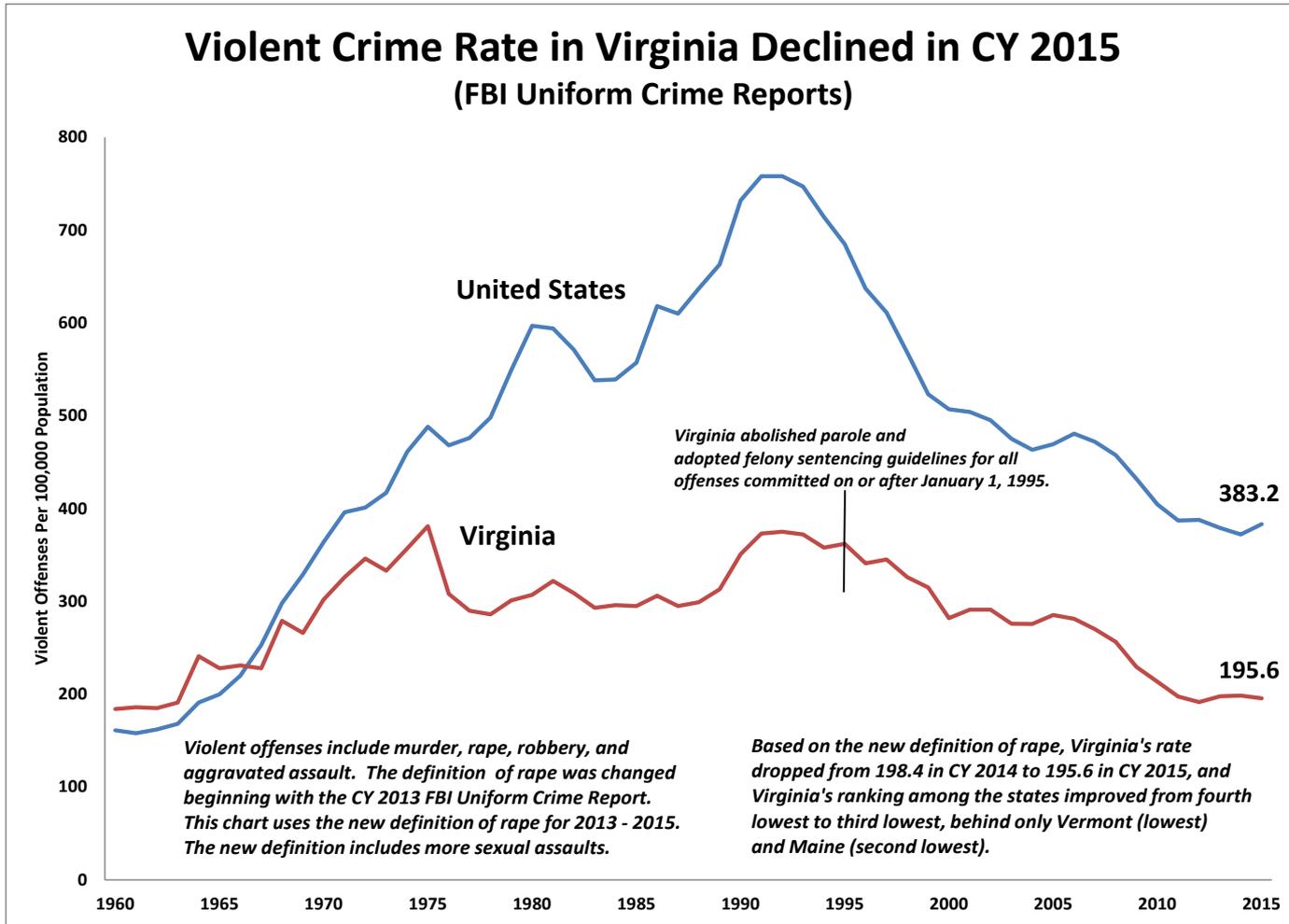


# Appendix

- Violent Crime Rates in Virginia and U.S.
- 1984 Joint DMHMR – DOC Report on the Mentally Ill in Jails.
- 31 Years Later: DOC Assessment of the Problem.
- 2014 Report by the Office of the State Inspector General on the Mentally Ill in Virginia’s Jails.
- For additional data, please refer to the Virginia Compensation Board, FY 2015 Jail Cost Report, and the 2016 Jail Mental Health Report, both of which are available on the Compensation Board’s web site.



# Violent Crime Rates



# Virginia – A Low-Crime State

- Virginia's violent crime rate continued its downward trend in CY 2015, with a 1.4% drop (but Virginia's murder rate increased 8.7%).
  - The U.S. violent crime rate increased 3.0%, with the murder rate up 10.0%.
  - For the 50 largest U.S. cities, the murder rate increased almost 17.0% -- the largest increase since 1993.
- Virginia had the third lowest rate of violent crime in the U.S. in CY 2015, a significant improvement in the ranking from 14<sup>th</sup> lowest in 2004.
  - Violent arrests (-15% in 2015), property and drug arrests (-6%).
- Preliminary data for January – May 2016 suggests an increase in arrests for murder, robbery, and aggravated assault, as well as for burglary and drugs, compared to the same period in 2015.
- Heroin arrests have more than doubled since 2011, along with a sharp increase in overdoses and deaths from heroin and prescription drugs.



# 1984 Joint MHMR-DOC Report

- Found 6.1% of jail inmates had a severe behavioral problem; 4.6% appear to have been psychotic.
  - National studies over the previous decade had found 5-10% of jail inmates suffered from psychotic illnesses.
  - “The past decade witnessed a drastic reduction in the number of patients housed in Virginia’s large state mental hospitals. Consequently, there is an urgent need for more community services for the former state hospital patient... Some of them get jailed on very minor charges...”
- “The chronically mentally ill who enter jail after being booked on nuisance violations should be diverted back into the mental health system.
  - There are other mentally ill jail inmates, however, who face serious charges and for whom diversion is not a viable option. These inmates need to receive treatment while in jail...”



# 31 years later...

- The revolving door between incarceration and the street for offenders with mental health issues is propelled largely by untreated mental illness and co-occurring substance abuse disorders... As predicted, **the decreased availability of hospital and training center beds without a congruent increase in community services has increased the “criminalization” of the mentally ill...** Current data demonstrates that without affordable, efficient, and readily available community treatment (e.g. cognitive behavioral groups based on evidence-based practices and medications) the welfare of individuals with mental illness and community safety are both at risk. In brief, **offenders with mental illness who are stabilized while incarcerated by programming, monitoring, structured settings, and medications, will require increased support, services, and structure on the community side far beyond what they are receiving now.** This report demonstrates that without these services in place, returning (offenders) with mental illness are not able to maintain the level of functioning required for successful transition back into their communities.
  - Dr. Denise Malone, Chief of Mental Health Services, Department of Corrections
    - “Mental Health and Recidivism: A Comparison of the FY 2009, 2010, and 2011 SR Release Cohorts,” Virginia Department of Corrections Statistical Analysis and Forecast Unit (September 2015).



# Inspector General's 2014 Report

- The Office of the State Inspector General (OSIG) conducted a study of mentally ill offenders in Virginia's jails during CY 2013, which was published in January 2014.
- OSIG visited 25 of 64 jails and reviewed 172 records of incarcerated persons with mental illness.
- Virginia's local and regional jails are the largest institutional provider of mental health services.
  - Jails lack resources to provide needed MH services for offenders.
    - Increases risk of deterioration during incarceration.
    - Persons in jail denied equal access to services available in the community.
    - Offenders in jail are covered by CRIPA; guaranteed by federal law to receive services.



# Inspector General's Other Findings

- Sheriffs and superintendents expressed concerns for the mentally ill offenders in their care, as well as the lack of options for their needs.
- Screening practices to identify those with mental illness, and training and qualifications of MH screeners, varied across the state.
- Lack of coordination between jails and community service providers, such as CSBs, generally leads to poor continuity of care.
- Treatment gains made while individuals are incarcerated are at-risk once the individuals are released.
- Medical staff reported that the inability of jails to provide medication over objection sometimes meant individuals deteriorated in jail, often to the point that hospitalization was required in state facilities.



# Inspector General's Recommendations

- Virginia should continue to prioritize funding for jail diversion and for CSB clinicians to provide mental health treatment in jails.
  - The Commonwealth should develop a strategy for funding mental health treatment for persons in jail, proportional to the investment in support services for the same population in the community.
- The safety and treatment needs of mentally ill persons should be addressed in future jail construction and renovation projects.
- The Board of Corrections should create financial incentives for jails to develop mental health pods that would expand active treatment for persons with mental illness, and also consider the feasibility of creating mental health treatment centers in regional jails.

