

Virginia's justice system is expensive, ineffective and inequitable. Despite some recent small progress in the areas of post-incarceration reentry, particularly felony disenfranchisement, the state continues to suffer under misguided policies and practices of the past.

## KEY POINTS:

### Expensive

Virginia's Public Safety Office and Judiciary have combined annual budgets of nearly \$3 billion, representing 7.7 percent of the total general and non-general state expenditures.

The annual cost to confine an individual in state prison is more than \$25,000, with inflated health care costs for the increasing numbers of prisoners over the age of 50. Virginia spends roughly \$1.5 billion a year to operate crowded jails and prisons.

The cost to incarcerate a young person in a juvenile facility is roughly \$100,000 per year.

Small, sensible changes to state statutes can make a big difference. Changing the amount that distinguishes larceny from grand larceny from \$200 to \$600 could save the state approximately \$22.5 million over six years.

In 2011, Virginia spent more than \$94 million on drug arrests alone. While other states like Washington and Colorado have begun to question and revise policies and practices that prioritize drug law enforcement, Virginia has shown no movement in this area.

### Ineffective

The "tough on crime," so-called "truth in sentencing" laws enacted in the 1990s have failed in driving down crime or recidivism. They have only driven up costs and created a larger group of people who carry the burden of post-incarceration collateral consequences.

Virginia's aggressive stance on arresting people for drug violations has had no effect on reducing drug use. In fact, illicit drug use has increased in recent years.

### Inequitable

People of color, particularly African Americans, are over-represented at each stage of the Virginia criminal justice system. In Virginia, African Americans comprise roughly 20 percent of the adult population. In the justice system, they comprise:

- 47.4 percent of all arrests
- 76.2 percent of robbery arrests
- 52.2 percent of aggravated assault arrests
- 60.8 percent of state prison inmates (For every white person incarcerated in Virginia, six African Americans are behind bars)

As a result of the figures above, 20.4 percent of African American Virginians have lost the right to vote, isolating them from their communities and civic participation.

In August of 2013, U.S. Attorney General Eric Holder addressed the annual meeting of the American Bar Association, lamenting the fact that “too many Americans go to too many prisons for far too long, and for no truly good law enforcement reason.” He also questioned whether our “war on drugs” has been “truly effective,” and has led to “an outsized, unnecessarily large prison population.” Holder’s speech not only provided a critique of our justice system that is “in too many respects broken,” but urged action to address these deficiencies.<sup>1</sup>

The Attorney General’s remarks are especially applicable to Virginia, a state that, despite experiencing a decline in overall crime over the past decade, continues to spend vast amounts of money on arresting and confining its citizens with little to show apart from high incarceration rates and strained budgets.

## INTRODUCTION

Virginia has enjoyed a steady decline in crime over the last two decades. As of 2011, the state showed crime rates well below the national average for most offenses. However, so-called “tough on crime” policies enacted in the mid-1990s have led to over-incarceration in the state with jails and prisons suffering from crowding and expensive maintenance.

This report provides an overview of Virginia’s criminal justice system and a brief look at juvenile justice statistics, with an eye toward identifying problem areas and potential solutions. As with other states and the nation as a whole, justice systems are complex and, sadly, rife with

areas of urgently needed reform. This report does not claim to cover all aspects of Virginia’s justice system or possible solutions.

The selection of a new governor in 2013 allows Virginians an opportunity to take a fresh look at the challenges created by decades of over-punishment and the associated costs. In a poll of prospective voters however, less than one percent of respondents named crime and public safety issues as priorities, thirty-seven percent named the economy as the top issue guiding their vote and twelve percent named the budget.<sup>2</sup> This may be a welcome stance given that crime is low and not at the top of voters’ social concerns. Because Virginia’s system of handling crime and public safety is overly-institutional and expensive, thinking about the economy and budget requires reconsidering the state’s criminal justice systems.

Some, like former Governor George Allen, whose 1994 campaign was successful largely due to a “tough on crime,” prison-focused platform, has attributed the state’s drop in crime to the practice of putting more people behind bars for longer.<sup>3</sup> In truth, evidence shows crime rates to be relatively independent of incarceration practices and findings specific to Virginia have also found longer prison terms to be ineffective at reducing recidivism by released persons.<sup>4</sup>

Virginia ranks low in Violent and Property crime nationally, but high in incarceration and spending	
State Ranking	Ranking
Violent Crime, 2011	46th
Property Crime, 2011	43rd
Federal & State Incarceration Rate, 2011	13th
Adult Community Supervision Rate, 2007	44th
General Funds Spending on Corrections, 2008	11th

Sources: Virginia Performs, “Crime,” July, 2013, <http://vaperforms.virginia.gov/indicators/publicsafety/crime.php>; Pew Center on the States, One in 31: The Long Reach of American Corrections, (Washington, DC, 2009).

Changes in arrest rates (per 100,000) varied by category from 2002 to 2011			
	2002	2011	Change
Arrests, rate	4441.9	4004.9	∨ 9.8%
Group A arrest rate	1548.0	1806.4	∧ 16.7 %
Group B arrest rate	2894.0	2199.0	∨ 24.0 %
Violent offense arrest rate	119.3	108.5	∨ 11.1 %
Drug offense arrest rate	346.1	455.0	∧ 31.5 %

Source: Crime in Virginia, annual editions 2001-2011; Crime in the United States, annual editions 2001-2011.

Virginia's adherence to onerous justice policies that were more common thirty years ago puts the state increasingly out-of-step with its neighbors and many states across the nation. As shown in the table on page 6, despite relatively low overall crime rates, Virginia's practice of mass incarceration and the costs that come with it put the state near the other end of the ranking scale.

## EVEN WITH DECLINING CRIME, ARRESTS IN VA HAVE REMAINED STABLE.

Overall, crime has decreased in Virginia over the last two decades, a trend experienced across the country. However, the number of arrests (as opposed to the rate of arrest) in the state has remained relatively stable, falling only 1.1 percent. This can be attributed to a greater number of arrests for drug violations, a phenomenon that has occurred nationally.

Compared to other states and the national average, Virginia has low rates of reported crime.<sup>a</sup> In 2011, the state had the 5th lowest

violent crime rate at 196.7 per 100,000 people, about half of the national rate. The 2011 property crime rate was the 8th lowest in the U.S at 2,249.6 per 100,000 people. Virginia's violent and property crime rates have fallen in the last decade (by 33 percent and 22 percent, respectively), mirroring the trend of crime rates across the country.

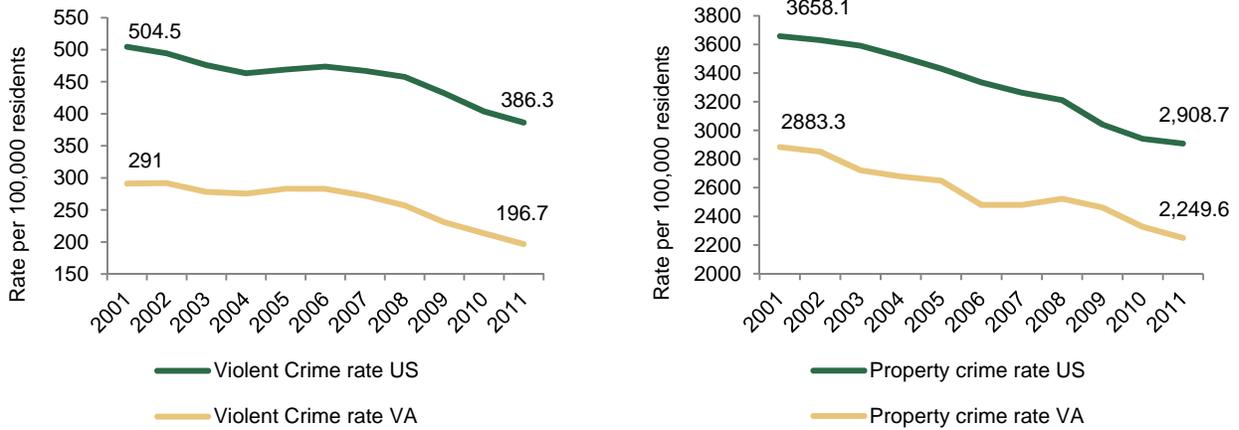
In contrast to declining violent and property offenses, the number of reported drug offenses increased by nearly half during the same period, from 34,404 to 50,650, an issue that will be discussed in further detail below.

Between 2002 and 2011, Virginia's overall arrest rate fell by 9.8 percent; much less than the 33 percent and 22 percent drop in reported major crime. However, disaggregating arrests for various offenses shows increases in some areas. For example, the arrest rate for Group A offenses—those considered the most serious—increased by 16.7 percent, driven by a rise in arrests for drug offenses, kidnapping, robbery, shoplifting and larceny. Arrest rates for Group B offenses,<sup>5</sup> which include many non-violent violations such as disorderly conduct and liquor

<sup>a</sup> It is important to note that "reported offenses" represent the number of offenses reported *by law enforcement* to the FBI's Uniform Crime Reporting

program, not offenses reported *to law enforcement* by citizens. That said, reported offense counts, much like arrest counts, reflect law enforcement activity.

Similar to the national trend, in the past 10 years Virginia has seen violent and property crime rates decline 33 and 22 percent, respectively.



Source: Crime in Virginia, annual editions 2001-2011; Crime in the United States, annual editions 2001-2011.

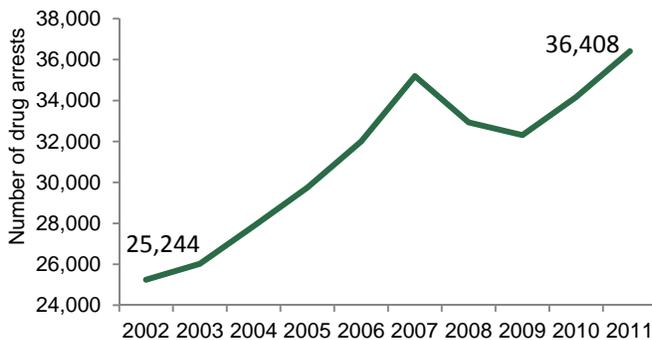
law violations, decreased by 24 percent from 2,894 to 2,199 per 100,000.

### Drug Arrests

Similar to other jurisdictions across the country, drug arrests in Virginia have increased in contrast to violent and property offense arrests, to a large extent negating the decline in overall crime. As more police funding has been tied to performance measures (i.e., number of arrests), police departments have often been forced to shift focus to low-level, non-violent drug violations as a means to help maintain or increase numbers and, thus, funding.<sup>6</sup> Unable to make arrest quotas through arrests for serious

crime, enforcement has turned to arresting people who otherwise would go unnoticed and pose a relatively low public safety risk to communities. As drug crimes are rarely reported by community members to police, upward trends in this area clearly reflect a shift in the use of law enforcement resources toward crimes that must be sought out rather than reported.<sup>7</sup>

#### Arrests for drug offenses increased steadily between 2002 and 2011.



Source: Crime in Virginia, annual editions 2002-2011

In 2012, Virginia arrested 38,349 people on drug charges, a 51 percent increase from 2002. Marijuana arrests accounted for 62.4 percent, or 23,936, of those arrests. Estimating law enforcement and court costs per arrest of \$1,650 for marijuana possession and \$5,260 for more serious narcotic and drug equipment arrests, the state spent more than \$94 million on drug arrests alone in one year.<sup>b</sup> While other states like

<sup>b</sup> Aos, Phipps, Barnoski and Webb estimated costs per arrest and court costs for various offenses in Washington State in 1995. Washington provides a good comparison with Virginia in that the value of the dollar is similar in the two states. Using [www.measuringworth.com](http://www.measuringworth.com) to calculate the amounts in 2012 dollars, we have estimated similar costs for Virginia.

Washington and Colorado have begun to question and revise policies and practices that prioritize drug law enforcement, Virginia has shown no movement in this area.<sup>8</sup>

Current science and policy shifts recognize that drug abuse is best addressed as a public health issue and is largely unresponsive to justice system interventions. Virginia's aggressive stance on arresting people for drug violations is a case in point. Decades of increasing drug arrests has had no effect on reducing drug use and, in fact, illicit drug use has increased in Virginia in recent years.<sup>9</sup>

## OVER THE PAST DECADE VIRGINIA COURTS HAVE SEEN A SLIGHT INCREASE IN CASES.

The Virginia courts system is comprised of four levels: the Supreme Court, the Court of Appeals, the Circuit courts and District courts. The District Courts handle misdemeanor criminal cases (maximum penalty of one year in jail or a fine up to \$2,500) and preliminary felony cases to determine whether the case will go on to the Circuit Court. The Circuit Courts handle felony criminal cases.

The caseloads of Virginia's Circuit Courts, which process the most serious criminal cases, saw relatively slow growth from 2002 to 2011, increasing by only 7.8 percent in cases commenced (from 166,389 to 179,362). This increase was less than the 13 percent population growth during that time.<sup>10</sup>

Some court-related issues in need of reform include the placement of judges and the system of appointing and paying public defenders and

court-appointed attorneys to provide a defense for those who cannot afford counsel.

### Judicial Selection

Virginia and South Carolina are the only states where judges are chosen through a purely legislative process. While the quality of judges in Virginia is not in question, *per se*, the selection process resembles a political appointment rather than performance-based hiring. Legislative changes that would allow more input by local bar associations and legal groups as well as the general public have been put forth almost perennially but have yet to get the votes needed to pass. In the existing process, many judicial candidates undergo intense scrutiny by state legislators only to be rejected, leaving key positions unfilled.<sup>11</sup>

In addition to the caseload management issues caused by judicial vacancies, judges who owe their selection to the influence of individual politicians may, intentionally or unintentionally, "misapply the law to benefit friends and disadvantage foes."<sup>12</sup>

### Indigent defense

The state's indigent defense system has been heavily criticized as insufficient. The system, which pits prosecutors representing the state against public defenders or court-appointed attorneys for those who cannot afford their own counsel, claims to put these two parties on equal footing. However, while the two positions are paid through similar pay schedules, prosecutors in many jurisdictions are given salary supplements that can raise their pay substantially and have more access to funds beneficial in preparing and presenting a case, such as expert witness fees.<sup>13</sup> Court-appointed defense attorneys, on the other hand, must work within statutory pay caps that greatly limit the amount of time and effort they devote to each case.

Virginia's Incarceration Rate (per 100,000) in 2011			
	Prison Rate		Jail Rate
KY	489	TN	406
VA	469	KY	402
TN	438	VA	349
WV	378	WV	224
MD	360	MD	221
NC	357	NC	198

<http://www.sentencingproject.org/map/map.cfm#map>

unnecessary collateral consequences and the erosion of public trust, to name a few.<sup>18</sup>

## VIRGINIA'S CORRECTIONAL SYSTEM IS LARGE, EXPENSIVE AND INEFFECTIVE.

Additionally, the appointment of an attorney for those who cannot afford one, does not actually come free in Virginia. Defendants may be charged “up to \$1,235 per count for some felonies” for a public defender’s services. Virginia is one of only a few states that does not currently have provisions for these charges to be waived.<sup>14</sup> Of the fifteen states with the largest prison populations, thirteen impose a charge for counsel, often discouraging defendants from accepting counsel; a practice that makes conviction and commitment more likely.<sup>15</sup>

In 2003, Virginia’s Indigent Defense Delivery System was given poor grades on a “report card” from the Virginia Indigent Defense Coalition (VIDC) and echoed in a report released by the American Bar Association the following year.<sup>16</sup> The VIDC found that the state scored poorly in the funding of indigent defense and the parity of pay between defenders and prosecutors as well as in the “quality of and standards required for defense counsel.”<sup>17</sup> A lack of quality defense counsel can lead to numerous problems, including over-incarceration, overuse of pretrial detention, increased likelihood to plead guilty, process mistakes and wrongful convictions, overly difficult reentry from prison due to

Virginia has the 8<sup>th</sup> highest jail incarceration rate in the U.S., holding 1 of every 214 adult Virginians.

Virginia’s prison incarceration rate is below the national average. Given that the United States as a whole incarcerates its citizens at rates never before seen in recorded history, a below average ranking does not reflect low incarceration rates. In fact, Virginia’s rates are relatively high when compared to its neighbors. The state’s jail incarceration rate is considerably higher than the national average. As shown in the table, in 2011, of the five states that are physical neighbors to Virginia, only Kentucky had a higher prison incarceration rate and only Kentucky and Tennessee had higher jail rates.

### Jail

Virginia is home to 66 local and regional jails and two local jail farms. In 1937, the state’s jail system was called the “most peculiar one in the nation” and remains largely the same today, with funding responsibility “spread across numerous state and local agencies” and fragmented policies and procedures.<sup>19</sup> The state’s jails house local-responsible inmates, state-responsible inmates and federal prisoners. At any time, roughly 28 percent of Virginia’s jail population consists of state-responsible inmates and federal prisoners.

Virginia's jail rates are above the national average (349 vs. 236 per 100,000) and the eighth highest in the US. In fact, on an average day one of every 214 adult Virginians are in jail.<sup>20</sup> Depending on the rating system used, Virginia's jails operate at between 100 percent and 150 percent capacity.<sup>c</sup> The average daily jail population (ADP) in Virginia "dropped for the first time on record" in 2008 to 28,683 persons. In 2009, the ADP dropped again, a change attributed to decreases in drug arrests, specifically for cocaine.<sup>21</sup> The number of overall drug arrests did slightly decrease in 2008 and 2009, but then resumed a steady rate of increase in 2010 and 2011 (see graph on page 4). Such a rapid fluctuation in jail populations due to a temporary decline in drug-related arrests demonstrates the immediate influence such arrests have on the overall jail population. Policymakers and system stakeholders should consider the strong impact that drug policies can have on correctional populations and emphasize a public health approach to substance use over continued justice system involvement and confinement.

## Prison

More Virginians are in prison than in jail; one of every 179 people.<sup>22</sup> The Department of Corrections (DOC) is responsible for 43 facilities, including 27 major institutions, 8 field units, 7 work centers, and 1 private prison.

In 2011, Virginia had the nation's 13th highest incarceration rate, with 469 per 100,000 state residents (38,130 individuals) in prison. This was less than the U.S. rate of 492 and an 11 percent increase from the 2002 state rate of 422. According to the Pew Center on the States,

between 1982 and 2007 Virginia's incarceration rate increased by 205 percent.<sup>23</sup>

In 1995, Virginia eliminated parole and instituted a "truth-in-sentencing" (TIS) system that requires all state-responsible inmates to serve at least 85 percent of their sentences. Other changes made in the state have lengthened sentences for many offenses and increased the number of offenses which qualify for enhanced penalties. These strategies have filled the state's prisons and ensure an inevitable increase in the correctional population into the future. Virginia also continues to create laws and policies that fill prisons. In fact, changes to the state's sentencing guidelines passed in early 2013 are, according to the Virginia Criminal Sentencing Commission's Fiscal Impact report "likely to result in longer prison terms for some offenders."<sup>24</sup>

During Governor George Allen's tenure from 1994 to 1998, "the state built new, tougher prisons with tighter security and earned a reputation as one of the most severe corrections systems in the nation. In fact, Virginia built more prisons than the state could fill, and soon began renting out prison beds to other states."<sup>25</sup> That is no longer the case.

The state's jails operate at as much as 150 percent capacity. And, while DOC prison facilities operate at over 96 percent capacity, usually around 28 percent of jail inmates are awaiting placement at a state prison.<sup>26</sup> So, a small amount of available bed space in some DOC facilities does not mean there is not an crowding problem within the state correctional system.

In fact, prison capacity and populations are confounded by the closing of prisons due to budget and safety reasons and the renting of beds to other states. In 2011, Virginia housed

<sup>c</sup> The lower capacity figure is calculated by assuming "double-bunking" in cells.

over 1,000 inmates from Hawaii, Pennsylvania and the U.S. Virgin Islands but will end this

practice because of crowding.

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## A SNAPSHOT OF JUVENILE JUSTICE IN THE COMMONWEALTH<sup>27</sup>

Virginia continues to struggle with how to effectively respond to unwanted behavior by youth in ways that positively address problems rather than worsen a child's opportunity for successful development. Too often, youth in Virginia find themselves drawn deeper and deeper into the justice system because of zero tolerance policies in school, the commission of status offenses or behavior driven by mental health issues.<sup>d</sup>

For example, according to a study of incarcerated youth in the Commonwealth, 62.9 percent of these young people were on psychotropic medication, more than three-fourths reported a history of moderate or severe problems in school attendance and most performed academically at levels far below their age.<sup>28</sup> And unlike other states that have moved towards more local, therapeutically oriented secure placements for youth requiring confinement, Virginia continues to rely on large, centralized and adult-like juvenile prisons to confine youth.<sup>29</sup>

Virginia continues to rank at the bottom of the states in compensation for court-appointed attorneys for indigent defendants and has not made significant changes to statutory pay caps in recent decades. Currently, the maximum fee allowed for an attorney appointed to a juvenile case is \$100.<sup>30</sup>

Virginia's juvenile justice system also experiences disproportionate minority contact with the problem only growing as youth move more deeply into the justice system. While African-American youth represent only about 20 percent of the youth population in Virginia, African-American youth comprise:

- 42.5 percent of all arrested youth
- 52 percent of youth detained
- 69.8 percent of youth committed.

Youth correctional expenditures in 2012:

- Per incarcerated young person \$103,493.93 in FY 2012
- Total juvenile correctional center expenditures not including education expenditures in FY 2012 = \$78,448,395
- DJJ operating expenditures in FY 2012 = \$190.3 million

Despite the expense, recidivism rates for youth released from confinement remain high; the 36 month re-arrest rate is 75.2 percent and the 36 month reconviction rate is 66.7 percent. These outcomes, along with

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<sup>d</sup> Status offenses, such as runaway or curfew violation, are those which, if committed by an adult, would not be considered a crime.

the vast amount of research in the area, suggests that Virginia could spend less money, and more effectively, by diverting some of these youth to evidence-based community alternatives.

Virginia continues to transfer youth as young as 14 years old to criminal court for certain offenses, including automatic transfer in some cases and virtually unfettered prosecutorial discretion in others, in contrast to a national trend towards ending such practices. Data from the Virginia Sentencing Commission suggests Virginia is unnecessarily transferring many youth to the adult system, as a majority of such youth do not receive sentences requiring active placement in adult prison, including 1 in 5 who only received probation.<sup>31</sup> Further, research shows that adolescents' brains continue to develop until they reach their mid-20's, limiting reasoning and impulse control and that even those youth who have committed serious offenses are less likely to recidivate if offered services in the juvenile rather than adult system.<sup>32</sup>

Despite these challenges, the Commonwealth is also experiencing some positive trends. For example from 2001 to 2010, Virginia lowered the number of youth in confinement by 36.5 percent, reducing commitments by 28 percent and detentions by 49 percent.<sup>33</sup>

In 2012, there were an estimated 947,362 people under the age of 18 in the Commonwealth, 11.6 percent of the total population. Of the 341,577 arrests made in that year, 28,817 (8.4 percent) were juveniles.

2012 Group A Arrests, juveniles	
Simple Assault	28.0 %
Drug Violations	19.3 %
Shoplifting	13.0 %
Other Larceny	12.5 %
2012 Group B Arrests, juveniles	
Other Non-Traffic	36.4 %
Runaway	24.7 %
Liquor Law Violations	11.6 %
Curfew/Loitering	11.6 %

## OVER-INCARCERATING VIRGINIANS HAS LASTING CONSEQUENCES TO TAXPAYERS AND COMMUNITIES.

Less crime in Virginia is a good thing. Whether crime reductions are driven by incarceration or not, is over-incarceration a problem? Yes. Maintaining a criminal justice system that relies heavily on the most restrictive methods of punishment is extremely expensive, disproportionately impacts communities of color and is ineffective at addressing the root causes of crime and the likelihood of reoffending.

### Expensive

Estimating the costs of a state's law enforcement and judicial systems is difficult, given the multiple funding streams and functions performed by police and courts. Also, there is no standard of per capita spending or percentage of a state's budget that these services should meet. In Virginia's 2011 state budget, Public Safety and the Judicial Department made up 7.7 percent, or \$2.99 billion, of the total general and non-general expenditures in the state.

In 2008, the approximate annual budget of operating the state's jails was \$798 million. The 2010 prison budget was \$748.6 million.<sup>34</sup> That represents an approximate annual expense of more than \$1.5 billion for incarceration in Virginia. A recent study by the Vera Institute of Justice found that, of forty participating states, Virginia had the 17th highest correctional

budget. With an average daily prison population of 29,792, the state spends an estimated \$25,129 per inmate per year.<sup>35</sup>

The cost to taxpayers is substantial for operating such a large prison system with an estimated cost per taxpayer of at least \$151 per year.<sup>36</sup>

Adding to the costs of Virginia's correctional system is an incarcerated population that is increasingly older and in need of medical care. Due to lengthy sentences and the abolition of parole, the Department of Corrections average inmate medical expenses increased 33 percent between 2006 and 2010 to \$4,827. These costs represent about 15 percent of all DOC expenditures.<sup>37</sup> Prison health care costs are roughly one and a half times as much for incarcerated people who are 50 or older.

The population of incarcerated people in Virginia's prisons who are age 50 or older grew from 715 in 1990 to 5,966 in 2011, an increase of 734 percent and has contributed to higher correctional expenditures.

### Ineffective

The increased use of incarceration in Virginia has largely been justified for the goal of reducing crime through the incapacitation of law-breakers and the deterrence of future law-breakers. However, there is a solid body of research that debunks the connection between incarceration and crime.<sup>38</sup> In fact, the Virginia DOC's own research found that, "using logistic regression to control for offender and offense characteristics, TIS [truth-in-sentencing] was found to have no significant impact on standardized recidivism rates."<sup>39</sup> In other words, when one takes away other factors and looks only at the sentencing system, TIS does not help reduce recidivism.

When comparing the recidivism rates of people sentenced under TIS guidelines with those sentenced under parole eligibility the DOC also found the paroled group were actually re-confined less (17.6 percent for TIS versus 17.3 for paroled people).

### Inequitable

Laws that mandate lengthy sentences that are grossly out of proportion with the offense for which an individual has been convicted unfairly remove individuals from their families and communities for long periods of time. Beyond being an overly expensive and harsh system of criminal justice, it is applied disproportionately to communities of color, particularly under-educated African Americans in Virginia. Decades after such harsh sentencing laws were enacted, a diverse group of voices have called for lawmakers to create fair and more proportionate practices.

## THE GRAND LARCENY ISSUE

One way in which the Virginia criminal justice system could minimize the impact it has on individuals convicted for minor offenses, reduce its incarcerated population and save money is by altering the grand larceny threshold that distinguishes between a misdemeanor and felony charge. That threshold is currently set at \$200. In other words, if the offense involves fraud or theft of anything valuing more than \$200, the offense is charged as grand larceny, a felony. The threshold was last raised through a change in statute thirty-three years ago in 1980 from \$100.<sup>40</sup> Two hundred dollars in 1980 would have an estimated value of \$557 today.<sup>41</sup> Only two states, Virginia and New Jersey have current thresholds at \$200 and are the lowest in the nation.

A Virginia Department of Corrections study from 2008 estimated that raising the larceny/grand larceny threshold to \$600 would save \$1.8 million in the first year, \$4.5 million in the sixth year and a cumulative \$22.5 million over a six year time frame.<sup>42</sup>

## AFRICAN AMERICANS ARE OVERREPRESENTED IN VIRGINIA'S JUSTICE SYSTEM.

In Virginia, as in many jurisdictions across the U.S., from arrest to incarceration, the racial disparity between the general population and those who encounter the criminal justice system is vast. The problem snowballs as individuals move further into the system. African Americans in Virginia are more likely to be arrested for serious offenses, more likely to be convicted for those offenses and more likely to receive lengthy sentences for those convictions.

It is in the best interest of society that we support an equitable justice system that holds individuals accountable for harmful behavior.

Conversely, systems that treat one or more groups more harshly than others is damaging to society and undermines our faith in justice and our sense of community.

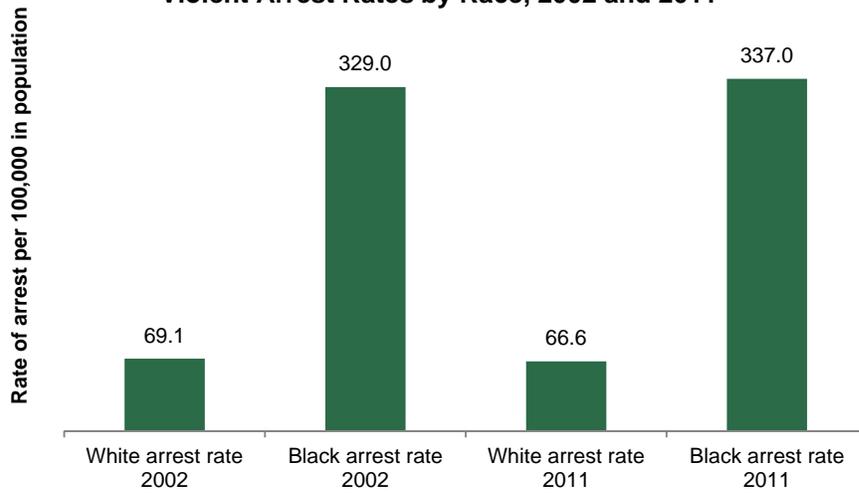
The racial disparity in arrests and arrest rates remained virtually unchanged throughout the last decade. While African Americans make up only slightly less than 20 percent of the adult population in Virginia, they were arrested for Group A offenses at more than twice that rate in 2002 (45.2 percent) and 2011 (44.2 percent). Arrests for several violent Group A offenses were skewed even more against African Americans, as shown in the table below.

Arrests for Group B offenses showed only slightly less racial disproportionality, with African Americans arrested for 37.6 percent of all Group B offenses in 2002 and 36.7 percent in 2011.

In 2011, more than 16,000 African Americans were arrested for drug offenses in Virginia, 44 percent of all drug arrests in the state. This phenomenon is not new; Human Rights Watch reported that, in 2006, African American drug

African American Virginians are arrested for serious offenses at rates greater than their population.			
	Total number of arrests 2011	Total number of African American arrests 2011	% of African American arrests (20% of population)
Robbery	1,942	1,479	76.2%
Murder/Non-negligent Manslaughter	277	187	67.5%
Aggravated assault	4,180	2,180	52.2%
Kidnaping/Abduction	998	519	52.0%
Negligent manslaughter	5	2	40.0%
Forcible rape	345	138	40.0%
Forcible sodomy	202	80	39.6%
Sexual assault with an object	108	36	33.3%
Forcible fondling	625	196	31.4%
<b>Violent Group A</b>	<b>8,682</b>	<b>4,817</b>	<b>55.5%</b>

**Violent Arrest Rates by Race, 2002 and 2011**



African American, people confined in Virginia’s prisons are mostly between the ages of 30 and 40, prime years for providing for families and contributing to society.

Incarcerated people in Virginia are mostly under-educated, with more than three-quarters having achieved a high school diploma or less.

arrests in the state made up 53 percent of all drug arrests.<sup>43</sup> Research has shown that African American drug use is typically less than that of whites, on the whole, making their over-representation a function of justice system priorities rather than an equitable response to law violations.<sup>44</sup>

The education breakdown shown in the graph on page 13 is representative of incarcerated populations throughout the country and serves to highlight the importance of education both as a crime prevention strategy and as a component to prison-based programs that seek to promote successful re-entry into society following

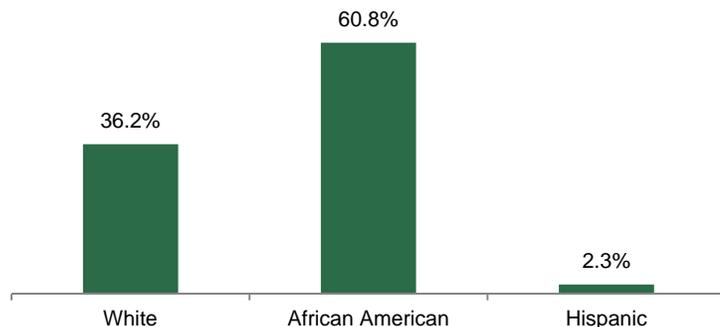
Racial disparity continues at the correctional level of the justice system in Virginia. Virginia’s prisoners are mostly African American, family-aged and under-educated. African Americans incarcerated in state-run facilities comprise over 60 percent of the inmate population, despite making up less than 20 percent of the general population.

For every white person incarcerated in Virginia, six African Americans are behind bars.

incarceration. Changing the dynamics of the education-incarceration equation requires the political will to invest in public safety

strategies that promote educational opportunities, especially for poor communities of color.

**African Americans are held in Virginia prisons at 3 times their general population percentage.**



The ratio of disparity between African American and white prisoners in Virginia is nearly 6-to-1 and greater than the national average of 5.6-to-1. In other words, for every white person incarcerated in Virginia, six African Americans are behind bars.

In addition to being overwhelmingly

## POST-CONVICTION AND RE-ENTRY BARRIERS

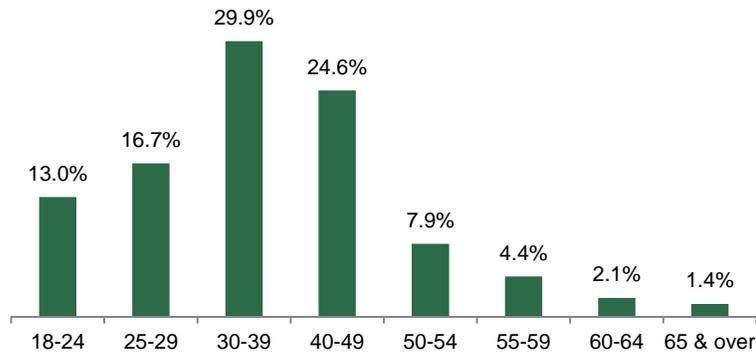
There are many collateral consequences of justice system involvement in Virginia that may follow individuals for years, often causing more disruption and harm than the original sentence. Virginia's criminal code contains hundreds of statutes that place restrictions on individuals who have been convicted of criminal offenses, particularly for felony offenses.<sup>45</sup>

Some of these restrictions are socially supported such as prohibiting employment that gives access to children for individuals who have been convicted of sex offenses. Others prohibit those convicted of felonies from working for private security companies or contracting with day care centers (for example, as a cleaning service). More than protecting the public from dangerous people, these statutes limit the opportunities of people returning to their communities after incarceration, making re-entry success more difficult and encouraging participation in underground employment.

Virginia's rate of felony disenfranchisement—

the loss of voting rights due to a felony conviction—is much higher than the national average with 5,576 per 100,000 experiencing disenfranchisement, or 7.3 percent of the adult population. As a result of higher rates of justice system involvement, African Americans in Virginia suffer disenfranchisement

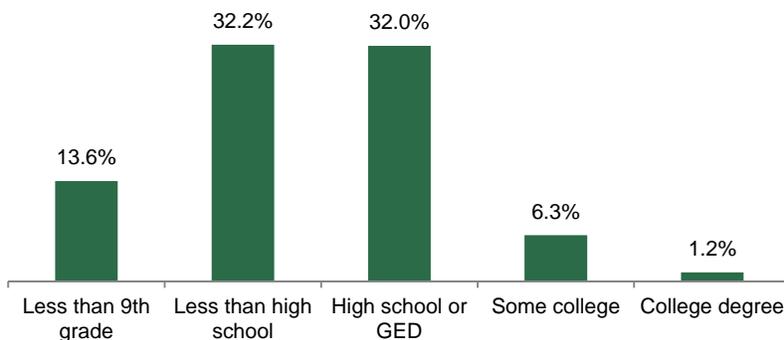
**Over half of Virginia prisoners are between ages 30 and 50.**



disproportionately compared to other communities. In fact, 20.4 percent of African American Virginians are disenfranchised. The US average rate of disenfranchisement is 1,878 per 100,000, affecting 2.5 percent of the population and 7.7 percent of African Americans. The problem of disparity appears to be increasing rather than subsiding.

Apart from the potential impact disenfranchisement may have on elections, “the revocation of voting rights compounds the

**Over 75 percent of Virginia inmates have an education of high school or less.**



isolation of formerly incarcerated individuals from their communities, and civic participation has been linked with lower recidivism rates.”<sup>46</sup> Allowing such participation helps returning individuals feel more connected and integral to their communities, increasing their social capital and encouraging lawful behavior.

In May 2013, following substantial efforts by advocates in the state, Governor McDonnell authorized automatic voting rights restoration to people convicted of felonies who have completed all their judicial obligations.<sup>47</sup> The clemency applies only to those whose offense is considered “non-violent” or “not serious” by the state, leaving out many truly non-violent offenses such as drug manufacturing or sale, but is a step in the right direction for Virginia.<sup>48</sup> It is also a positive recognition by lawmakers that post-conviction collateral consequences are an important issue in a state where so many will eventually face the challenges of re-entry.

Some jurisdictions in Virginia have also embraced the “ban the box” movement which seeks to eliminate questions about prior convictions on employment applications. In early 2013 the Richmond City Council joined “forty-three localities nationwide, including Newport News” in removing the questions from city job applications, a move they hope will encourage private sector employers to do the same.<sup>49</sup>

## RECOMMENDATIONS

Virginia faces an escalating crisis if the state does not take steps to reassess and change its approach to crime and imprisonment. The actions needed to improve the criminal justice system involve mostly a return to policies of the past with an overall shift toward community investments and away from the continued and increasing overuse of the justice system.

**Repeal Truth-in-Sentencing statutes and reinstate parole.** Other states and the Federal government that rode the early 1990s truth-in-sentencing bandwagon have begun to chip away at the policies, finding them

costly, unfair and arbitrary.<sup>50</sup> Virginia should do the same. The TIS and parole elimination policies passed in Virginia were meant to address crime rates, however by the time the legislation was enacted crime had already begun to drop in the Commonwealth and across the country, including in places without such measures. To reduce costs to taxpayers, increase the successful reentry of formerly-incarcerated people and to ensure that individuals have an incentive to participate in treatment and other programs thereby reducing their sentences through positive behavior, the state should reinstate a parole system and meaningful good-time sentence reductions.

**Reduce focus on drug offenses.** As violent and property crimes have fallen in Virginia, law enforcement has upped its attention to drug offenses. A harsh approach to drug offenses fails the state in several ways. First, it is an ineffective way of addressing the potential health needs of the arrested people. Jails and prisons, particularly crowded ones, provide very little treatment or re-entry preparation for people who may have substance abuse disorders. These people, if arrest is appropriate at all, should be diverted to treatment-based interventions.

Second, criminalizing drug-related behavior often draws people into a spiral of criminal justice involvement. If the original offense does not warrant incarceration, a failed drug test while under supervision may. Each violation or misstep of the arrested person pushes them further into the justice system where treatment is unlikely and the costs are great.

Finally, such an approach goes against the current public sentiment of handling drug violations as a public health issue, rather than a criminal one. Across the country, jurisdictions

are opting for laws and policies that focus law enforcement efforts away from drug users and toward the more serious behaviors they were meant to address. Virginia should join in the public health approach to issues of drug abuse in society.

### **Work to address racial disparity throughout the criminal justice system.**

The problem of racial disparity plagues the criminal justice systems of many states and the federal government. Virginia should join the many other states attempting to reduce racial disproportionality through programs that target reductions in disproportionate minority contact and increase the use of community-based alternatives to incarceration to reduce continued and future justice system involvement.

### **Demand better educational resources and opportunities, especially for low-income communities of color.**

Improving educational resources and opportunities for low-income communities of color is one way to increase public safety. Educational attainment improves employment opportunities and can be a strong way to connect individuals with their

communities. Such an approach to public safety requires a commitment that begins as early as possible in the lives of young people and continues through to adulthood.

### **Re-allocate juvenile justice resources from centralized, adult-like juvenile prisons to more robust and proven community-based alternatives.**

Research and experience has shown that young people respond better in environments where their educational and emotional needs are met. Rather than confining youth in correctional settings, Virginia should adopt a more therapeutic model of residential, close-to-home facilities for the rare cases where confinement is deemed necessary.

### **Restore the authority of judges to make decisions regarding the trial and treatment of youth as adults.**

Youth transfer statutes, based on outdated tough-on-crime philosophies, should be amended to allow courts to make decisions based on the merits of each case rather than automatically transfer youth to criminal courts. Such policies cause irreparable damage to youth and serve no greater justice aim.

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