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The Criminal (In)Justice System of Virginia: A Critical Reflection and Analysis

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The Criminal (In)Justice System of Virginia

A Critical Reflection and Analysis



Alicia Jiggetts

Senior Thesis in Criminal Justice

Advisor: Dr. Jan Hoffman French

University of Richmond

Department of Sociology and Anthropology

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Secondly, I would like to express my gratitude to all of the individuals who are featured in this paper. Taking the time out of your busy schedules to let me interview you or granting me permission to share your personal stories and perspectives on Virginia's criminal (in)justice system has added so much life to this paper. Your words are so important and valuable and I hope that I have captured each of your voices authentically and accurately in the following pages.

Lastly, I would like to thank my professors at the University of Richmond and my internship supervisors across the Commonwealth of Virginia for being a part of my journey and contributing to the arsenal of knowledge I now possess. My coursework in Criminal Justice, Political Science, Women, Gender, and Sexual Studies, Sociology, Chemistry, Psychology, and Leadership has allowed me to examine the criminal justice system through a lens that is both interdisciplinary and intersectional. Additionally, my classes provided me with a plethora of material, sources, and research tools that have allowed me to make this paper personal yet academic, reflective yet analytical. My community-based learning experiences through internships with the Office of the Secretary of the Commonwealth of Virginia, the City of

Richmond's Center for Workforce Innovation, the Community Corrections Division of the Hampton-Newport News Criminal Justice Agency, and Virginia21 have allowed me to get up close and personal with the criminal justice system in ways that I never imagined were possible or feasible.

My sincerest thanks to all of you for allowing me to bring this paper together.

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Class of 2019

I. Introduction

“There is power in proximity.”

– Bryan Stevenson–

Attorney, Advocate, and Founder of the Equal Justice Initiative

“Injustice anywhere is a threat to justice everywhere.”

– Rev. Dr. Martin Luther King Jr. –

Civil Rights Leader

Many of the beliefs that modern societies hold about crime and punishment have existed since the beginning of human civilization. One of the first things I remember learning in my high school Ancient World History class was about Hammurabi of Babylon’s Code of Law, which was the one of the earliest written codes of law known to humankind. As such, Hammurabi’s Code established one of the earliest criminal justice systems in the world. In addition to dictating what the laws of the land were, Hammurabi’s Code articulated what the punishment for breaking any of those laws would be. This criminal justice system was a highly retributive system that adhered to a doctrine of “an eye for an eye, a tooth for a tooth.” Furthermore, Hammurabi’s criminal justice system discriminated on the basis of social and economic status; the Code punished the enslaved and poor more severely than it did the wealthy, even if the same kind of offense was committed. Obedience to the rule of law was considered an essential part of being a good Babylonian citizen and violations of the law were taken very seriously by those individuals tasked with enforcing the laws and punishing those who violated them.

In my senior year of high school, I wrote an extended essay where I examined the extent to which various legal systems of the past influenced the present-day legal system of the United States. In delving into our world’s legal history, I discovered that many of the legal principles that were written into our U.S. Constitution have origins that trace back to ancient systems of law

such as Hammurabi's Code. It was this research and a desire to further understand how law and order play out in the real world that sparked my passion for law and criminal justice. I think it's quite remarkable to see just how crucial criminal justice systems are to the functioning of our societies today as they were to the early civilizations of the world. Furthermore, I find it fruitful to explore how criminal justice systems in the United States can be just as harsh, unforgiving, and unjust as some of the criminal justice systems that existed thousands of years ago.

A. A Scholar's Story

In this paper, I share the many stories that I have collected during my journey as a criminal justice scholar in the Commonwealth of Virginia and analyze them within the context of the very real and very troubling criminal justice system that exists within this state and within this nation. Due to academic limitations related to this field of study at my university, my educational experience has been very different from those who studied criminal justice before me. While many of my classes taught me about the structure of the legal system and how to read and analyze the written law, very few of my classes delved into topics related to racial disparities, mass incarceration, and the prison-industrial complex. I found myself learning a lot about constitutional law but not very much about criminal law, which wasn't very fulfilling for a student with my interests. The classes where I did get to delve deeply into the contentious topics that raised questions about justice and injustice, fairness and unfairness, and equality and inequality with the U.S. criminal justice system were what really helped me to sharpen my critical thinking and analytical skills. These classes allowed me to read about, conduct research on, and discuss in-depth the multitude of implications of the unequal distribution of justice on our society.

Yet, the majority of my learning took place outside of the classroom as opposed to within it. While the books and documentaries and articles my professors provided were informative and sometimes mind-blowing, I realized early on in my academic career that I would not be able to fully understand how the criminal justice system worked until I worked within it for myself. I also realized that I could not make generalizations about how the criminal justice system affected people in communities without interacting with people from the communities I wanted to learn about. It was important for me to be hyperaware of how context matters in different places and for different people and to understand how the various idiosyncrasies of laws and social policies allow justice to flourish or injustice to thrive.

Hence, I took the opportunity to explore criminal justice by engaging with Virginia's criminal justice system through long-term community-based learning. Doing so allowed me to apply my understanding of theory, institutional and systemic oppression, and power dynamics to what I saw taking place in the communities I served. Experiential learning taught me so much more about criminal justice and injustice than my professors had the capacity to and allowed me to develop my own sense of *why* and *how* things were not going well in the Commonwealth. By working within government agencies, connecting with advocacy groups, and actively participating in local social movements, I have been able to see with my own eyes the ways in which the criminal justice system in Virginia has been both progressive and regressive, restorative and retributive, and just and unjust. I've met so many people who have been impacted by the criminal justice system in Virginia whose stories have left me permanently confused and unsettled. It's one thing to read a book like *Just Mercy* or *The New Jim Crow* and feel heart-broken or shaken by the harsh realities that the authors convey with their stories about individuals you may never actually meet. Yet, it is a completely different thing to meet someone

face-to-face and feel outraged to hear about how a system that claims to be delivering justice has done this person wrong. The emotions do hit hard, but not at all in the same way.

It is precisely because of these experiences that I have developed this paper. I have seen the many ways in which the criminal justice system in Virginia has been both a champion of and a tyrant towards the rights of the criminally accused, and I began wondering if the elements of injustice and justice within this system balance each other out to make the system somewhat neutral, if the system is more just than we may initially think, or if the system is as unjust as many already perceive it to be. My observations and experiences as scholar-leader-activist in the community have made me question the ways in which Virginia's criminal justice system can be both an ally and an enemy to the civil rights and liberties of the criminally accused. My goal in this paper is to effectively dissect, analyze, and evaluate several key aspects of Virginia's criminal justice system and determine whether Virginia's system should be considered a justice system or an injustice system.

B. Criminal (In)Justice

In this paper I examine the role of retributivist and restorative policies of Virginia's criminal justice system and evaluate the impacts of these policies on the civil rights and liberties of the criminally accused. I define the criminally accused as any individual or individuals who have come into negative contact with the criminal justice system. Negative contact refers to any interactions with law enforcement that result in an arrest, a temporary or permanent period of detainment, any form of court proceeding(s), incarceration, or supervision. Included under this umbrella of the criminally accused are people who have been investigated, arrested, interrogated, or otherwise taken into police custody; individuals on probation or parole; people actively

incarcerated while awaiting trial or sentencing, serving time for a conviction, or on death row; and those individuals released from incarceration or supervision. For the purposes of this paper, the focus is on individuals who are actively incarcerated, under law enforcement supervision, and readjusting to society following incarceration or supervision, as these are the three groups of the criminally accused that I have worked most closely with in my professional and academic careers.

My paper is not purely a research paper. While there is a wealth of information available on the topic I am exploring, I wanted this paper to be mostly grounded in the research that I have done myself and the conclusions that I have reached after making my own observations. As a result, this paper is a blend of personal and critical reflection, field study, research, and policy analysis. I thought it appropriate for this paper to encompass all of these aspects because I immersed myself in the field like an anthropologist by observing and interviewing individuals in the community while simultaneously examining and critiquing the policies and politics that affect these individuals. I felt that this paper would need to be written in a manner that would allow me to highlight all of these components at the same time. Most of my direct work with the criminal justice system in Virginia has taken place in the City of Richmond and in the Hampton Roads region. As a result, many of the stories and statistics that I share in this paper are specific to individuals and persons who I have encountered in Richmond or Hampton Roads, and therefore may not necessarily be generalizable to the entire Commonwealth itself.

Throughout this paper I provide an overview of the current state of criminal justice in Virginia by sharing the relevant statistics and discussing the historical and political contexts necessary for understanding the laws, policies, and practices of today. In the first section of my paper, I explore sentencing and incarceration. I specifically look at the ways in which Virginia's

criminal justice policies contribute to mass incarceration, discriminatory criminal sanctions, and higher rates of conviction incarceration. Furthermore, I will provide commentary on what life looks like inside of a state prison and highlight the injustices that the criminally accused face while serving their sentences behind steel bars and concrete walls. I then discuss the work of criminal justice reformers in trying to get Virginia to change its policies and practices.

In the second section, I share my personal experiences as a community corrections intern and discuss the strengths and weaknesses of local probation as an alternative to incarceration. In the third section, I discuss juvenile incarceration in Virginia and the school-to-prison pipeline by highlighting how school disciplinary practices arbitrarily funnel students out of the education system and into the criminal justice system. In the fourth section, I highlight what the lives of the criminally accused look like post-incarceration and post-supervision, drawing on examples from my experience as a Restoration of Rights intern with the Office of the Secretary of the Commonwealth and as a program assistant with the City of Richmond's Center for Workforce Innovation.

In the final section, I propose several sociopolitical changes that I believe can help Virginia's criminal justice system transition into a more just and a more ethical justice system. I also highlight the good work of individuals who are striving to ensure that those people who are behind bars retain their humanity and are not left to waste away inside of the Commonwealth's carceral institutions. It is in this concluding section where I will argue that although Virginia's criminal justice system is an injustice system in many ways, the damage to the system can be reversed if enough effort is put into making the necessary social, political, economic, and ethical changes.

C. Telling the Stories

In studying criminal justice, I have found storytelling to be one of the most impactful means for individuals to share their experiences. Shaka Senghor's memoir, *Writing My Wrongs*, and the collections of memoirs in David Coogan's *Writing Our Way Out*, and Wally Lamb's *Couldn't Keep It to Myself* all served as inspirations to me as I thought about how to tell my story and the stories of the people featured in this paper. My goal is for this paper to read like a story, rather than as an academic paper. Within this paper, many stories from real people I've worked with, briefly met, or have a sustained relationship with are highlighted. However, to protect their privacy and identities as much as possible, I have identified them either by their initials or a pseudonym that I created for them. Without these individuals, this paper would not have been possible. I attempted to capture a diverse range of individuals from varying professional, gender, and racial backgrounds and identities. Most of the individuals I interacted with are persons of color. Given the huge role that race plays in the criminal justice system, I thought it especially important to have these voices represented.



II. Sentencing and Incarceration

“Crime affects all of us...But I don’t know that jail and prison is solving the crime problem...We punish people and nothing really changes. The crime is thoughtless. The punishment is thoughtless. Society becomes thoughtless.”¹

– David Coogan –

Author, *Writing Our Way Out: Memoirs from Jail*

“In all the work I have done, I have come to realize that every form of oppression, from environmental to racial, comes together in a prison. Every. Form. Of. Oppression. Whatever anti-oppression work you do will eventually lead you to prison justice.”

– M.B. –

Chair of the Coalition for Justice

More often than not, our attention is hyper-focused on the criminal justice system at the national level. The United States has been called out for leading the world in mass incarceration, and scholars like Michelle Alexander and Angela Davis, lawyer activists like Bryan Stevenson, and filmmakers like Ava DuVernay have played integral roles in making our society collectively pause and take a critical look at our prison nation and the myriad of social inequities and injustices that manifest within it. Our nation is home to five percent (5%) of the global population but accounts for twenty-five percent (25%) of the world’s imprisoned population.² Within our prison population, racial minorities and socioeconomically disadvantaged individuals are overrepresented. Yet, when examining mass incarceration at the national level, it is crucial that we recognize that the criminal justice systems of each individual state in the U.S. contribute to the national numbers. According to Wagner and Sawyer’s “Mass Incarceration: The Whole Pie” annual report for 2018, state prisons hold 1.3 million of the nation’s 2.3 million incarcerated

¹ Coogan, David, *Writing Our Way Out: Memoirs from Jail*, Brandylane Publishers, Inc. 2016: 13. Print.

² Turan, Kenneth, “Ava DuVernay’s Documentary ‘13th’ Simmers with Anger and Burns with Eloquence,” *LA Times*, 6 October 2016, accessed March 12, 2019, <https://www.latimes.com/entertainment/movies/la-et-mn-13th-review-20161001-snap-story.html>.

individuals.³ So while it is true that criminal justice reform on the national level is certainly necessary, turning our attention to what can be done to end mass incarceration at the state level should be a priority if we are truly serious about preserving the rights of the criminally accused.

A. Overview

The criminal justice system is a complex network of legal institutions and law enforcement personnel that is tasked with both the handling of crime and punishment and the administration of justice. In observing many of the legal practices of today, I have realized that the criminal justice system seems to be doing very well in performing the former task but extremely poor in performing the latter. I make this claim because in many ways, the actors and institutions involved are not always striving to ensure that the criminally accused retain their fundamental rights to equal protection and due process of law.

Sometimes these rights violations are due to the structural and institutional limitations that exist within the criminal justice system. Public defenders, for example, face institutional, economic, and cultural constraints that inhibit their ability to defend the criminally accused to the fullest extent possible.⁴ Public defense attorneys have less power over the legal process than their colleagues on the prosecutorial side, are overworked and underpaid for their services to indigent defendants, and often find themselves persuading their clients to take a guilty plea rather than providing their clients the opportunity to plead their innocence in the courtroom.⁵ At other times, the rights of the criminally accused are disregarded due to systemic racial, gender, or

³ Wagner, Peter and Wendy Sawyer, “Mass Incarceration: The Whole Pie 2018,” *Prison Policy Initiative* accessed March 12, 2019, <https://www.prisonpolicy.org/reports/pie2018.html>.

⁴ Jiggetts, Alicia, “The Dilemma of Public Defense,” *PLSC 323: Money, Politics and Prison*, 6 December 2018, 10.

⁵ Jiggetts, “The Dilemma of Public Defense,” 3.

socioeconomic biases. As of the current decade, law enforcement officers are being looked at with closer scrutiny and increased skepticism as more incidents of police brutality towards minorities and extrajudicial killings of unarmed civilians are reported, recorded, and exposed.⁶

Often times, the laws and social policies that are currently on the books are to blame for the absence of justice and disregard for the rights of the criminally accused in our criminal justice system. Policy, politics, and economics shape the way criminal justice systems function and predetermine who will be most adversely affected. Criminal justice systems have four primary goals: retribution, deterrence, incapacitation, and rehabilitation.⁷ However, these goals are not always emphasized equally, or fully achieved, by the individuals and institutions tasked with accomplishing them. In her article entitled “Reimagining a Lifetime of Punishment” Samantha Olson explains that “each of these four goals serves a different purpose in creating criminal justice legislation, [but] not all four can be found in each piece of legislation.”⁸

Retribution refers to the punishment of an individual for committing a crime. Olson says that “The focus is on the equity and proportionality of the crime; similar crimes should be punished the same way, and the punishment should be consistent with the severity of the crime.”⁹ Criminal justice systems in the U.S. are highly punitive; Louisiana has the highest rate of incarceration in the U.S. and Oklahoma and Texas rank first and second place for state-sanctioned executions.¹⁰ However, the punishments handed down by criminal justice systems are

⁶ Jiggetts, Alicia, “#BlackLivesMatter: From Hashtag to Public Policy,” PLSC 400: *Senior Seminar: American Exceptionalism*, 16 December 2018, 2.

⁷ Olson, Samantha, “Reimagining a Lifetime of Punishment: Moving the Sex Offender Registry to a Risk of Re-Offense Model,” *Oregon Law Review* 96 (2017): 313-335.

⁸ Olson, “Reimagining a Lifetime of Punishment,” 321.

⁹ Olson, 321.

¹⁰ “State by State Database,” *Death Penalty Information Center*, accessed April 8, 2019, https://deathpenaltyinfo.org/state_by_state.; “State Execution Rates,” *Death Penalty Information Center*, accessed March 25, 2019, <https://deathpenaltyinfo.org/state-execution-rates>.

not always proportional to the crime committed. Policies like mandatory minimum sentences and three-strike laws, which I will discuss in more detail later in this section, contribute to lengthy sentences for crimes that are often minor or non-violent.

Deterrence is the “[creation of] a fear of punishment” that aims to either prevent members of a community from committing the same crimes that others have committed, or preventing those who have already committed crimes from recidivating.¹¹ The rationale is that by making an example of someone else, law enforcement will be able to deter others from following that person’s lead, and thus reduce overall crime. The over-policing of “high crime” areas is a common deterrence technique utilized by police forces across the U.S. However, over-policing can often lead to antagonistic relationships between community members and law enforcement officers. Furthermore, low-income areas and communities of color tend to be policed more heavily than the wealthier and whiter communities that are policed for the purpose of protecting residents rather than for stopping criminals. These differences in policing then contribute to the disparate arrest rates between these types of communities.

Incapacitation is the prevention of further crimes by isolating the criminally accused from the rest of society.¹² This is the primary function of the prison system. By incarcerating those individuals who are perceived as threats to public safety or nuisances to the general population, the criminal justice system is keeping communities safe from individuals who break the rules. The problem with incapacitation, however, is that isolation via incarceration does not always guarantee reformed behavior. Sometimes incarceration exacerbates behaviors like drug abuse and violence because of the influences of individuals already inside. The use of solitary

¹¹ Olson, 321-322.

¹² Ibid, 322.

confinement also raises many ethical concerns from prison reform advocates due to the psychological and physical effects of the practice.

Rehabilitation refers to the attempt to treat or reform the behavior(s) of the criminally accused.¹³ Prison was originally designed to be a place where lawbreakers would spend time reflecting on and repenting for their wrongdoings before being released back into society.¹⁴ As such, the prison system is supposed to help ensure that when individuals leave the gates of the prison behind, they will not commit further crimes. Rehabilitation is where incarceration, and the criminal justice system as a whole, fails the most, because there are limited resources available to truly help the criminally accused. While many inmates are able to use religion or education as a means of rehabilitating themselves, other inmates are not as fortunate. Furthermore, a large percentage of inmates need psychological help that prisons often do not provide during or after their stay behind bars, resulting in either a higher likelihood of recidivism upon release or an untimely death soon after release.¹⁵

Criminal justice policies and practices in the Commonwealth of Virginia follow the status quo in many ways, which is one of the reasons why I have chosen Virginia for this critical analysis. Furthermore, I chose to examine Virginia in this paper because I have worked most proximately with Virginia's criminal justice system. Thus, from this point forward, I will be referring specifically to Virginia's criminal justice system, with limited commentary on national trends and practices. When it comes down to determining in what ways the criminal justice system in Virginia poses a threat to the civil rights and liberties of the criminally accused, there

¹³ Ibid, 322.

¹⁴ Davis, Angela Yvonne, *Are Prisons Obsolete?* New York: Seven Stories Press, 2003: 45-46. Print.

¹⁵ Haney, Craig, "Mental Health Issues in Long-Term Solitary," *Crime and Delinquency* 49(2003): 124-156.

are three key indicators of injustice: statistics, policies, and on-the-ground reality for the criminally accused.

First, I examine the statistics on incarceration because in many ways the numbers tell the story of injustice more effectively than words can. Second, I analyze the implications of specific criminal justice policies on mass incarceration in Virginia, as policy can be the determining factor for the length and severity of an individual's prison sentence. Third, I assess what life behind bars looks like for the criminally accused by sharing what people who are or have been incarcerated have said about their lived experiences in Virginia's jails and prisons. I also consider the perspective of proponents of prison reform in Virginia.

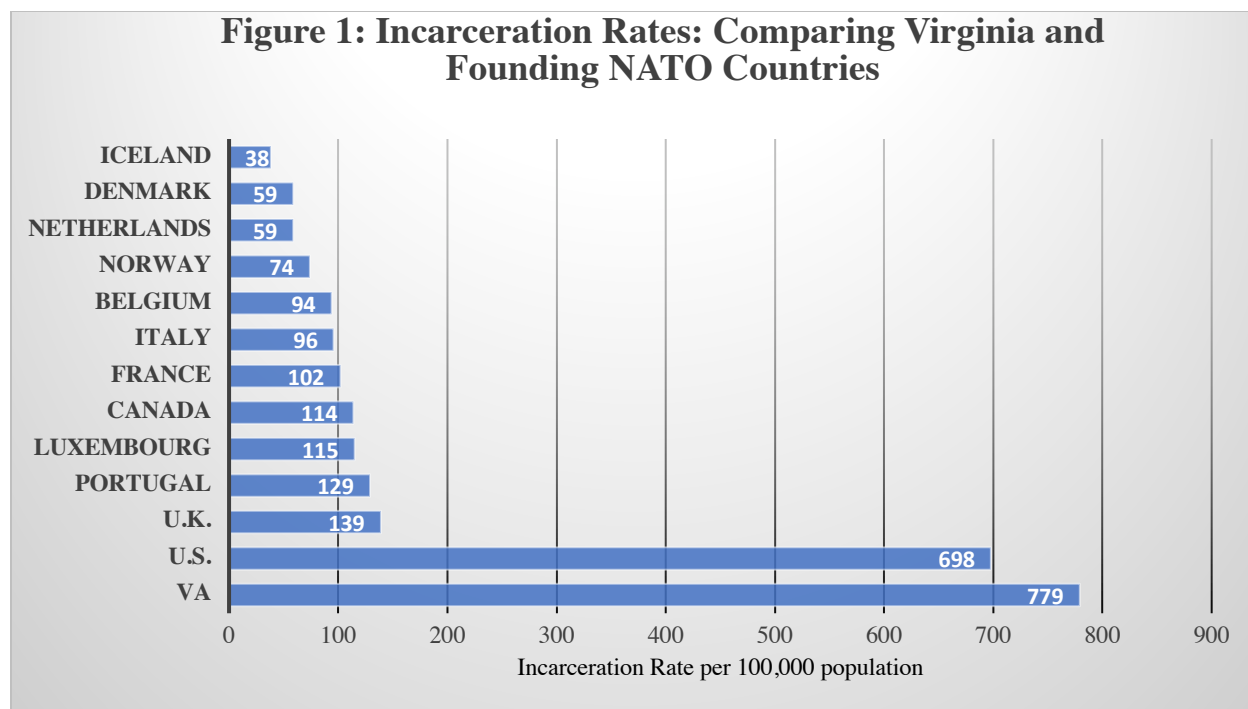
B. Injustice in Numbers

Virginia's incarceration rate is trailing the national average for incarceration. The Commonwealth of Virginia has the 13th highest incarceration rate out of the fifty states, incarcerating 449 people for every 100,000 Virginians.¹⁶ According to the U.S. Bureau of Justice Statistics, the U.S. as a whole incarcerates 471 people per every 100,000 U.S. inhabitants.¹⁷ However, when factoring in the number of people incarcerated in *all* institutions of confinement, such as state prisons, jails, immigration detention centers, and juvenile detention centers, Virginia's incarceration rate not only tops the national incarceration rate, but also tops the incarceration rates of eleven other nations in the world, as shown in Figure 1 below.¹⁸

¹⁶ "State-by-State Data," *The Sentencing Project*, <https://www.sentencingproject.org/the-facts/>.

¹⁷ "State-by-State Data," *The Sentencing Project*.

¹⁸ "Virginia Profile," *Prison Policy Initiative*, <https://www.prisonpolicy.org/profiles/VA.html>



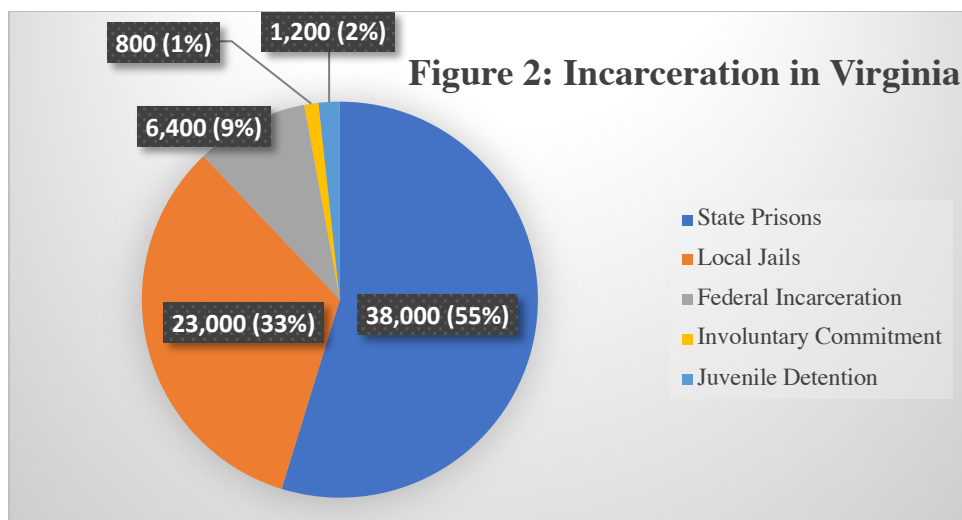
About 131,000 Virginians are affected by the criminal justice system, with about 69,000 serving time behind bars and approximately 61,600 under some form of supervision.¹⁹ Figure 2 illustrates the distribution of incarcerated individuals in various carceral institutions.²⁰ Thousands of people who are behind bars in Virginia have not been convicted yet.²¹ While nearly 12,000 of Virginia's incarcerated population in 2013 were convicted, just under 9,000 were behind bars awaiting trial.²² Due to an inability to pay bail and the long periods of time that the criminally accused often must wait prior to going to trial, many Virginians spend an extended period of time in pretrial detention. Sometimes, but not very often, the time spent in pretrial detention can be counted as time served towards one's actual sentence.

¹⁹ "Virginia Profile," *Prison Policy Initiative*.

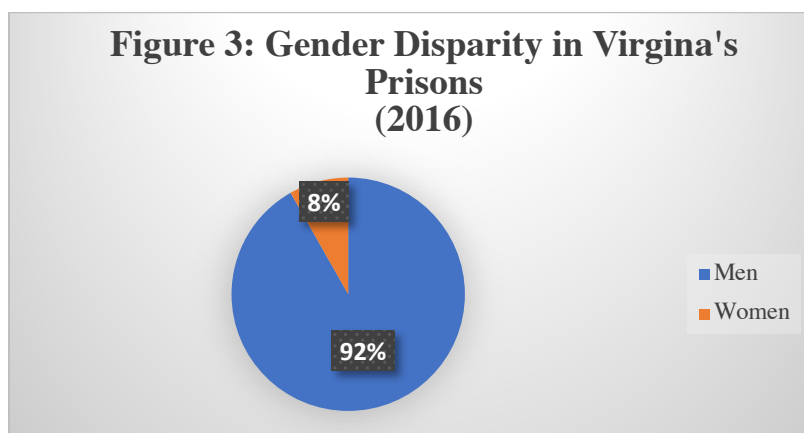
²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

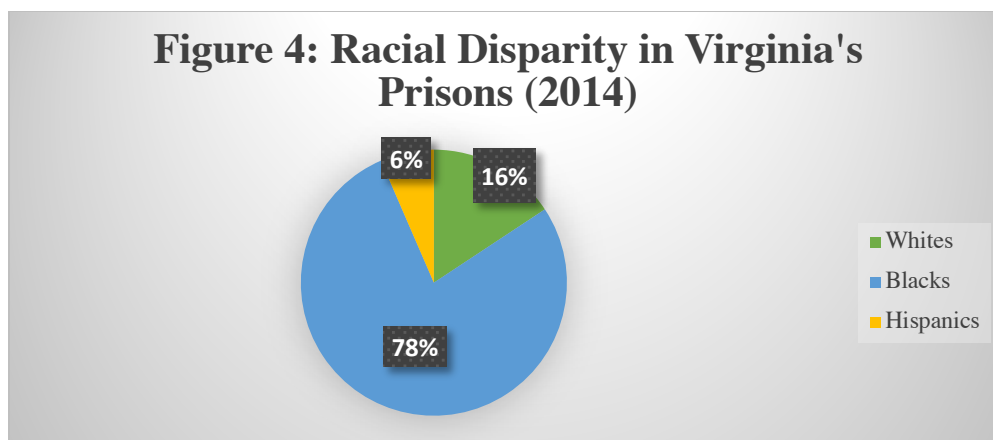


Furthermore, the criminally accused are not incarcerated equally in Virginia. Men are overwhelmingly overrepresented in Virginia's prisons (see Figure 3) and African Americans account for over 75% of Virginia's incarcerated population, despite composing only 18.9% of Virginia's population (see Figure 4).²³ This follows the disturbing trend in mass incarceration taking place nationally. While only about 13% of the U.S. is African American, African Americans comprise 40.2% of the incarcerated population across the nation.²⁴



²³ "Detailed State Data," *The Sentencing Project*, <https://www.sentencingproject.org/the-facts/#map?dataset-option=SIR>.

²⁴ Turan, "Ava DuVernay's Documentary '13th' Simmers with Anger and Burns with Eloquence."



The mentally ill are also incarcerated at an alarming rate in Virginia's prisons and jails, which serve as the largest mental health treatment facilities across the nation.²⁵ The Hampton Roads Regional Jail serves as the largest mental health treatment center in the Commonwealth.²⁶ According to the Compensation Board's 2016 report, 26% of the females locked up in Virginia's local jails suffer with mental illnesses while 14% of the male inmates suffer with mental illnesses.²⁷ Nationwide, the U.S. Department of Justice estimates that 16% of incarcerated individuals have some form(s) of mental illness.²⁸ Persons with mental illnesses are four times more likely to be arrested for minor charges; 70% of inmates with mental illnesses are arrested for committing nonviolent misdemeanor "crimes of survival."²⁹

In addition to incarcerating individuals at an alarming rate, the Commonwealth of Virginia ranks fourth in the nation for per capita executions, falling behind the states of Oklahoma, Texas, and Delaware.³⁰ Since 1976, when capital punishment was reinstated, Virginia

²⁵Osborn, Andrew, "An Introduction to Forensic Psychology, Public Policy and the Law," *Presentation given in CHEM 113: Catching Criminals with Chemistry at the University of Richmond*, 2018.

²⁶ Osborn, "An Introduction to Forensic Psychology."

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ "State Execution Rates," *Death Penalty Information Center*.

has executed 113 people.³¹ Prior to 1976, Virginia executed 1,277 people.³² If looking just at the execution numbers alone, it is revealed that Virginia ranks third in the nation for executions, following Texas and Oklahoma, which rank first and second for executions respectively.³³ Currently, there are three (3) individuals on Death Row in Sussex I Correctional Center, which is located in Waverly, Virginia.³⁴

Looking at these numbers, one may conclude that Virginia must have very high crime rates. After all, why else would the Commonwealth incarcerate so many of its own people? However, that is not the case. According to the Justice Policy Institute, Virginia's crime rates have been steadily declining over the last twenty years.³⁵ In 2011, Virginia ranked 46th out of the 50 states for violent crime and 43rd out of the 50 states for property crime.³⁶ So why is it that Virginia is still ranked 13th for incarceration in 2011 and was ranked 11th for spending on Corrections in 2008, despite the low rates of reported crime?³⁷

One of the reasons is that drug-related arrests have increased over time.³⁸ Between 2001 and 2010, arrests for drug offenses increased by 31.5%.³⁹ As a result, even though crime itself has decreased, the number of arrests being made in Virginia have been about the same over time.⁴⁰ The Justice Policy Institute (JPI) criticizes Virginia's aggressive stance on drug violations, because "arresting people for drug violations has had no effect on reducing drug use.

³¹ "State by State Database," *Death Penalty Information Center*.

³² *Ibid*.

³³ *Ibid*.

³⁴ "Ibid; Iovino, Jim, "Facts About Virginia's Death Row," *NBC4 Washington*," 10 November 2009, <https://www.nbcwashington.com/news/local/Facts-About-Virginias-Death-Row-69644447.html>.

³⁵ "Virginia's Justice System: Expensive, Ineffective and Unfair," *Justice Policy Initiative*, November 2013, 2.

³⁶ "Virginia's Justice System," *Justice Policy Initiative*," 2.

³⁷ *Ibid* 2.

³⁸ *Ibid* 3.

³⁹ *Ibid* 3-4.

⁴⁰ *Ibid* 1.

In fact, illicit drug use has increased in recent years.”⁴¹ Another factor behind the increase in the number of incarcerated individuals in Virginia’s prisons and jails is that people are going to jail for much longer periods of time due to “tough on crime” policies.⁴² The JPI contends that these policies help keep Virginia’s criminal justice system “expensive, ineffective, and unfair.”⁴³ Hence, if we are to fully understand the statistics and the current trends in incarceration, we must consider the policies that are driving these numbers and determine what can be done on the policy side to change the narrative.

C. Problematic Policies

When Presidents Nixon and Reagan began their crusades against crime in the 1970s and 1980s, highly punitive policies on the federal and state level helped to usher in our current era of mass incarceration. In the years that followed, presidents from both the Republican and Democratic parties enacted criminal justice legislation that served to maintain mass incarceration rather than reduce the established trend. Three such problematic policies that have had a profound effect on mass incarceration nationally and in the Commonwealth of Virginia are mandatory minimums, three-strikes laws, and truth-in-sentencing. These laws work both individually and in tandem with one another to ensure that people who go into Virginia’s state prisons are staying there for long periods of time, if not permanently.

Mandatory minimum laws establish a minimum amount of time that one must spend behind bars for committing a specific crime. These laws are designed to ensure that every individual who commits the same crime is fundamentally punished in the same way. However,

⁴¹ Ibid 1.

⁴² Ibid 1.

⁴³ Ibid 1.

mandatory minimums laws often do not fit the proportionality principle of punishment, and do not take away from the fact that the longevity of the sentences for black defendants and white defendants are often unequal. According to the American Civil Liberties Union's written submission to the Inter-American Commission on Human Rights, Black males face jail and prison sentences that are nearly 20% longer than the sentences imposed upon their White male counterparts.⁴⁴ This means that, while the minimum amount of time served must be the same, the total amount of time served can vary. For example, in the Commonwealth of Virginia, the time served for involuntary aggravated vehicular manslaughter can range from one (1) year behind bars to twenty (20) years behind bars.⁴⁵ However, the mandatory minimum that any individual must serve for this offense is one year.⁴⁶ So if two men in Virginia, one Black and one White, are convicted for involuntary aggravated vehicular manslaughter, the White man could get a sentence of ten (10) years while the Black man could get a sentence of twelve (12) years.

Now, take into consideration the mandatory minimum laws for marijuana in Virginia. Marijuana is listed as a narcotic under Virginia's drug classifications.⁴⁷ The mandatory sentence for selling or distributing marijuana is five (5) years behind bars, but the total range for the crime is five (5) years to life in prison.⁴⁸ Transporting five pounds (5 lbs.) of marijuana into the Commonwealth guarantees a mandatory minimum of three (3) years behind bars, but a possibility of up to forty (40) years.⁴⁹ So, as punishment for transporting marijuana into the Commonwealth, a White male could receive 20 years while a Black male could receive 24 years.

⁴⁴ American Civil Liberties Union, "Racial Disparities in Sentencing," *ACLU*, 27 October 2014, 1.

⁴⁵ Virginia Criminal Sentencing Commission, "Mandatory Minimum Laws in Virginia," *VCSC*, http://www.vcsc.virginia.gov/Man_Min.pdf.

⁴⁶ VCSC, "Mandatory Minimum Laws."

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

So, what do these examples illustrate? Well for one, we see that under Virginia law, a person who kills someone while driving intoxicated will serve less time behind bars than a neighborhood drug dealer. This indicates that the concept of proportionality is not coming into play when drafting and adopting criminal justice policy. Secondly, we see that mandatory minimums do not in any way guarantee equity in sentencing, and thus are not contributing to an end or reduction of mass incarceration in our Commonwealth.

Once we couple mandatory minimum sentences with three-strikes laws in Virginia, we then have an even bigger problem. Three-strikes laws are the brain child of President Bill Clinton, and have allowed for an even greater number of criminally accused individuals to be sent to prison for life. By placing criminal conduct in the context of a baseball game, three-strikes laws mandate that an individual who has committed three separate felonies will be incarcerated for life upon receiving the third felony. Virginia's three-strikes laws have been on the books since 1994.⁵⁰ According to D.C. attorney Evan Werbel, "The idea of three-strikes laws is that [the criminally accused has] committed a crime, sat in jail and should have realized the wrongs of [their] ways, but then [they] go out and do it again. After the third conviction, the three-strikes law basically says 'Enough is enough, and [they're] never going to be rehabilitated.'"⁵¹

Virginia, however, has not been interpreting three-strikes laws in this manner. Whereas the law is supposed to apply to each criminal conviction, many prosecutors have been applying strikes to the individual charges or crimes. For example, Attorney Werbel had a client who

⁵⁰ Folk, Ashley, "Three Strikes Laws in Different States," *LegalMatch Law Library*, 17 December 2004, <https://www.legalmatch.com/law-library/article/three-strikes-laws-in-different-states.html>.

⁵¹ Reutter, David, "Virginia Parole Board Changes 'Three-Strikes' Interpretation," *Prison Legal News*, July 2018, <https://www.prisonlegalnews.org/news/2018/jul/6/virginia-parole-board-changes-three-strikes-interpretation/>.

committed nine crimes in three separate cities within the span of one month.⁵² In court, his client was convicted and given a combined sentence, meaning he would serve time for all of the crimes committed during his “spree” before being paroled out.⁵³ However, Virginia’s Board of Corrections classified this client as three-striker, making him ineligible for parole.⁵⁴ Werbel writes that by classifying his client as a three-striker, his client is not being given the chance to rehabilitate himself.⁵⁵ He was only convicted once and served one stint in prison; so three-strikes should have never been applied to this case. It took Attorney Werbel fifteen (15) years to get his client paroled out.⁵⁶ So instead of being eligible to go free after serving eight (8) years, Werbel’s client served 23 years behind bars; nearly three-times longer than he should have.

Another issue with this three-strikes interpretation is that “the existing statute does not require that inmates be convicted for one strike before another can be counted against them,” which contradicts the idea that a person must go through a process of conviction and release three times, rather than be charged with three separate crimes alone.⁵⁷ Adrienne Bennett, chairwoman of the state parole board, noted that, “The way that this statute had been interpreted [is] different from the way any three-strikes statute [has] ever been interpreted in the history of three-strikes statutes. The lack of due process and the subjectivity of the application of the law create an unfair and inequitable standard.”⁵⁸ Senator Scott Surovell of Virginia stated that while

⁵² Reutter, “‘Three-Strikes’ Interpretation,” *Prison Legal News*.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ Dujardin, Peter, “Changes in ‘Three Strikes and You’re Out’ Law, Practice Could Affect Hundreds of Inmates,” *DailyPress*, 7 January 2018, <https://www.dailypress.com/news/dp-nws-evg-parole-three-strikes-20171218-story.html>.

⁵⁸ Reutter, “‘Three-Strikes’ Interpretation.”

“in the abstract, three robberies sounds egregious...the way the [three-strikes] law was applied seemed to be capturing a lot of people I’m not sure it was ever aimed at.”⁵⁹

This misinterpretation of the law demonstrates the way that the rights of the criminally accused are infringed upon in Virginia. Attorneys on both the prosecutorial and defense sides have not been reading and applying the law in the correct way. Furthermore, given the power of state prosecutors to determine whether to charge an individual with a misdemeanor or a felony often leaves Black defendants at a disadvantage. For example, wobbler laws allow some crimes to be considered as either a misdemeanor offense or a felony offense; the prosecutor gets to choose.⁶⁰ Ashley Folk writes that “if a defendant has two previous felonies on record and commits a crime which is considered a ‘wobbler,’ the court has the discretion to charge the crime as a felony. This allows the court to hand down a greater sentence even if the crime would normally be a misdemeanor.”⁶¹ The combination of racial biases and unchecked discretion make this dangerous, especially for defendants of color who are more likely to be charged with felonies. The ACLU writes that even when controlling for contextual factors, “Black defendants face significantly more severe charges than Whites.”⁶²

Truth-in-sentencing laws are “a collection of different policies that align imposed sentences with time served. Under a series of changes related to the 1995 sentencing reforms in Virginia, all sentenced persons must serve at least 85% of their sentence” before being eligible for parole.⁶³ In practice, truth-in-sentencing has led to the abolition of parole in Virginia, where

⁵⁹ Ibid.

⁶⁰ Folk, “Three Strikes Laws in Different States.”

⁶¹ Ibid.

⁶² American Civil Liberties Union, “Racial Disparities in Sentencing,” 1-3.

⁶³ “Billion Dollar Divide: Virginia’s Sentencing, Corrections and Criminal Justice Challenge,” *Justice Policy Initiative*, April 2014, 2-37, <http://www.justicepolicy.org/uploads/justicepolicy/documents/billiondollardivide.pdf>

only those people sentenced prior to 1995 are eligible for parole.⁶⁴ This explains why in Virginia, there are only about 1500 individuals under parole supervision.⁶⁵ The stated purpose of these laws is “to reduce the gap between the sentence(s) pronounced in the courtroom and the incarceration time actually served.”⁶⁶ When parole was still in place, incarcerated individuals could use “good behavior” or “earned time” credits to reduce the amount of time served before being paroled out.⁶⁷ Under this system, inmates could serve as little as 20% of their sentence.⁶⁸ Under truth-in-sentencing, inmates must serve at least 85% of their sentence.⁶⁹ Most inmates serve 90% of their sentence.⁷⁰

Virginia prides itself on the success of truth-in-sentencing. Not only do these laws maintain public safety by keeping violent felons behind bars, but they also reduce recidivism and have contributed to a decrease in violent crimes.⁷¹ However, truth-in-sentencing has also contributed to the addition of more mandatory minimum sentences, 25% of which apply only to drug offenses.⁷² Furthermore, Virginia has added more offenses to the criminal statute; criminalizing more behaviors so that more arrests can be made.⁷³ So while the victims of crime are guaranteed peace of mind, the criminally accused are guaranteed extended time. This demonstrates Virginia’s commitment to retribution over restoration. Instead of giving inmates

⁶⁴ “Billion Dollar Divide,” *Justice Policy Initiative*, 3.

⁶⁵ “Detailed State Data,” *The Sentencing Project*.

⁶⁶ Virginia Criminal Sentencing Commission, “A Decade of Truth in Sentencing,” March 2005, http://www.vcsc.virginia.gov/Mar_05/TIS_Brochure.pdf.

⁶⁷ VCSC, “Decade of Truth in Sentencing.”

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² “Billion Dollar Divide,” *Justice Policy Initiative*, 3.

⁷³ Ibid 3.

the chance to redeem themselves and prove that they can change, they are cast out of society and labelled as irredeemable.

As a consequence of these policies, mass incarceration in the Commonwealth has increased while crime rates in Virginia have decreased. In addition, communities and families have been torn apart, as more and more individuals wind up in jail for longer periods of time.⁷⁴ When and if the criminally accused are released from prison, many of these individuals become members of a population of socially and economically disadvantaged people who have lost ties to family and friends, have limited opportunities for work, education, and government assistance, and no longer possess the right to vote. Essentially, these individuals are treated as if they are non-citizens in their own state and country.

By treating the criminally accused as if they are incapable of reformation, rehabilitation, and redemption, Virginia's policies are not fulfilling the goals of criminal justice. In fact, these policies serve to exacerbate injustice, often along racial lines, while operating under the guise of promoting public safety. Furthermore, these policies ensure that the Commonwealth is spending a lot more money on incarceration than on other important costs, such as education, healthcare and resources for the mentally ill, and community corrections. Virginia's lawmakers need to take a good look at the statute and reevaluate the terms, especially for mandatory minimums where the punishment is not fitting the crime. Furthermore, present and future attorneys need to be instructed on the proper way to apply three-strikes laws. Lastly, truth-in-sentencing needs to be reevaluated. While dangerously violent criminals should be held in prison for a longer time, nonviolent criminals who pose a low-risk to society should be afforded the chance to redeem

⁷⁴ Ibid 3.

themselves. Given how toxic and dangerous a life behind bars can be for the criminally accused, Virginia lawmakers should prioritize keeping people out of prisons instead of keeping them trapped inside of them. After all, Virginia's prisons do in many ways violate the civil rights and liberties of the criminally accused the most.

D. Life Behind Bars

The Commonwealth of Virginia is home to thirty-eight (38) state prisons, three (3) of which are women's prisons and one (1) of which is a super-maximum-security prison.⁷⁵ There are also many local and regional jails scattered throughout the state. Prisons vary by security level, ranging from a Level 1 to a Level 5. Offenders are assigned to specific prisons based on the offense(s) committed. Prisoners who have not committed murder I or II, kidnapping or abduction, or sex offenses will likely be assigned to a prison with a Level 1 security level.⁷⁶ Prisoners who are completing long-term sentences (multiple or for life) will likely be assigned to a Level 4 or Level 5 facility.⁷⁷ Inmates who are disruptive, assaultive, pose a high escape risk, or display severe or predatory behavioral problems will be assigned to Red Onion State Prison, which is Virginia's super-maximum security institution.⁷⁸ Inmates in a Level 4 or Level 5 prison who have not had behavioral problems in prison for 24 months (2 years) may be considered for reassignment to an institution with a lower security level.⁷⁹

While time spent in jail or prison is not meant to be comfortable or enjoyable, the criminally accused are still supposed to have basic human rights. However, many of Virginia's

⁷⁵ Virginia Department of Corrections, "Facilities (Major Institutions and Correctional Units.)"

⁷⁶ VA Department of Corrections.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid.

carceral institutions are violating the rights of the criminally accused. A 2016 article in the Richmond-Times Dispatch named the Hampton Roads Regional Jail (HRRJ) in Portsmouth, VA “the deadliest [jail] in Virginia for inmates.”⁸⁰ After analyzing statistics collected from the VA Department of Corrections and the state’s Compensation Board, the ACLU found that inmates held at HRRJ died nine times (9x) more often than inmates held at any other local or regional jails in Virginia between 2013 and 2016.⁸¹ The Richmond City Jail, however, tied with HRRJ for having 12 inmates die in the same three-year time span.⁸² The number of deaths at HRRJ led former Virginia Governor Terry McAuliffe and Virginia Attorney General Mark Herring to look into potential constitutional rights violations within the state’s carceral institutions.⁸³ Inmates in the HRRJ allege that guards have assaulted inmates who have then later died, and others allege that inadequate medical care is the culprit behind many of the deaths behind bars.⁸⁴ The Assistant Superintendent of HRRJ claimed that the number of deaths is due to the percentage of the jail population who are coming into the jail with preexisting medical illnesses such as cancer and HIV.⁸⁵ However, if that is truly the case, the question then is raised as to whether the inmates are receiving the medical treatment that they require.

The U.S. Supreme Court has ruled that incarcerated individuals are entitled to medical care and attention while incarcerated. In *Estelle v. Gamble* (1976), the Court ruled that “the deliberate failure to provide adequate medical treatment to prisoners is cruel and unusual

⁸⁰ Kleiner, Sarah and K. Burnell Evans, “Hampton Roads Regional Jail Is Deadliest in the Virginia for Inmates,” *Richmond-Times Dispatch*, 3 September 2016, https://www.richmond.com/news/virginia/hampton-roads-regional-jail-is-deadliest-in-the-virginia-for/article_e8bf8340-e3e7-5f6e-b17f-a3e9cbb73add.html.

⁸¹ Kleiner and Evans, “Hampton Roads Regional Jail.”

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

punishment” in violation of the Eighth Amendment.⁸⁶ In their research on the intersection between public health and incarceration, Dumont et. al note that “Among the ironies of contemporary social and political attitudes regarding prisoners in the United States is that the incarcerated constitute almost the only group that has a constitutional right to health care.”⁸⁷ The Civil Rights of Institutionalized Persons Act, enforced by the U.S. Department of Justice, affirms the inmate entitlement to healthcare.⁸⁸ Yet, there are many indications that Virginia is not following the law. In HRRJ, for example, one of the inmates who died was imprisoned while awaiting trial for shoplifting.⁸⁹ He was an alcoholic who needed medication for seizures and acid reflux.⁹⁰ Upon discovering letters written only days before his death, the inmate wrote that he had blacked out, was experiencing a lot of pain, and was unable to eat or drink anything.⁹¹ His letters alleged that the jail did not consider his symptoms an emergency and therefore did not allow him to get any medical attention.⁹² Another inmate who died in HRRJ had no known medical illnesses, but was known to suffer from both bipolar disorder and schizophrenia.⁹³ He was in jail for stealing five dollars (\$5) worth of food from a neighborhood convenience store.⁹⁴ While in jail, he somehow lost 46 pounds with 101 days, a dramatic loss in weight that no one could explain.⁹⁵ Ultimately, though, this loss of weight contributed to his death.⁹⁶

⁸⁶ Dumont, Dora M. and Brad Brockmann, Samuel Dickman, Nicole Alexander, and Josiah D. Rich, “Public Health and the Epidemic of Incarceration,” *National Institute of Health*, 21 April 2012, 5.

⁸⁷ Dumont et. al, “Public Health and the Epidemic of Incarceration.”

⁸⁸ Kleiner and Evans, “Hampton Roads Regional Jail.”

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Ibid.

The crisis of medical treatment in Virginia's institutions of incarceration transcend gender lines. Women held in the Virginia Correctional Center for Women (VCCW) in Goochland and the Fluvanna Correctional Center in Troy report not receiving the medical care they are entitled to.⁹⁷ For many women in prison, "getting sick can equal death" when women suddenly find themselves diagnosed with dangerous illnesses.⁹⁸ One woman at VCCW died from flu and MRSA.⁹⁹ Another woman alleges to have been waiting over a-year-and-a-half for treatment for Hepatitis C.¹⁰⁰ In 2019, incarcerated women are alleging that they very seldom get to see the doctor, and that their requests for medical care or complaints about the inadequacy of health care are going unanswered by prison officials.¹⁰¹ In 2016, inmates at Fluvanna, the largest women's prison run by the Commonwealth of Virginia, were still complaining about inadequate healthcare, despite the prison having been at the center of a lawsuit in 2012 regarding the issue.¹⁰² The previous lawsuit accused Fluvanna of having a "systemic, pervasive, and ongoing failure to meet the minimum standards of medical care for inmates."¹⁰³ Allegedly, the institution was denying inmates their medications, purposely making them miss their appointments, and refusing their requests to see doctors.¹⁰⁴

Medical care is just one of many troubling issues that inmates in Virginia face. Another huge human rights issue that prison reform advocates are up-in-arms about is the use of solitary

⁹⁷Hafner, Katherine, "Women 'Seen and Not Heard': Inmates at Virginia's Goochland Prison Fear Lack of Medical Care," *Daily Press*, 13 March 2019, <https://www.dailypress.com/news/dp-nws-goochland-inmates-lack-of-care-0313-story.html>; Harki, Gary A, "At Fluvanna Correctional Center For Women, Horror Story after Horror Story in Medical Care," *Virginian-Pilot*, 10 December 2016, https://pilotonline.com/news/government/politics/virginia/article_9096368d-54ce-5018-beb7-bea8732e8965.html.

⁹⁸ Hafner, "Women 'Seen and Not Heard.'"

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Harki, "Horror Story after Horry Story."

¹⁰³ Ibid.

¹⁰⁴ Ibid.

confinement in maximum security and super-maximum-security prisons. Red Onion, Wallens Ridge, and Sussex II are infamous for their use of solitary confinement. In 2003, Dr. Craig Haney wrote a paper about entitled “Mental Health Issues in Long-Term Solitary and ‘Supermax’ Confinement.”¹⁰⁵ In this paper, Haney discusses the psychological and psychiatric effects of conditions solitary confinement in super-maximum-security prisons.¹⁰⁶ These institutions keep inmates virtually isolated from the outside world, deprives them of social contact with other human beings, and subjects them to complete idleness for extended periods of time in cells that are often small, dark, and claustrophobia inducing.¹⁰⁷ Inmates in supermax prisons are heavily constrained and have all of their everyday movements controlled by prison officials.¹⁰⁸ The conditions of this confinement often lead to the onset of psychological pain, mental illness, and/or social pathologies, or the exacerbation of the mental health concerns of those inmates who are already suffering from pre-existing mental illnesses.¹⁰⁹ Yet, despite the wealth of research available showing the dangerous psychological and psychiatric effects of supermax prisons, the legal system has not yet called for the abolition of supermax prisons and the use of solitary confinement as punishment in U.S. prisons.¹¹⁰ A Washington Post article written about the conditions at Red Onion states:

“Conditions in solitary confinement can differ from state to state, but generally prisoners are near-totally isolated, locked in small cells for 22 to 24 hours a day. Recreation and showers are available only under strict circumstances. People who enter solitary confinement healthy are prone to come out disturbed. Those with mental illness are at high risk of getting much worse. When they leave prison, they become everyone’s

¹⁰⁵ Haney, “Mental Health Issues in Long-Term Solitary Confinement,” 124-153.

¹⁰⁶ Ibid 124-125.

¹⁰⁷ Ibid 124-125.

¹⁰⁸ Ibid 138-139.

¹⁰⁹ Ibid 130-132.

¹¹⁰ Ibid.

problem, not just the Warden's. Human beings are social animals. Interaction with other people is not a luxury; it is a mental-health requirement."¹¹¹

Inmates at Red Onion allege being denied access to recreation and shower privileges for over a month.¹¹² Many also report being abused by prison guards.¹¹³ One inmate alleges that a guard sprayed him in the face with mace through his food tray slot multiple times and threatened to “beat his [n***er a**]” if he reported the incident to prison administrators.¹¹⁴ As a result of alleged incidents like this, inmates have been afraid to file complaints about the abuses they've suffered at the hands of prison guards.¹¹⁵ Many allege that they have been kept in isolation for extended periods of time, and have not been downgraded to lower levels of security even after they've behaved as required.¹¹⁶ The inmates also claim that positive behavior is not encouraged, and that the guards often instigate situations to make inmates act up so that the guards can then inflict punishment upon them .¹¹⁷ One can only imagine the effects that such a toxic, dangerous, and mentally distressing environment like this can have on the criminally accused both inside and outside of prison.¹¹⁸ Some of the psychological effects that Haney highlights in his paper are appetite and sleep disturbances, anxiety, panic, rage, paranoia and hallucinations, lethargy and depression, deteriorating mental and physical health, social withdrawal, suicidal ideation and/or behavior, cognitive dysfunction, aggression, irritability, and negative attitudes towards people

¹¹¹ Editorial Board, “Horrible reports from solitary confinement prove Virginia still has far to go,” *Washington Post*, 3 June 2018, https://www.washingtonpost.com/opinions/horrifying-reports-from-solitary-confinement-prove-virginia-still-has-far-to-go/2018/06/03/c7da6df0-6532-11e8-99d2-0d678ec08c2f_story.html.

¹¹² “Horrible reports from solitary confinement,” *Washington Post*.

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

and things.¹¹⁹ Haney notes further that “many of the negative effects of solitary confinement are analogous with the acute reactions suffered by torture and trauma victims.”¹²⁰ Inmates are over-controlled and become reliant on the institution to “organize their existence.”¹²¹ This results in making inmates’ long-term adjustments to a social world much more difficult.¹²² Haney writes that “supermax prisons offer little to no transitional or counseling programs to prisoners [who are] making the adjustment from near total isolation to an intensely social existence.”¹²³

While there are some people in our society that believe that prisoners who are in jail or prison only have themselves to blame for where they are and thus are deserving of the treatment they face, there is still a question of ethics and human rights that needs to be taken into consideration. Even while imprisoned, individuals still have rights and should not be abused by those who exert power. The Washington Post article on Red Onion closes by sharing what the ACLU has to say about Virginia’s use of solitary confinement:

“One does not have to believe every one of these prison accounts to be horrified. Even in Virginia, a state that has made great strides, fewer people should be in solitary, and they should be treated like human beings once they are there.”¹²⁴

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¹¹⁹ Haney, “Mental Health Issues in Long-Term Solitary Confinement,” 131-132.

¹²⁰ Ibid 132.

¹²¹ Ibid 144.

¹²² Ibid 144.

¹²³ Ibid 144.

¹²⁴ “Horrorifying reports from solitary confinement,” *Washington Post*.

I was given the chance to really delve into Virginia's criminal justice system when I took a course called Money, Politics, and Prisons with Professor S at the University of Richmond. In this course, we read primary and secondary sources about incarceration in the U.S. and watched several documentaries detailing the violence and abuses that often occur behind the walls of correctional centers across the country. Yet, it wasn't enough to just read about Shaka Senghor's twenty-year prison experience in his memoir entitled *Writing My Wrongs* or to simply watch the footage of the prisoners taking control of Attica Correctional Center to protest the inhumane treatment they faced at the hands of staff, administrators, and the state of New York. Dr. S wanted us to have the experience of seeing a state prison for ourselves and hearing what the inmates and administrators had to say. Thus, on a cool October afternoon, our small class of twelve boarded a bus and made the hour-long journey to Nottoway Correctional Center with nothing but a writing utensil and a small notebook for taking field notes. We would spend two-and-a-half hours exploring the prison, seeing who and what we could see, and learning all that we could learn in the limited amount of time we were there.

Nottoway Correctional Center is located in the town of Burkeville in Nottoway County, Virginia. It is tucked away in a rural, wooded area off of the Patrick Henry Highway. It is an all-male prison that was opened in 1984, during President Ronald Reagan's infamous "War on Drugs." It is a special purpose institution that houses both a reception center and a work center. The reception center is the main prison, which is classified at a security level of 3, thus designating Nottoway as a medium security prison. Individuals serving single, multiple, and life-long sentences are incarcerated at Nottoway. The work center is located adjacent to the reception center, and is a facility that allows inmates to work within the community or in on-site shops and factories for a few hours each day doing manual labor such as woodworking or highway

cleanups. Only select a few individuals are eligible for the work center, and must continuously abide by the strict requirements of the center. Eligibility is dependent upon an inmate's criminal offense(s) and/or behavior in prison.

Despite being nervous about walking into state prison for the first time, I resolved that I would be objective rather than subjective. While noting the expectations that I had, I was open to having my perceptions proven or disproven by what I saw once I was there. I wondered what we would see, who would we meet, and whether we would truly get a holistic understanding of what life behind bars meant for the men behind bars. Turning into the prison, tall wire fences topped with barbed wire towered above us. Our bus pulled up in front of the Welcome Building, an uninviting, gray brick edifice. Once inside, we were greeted by two black female correctional officers, who were very friendly towards us as they collected our personal items and made us go through the security scanner. I was surprised that our first interaction at the prison was with black women, given not only the gender demographics of the prison, but also the racial demographics of the surrounding counties. The three major counties we passed through were majority white – Amelia, Burkeville, and Nottoway were 72.2%, 67.2%, and 55.0% white respectively. For Burkeville and Nottoway, I could not help but wonder whether or not the prison population was being factored in to the population numbers.

The inside of the Welcome Building was not as intimidating as the outside. It was not dark and gloomy like I had expected it to be. As I waited for my turn to go through the scanner, I looked around at some of the posters and portraits hanging on the walls. There was one poster that was designed to look like a vacation getaway advertisement that read: "Come for a visit, stay 3-5 years." This clever signage was indicating the penalty for bringing contraband into the prison. There was another poster telling people that if they saw something suspicious, they

should say something about it. A framed image of the Department of Corrections stated that at Nottoway there was a strong commitment to “talking, thinking, and learning together,” “finding common ground and new meaning,” and “suspending judgement through dialogue.” On another wall, a digital counter proudly boasted that Nottoway had gone 689 days without any lost time incidents, meaning that no employees had been seriously injured while on the job in almost two years. Lastly, lined up across the top of one of the main walls were twelve framed photographs of the highest D.O.C. officials in Virginia, such as the Secretary of Public Safety and Homeland Security.

The security scanner at Nottoway reminded me very much of the scanners at the airport, save for a few interesting differences. You climb up onto a moving platform and stand with your legs slightly spread and your feet on the yellow stickers indicated for you. You keep your hands at your sides. After you identify yourself to the officer working at the machine, you stand absolutely still as the platform slides you through the scanner, which sends an image of both your external and internal body, ensuring that you have no contraband anywhere on or inside you. After you have been scanned in this manner, you step down and must stand on a yellow asterisk on the floor. Another machine scans you as you rotate your body 360 degrees. If you are not cleared following the second scan, you will receive a pat down. I did not receive a pat down, but some of my classmates did.

Visitors to Nottoway and employees of the prison must go through this security process every time they enter and re-enter the prison. There are strict protocols regarding who can be let through, how many people can be let through at a time, what one can bring into the prison, and when certain doors and gates can be opened and closed. The doors are heavy, metal and electronic. If you get caught between one of the doors when it is sliding closed, you will be

severely injured or killed. After successfully clearing security and being granted clearance to the courtyard, we were able to fully explore Nottoway.

There is barbed-wire all over Nottoway. Every wall and fence around the prison is topped with thick, spiraling wire that had very sharp razor blades attached. If you tried to climb over any of those fences, you would slice yourself up and bleed profusely and painfully. The courtyard between the Welcome Building and the Administrative Building was a nicely cultivated greenspace with benches and lunch tables. Two large birdhouses adorned the space, making one think for a moment that they were in a small park. Only the barbed wire and the watch towers looming over the space served as a reminder that you were officially standing inside of a state prison.

Mr. R, a prison administrator, was our guide during our visit. He was a white male of an average height and build, with a shaved head. He had been working at Nottoway since 2013 and had worked at Greenville Correctional Center in Virginia prior to coming here to work. In addition to his work at Nottoway, he teaches a course about Corrections at Longwood University. He had a friendly demeanor and was responsive to our many questions. He also gave us a document that we had to sign regarding rape, sexual harassment, and assault at the prison. He told us that if any of the inmates said or did anything inappropriate to us or vice versa, we would be obligated by law to report the incident. He also gave us several quick facts about Nottoway to give us greater context about the prison.

According to Mr. R, Nottoway used to be a Level 4 prison but was downgraded to a Level 3. The last attempted escape was in 2011, but the inmate was so injured by the barbed wire that he waited for the corrections officers to come get him. Since he was already serving a life sentence, the inmate was not terribly concerned about the consequences of his escape attempt.

Nottoway is the second largest prison in Virginia, after Greenville prison. It does not offer too many educational opportunities but does offer classes in trades such as HVAC, technology, and baking. Inmates in Nottoway can be placed in segregation (solitary confinement) anywhere from a few days to a few months. The summers in Burkeville get very hot – cells can get up 110 degrees in the summer, which makes the inmates testy because there is no functioning AC in the facility. Dr. S and Mr. R both noted that spending tax payer dollars on an AC for inmates “would make a lot of folks mad” as many would have the “I don’t have AC, so why should I pay for prisoners to have AC?” mentality on the matter. Plus, given the age of the facility, installing a central heating and cooling system would be very expensive. Mr. R said that they give the inmates water to help them cool off.

Mr. R led us into the Administrative Building to sign-in again and relinquish our IDs. We then gathered in a conference room to meet with the Warden, Mr. C. We also met the prison investigator, who jokingly referred to himself as the prison instigator. His role is to investigate incidents that occur between inmates and involving violations. He had to write reports to the prison’s Internal Affairs, who then choose whether to punish or prosecute those who have broken the rules. For example, tobacco is not considered a legal substance in the U.S. but is prohibited in prison. Inmates caught with tobacco receive an institutional charge, and get points added on their prison record. Between 17-25 points keeps inmates at a Level 3 prison; over 25 points gets inmates sent to Level 4 and Level 5 prisons, such as the super-maximum-security prison Red Onion State Prison or Wallens Ridge State Prison. Listening to this explanation raised an important question for me: Should there rightfully be a different set of laws for those in prison, or should all laws apply to everyone, free and imprisoned, equally? While it makes sense that inmates cannot have drugs in prison, why are non-drug items not permissible?

The warden at Nottoway is a white, middle-aged man of a pleasant disposition who joined us at the conference table and answered our questions. He was shockingly very candid about the goings on at the prison and the power that he exerts over the prison as the warden. He explained to us that Nottoway prison is an intake center, and as such bears the responsibility of analyzing most of Virginia's male offenders, assessing their records, needs, and characters, and deciding which prisons to send them to, based on certain factors. They classify inmates objectively and have ten (10) staff psychiatrists to come in two-to-three (2-3) times a month to help analyze inmates and prescribe medications where needed. Mr. C noted that the amount of time an inmate has for his sentence is not always the determining factor for whether an inmate gets sent to a low, medium, or high security prison. They just try to be logical and use common sense. Mr. R noted that "a lot of the guys are on medications and go to individual therapy sessions." Nottoway currently has 1,160 inmates (despite having a capacity for only 1,112) and 472 staff members. In 2018, Nottoway had classified about 3,700 inmates total. Warden C also shared that there were some "high-profile" inmates currently doing time there.

When asked about the Work Center across the street, Warden C shared that inmates are given the chance to go out into the community and do supervised work. Virginia Correctional Enterprises allows inmates to get their GEDs, obtain vocational skills like custodial work, and gain other manufacturing experiences. At Nottoway, inmates can also work in the woodshop to build furniture, such as cabinets and desks. State colleges and public schools around the state often receive their furniture from the prison labor at Nottoway. I noted that even though Nottoway is not a private prison, the prison-industrial complex seemed to be very much at play.

On average, Nottoway has about five-to-six violent incidents per year. Warden C noted that quite recently at Nottoway there had been an incident where two inmates jumped another

inmate and stabbed him in the arm, causing a relatively minor injury. He said that there is not too much violence at Nottoway, but stated that “anything can happen at any given time.” He also made it clear that if any of the inmates attempted to harm one of his staff, he would ensure that the individual would be sent to Red Onion or Wallens Ridge on the same day. This was an immense demonstration of his power and discretion over the institution.

The biggest contraband items that one can bring into Nottoway are drugs and cellphones. Cellphones are banned due to concerns over drug operations and escape attempts. Once, during a routine night patrol, two green boxes (painted to blend in with the grass) were discovered on the prison grounds. These boxes contained several cellphones, and likely had been dropped into the prison by a drone. In another incident, marijuana had been discovered hidden in the packaging for paper towels. As the discovery was made during the week, Warden C stated that the contraband had likely been smuggled in by staff rather than by visitors.

Mother’s Day and Christmas are the two biggest visiting days for inmates. Nottoway allows visitation hours on the weekends and prides itself on its crowd control mechanisms and ability to take into consideration travel distance and other factors when shuffling folks in and out during visiting hours. Visitors must be on an approved list. Some inmates may refuse to see their visitors. Warden C said that positive visiting experiences tend to be very beneficial for the inmates. Occasionally, visitors who are up to no good get caught. A young woman (who obviously did not see the anti-contraband sign in the Welcome Building) had visited Nottoway quite recently and had been apprehended for smuggling drugs in her pants during a visit. Many women who visit may attempt to smuggle drugs in their sanitary products, which led to a ban on tampons in Virginia’s state prisons. Upon interrogation, the woman confessed that she didn’t

even know the inmate she was supposed to be visiting; she had just been given a name and some instructions by the dealer who sent her.

There are no prison dogs at Nottoway, though there used to be. When the prison downgraded to a Level 3, the dogs left. When asked about the prevalence of gang activity at Nottoway, Warden C noted that there are a lot of Bloods. He shared that sometimes there are conflicts between rival gang members, but most of the conflicts are within the same gang. The Bloods tend to be afraid of the Latino gangs, such as MS-13, and therefore won't mess with them. Sometimes, the corrections officers or the Warden will negotiate with the gang leaders when inmates do wrong, because the leaders will keep their gang members in line. Going to gang leadership can often be more productive than apprehending individual gang members.

After our conversation with Warden C, Mr. R took us out onto the Boulevard to explore the world of Nottoway Correctional Center. The Boulevard was a path that led us outside to the main prison facilities. All around us were high fences with barbed wire. We passed the dining hall, which was a gray brick building that did not look very welcoming at all. There was also an enlarged image of a bald eagle flying against a backdrop of the American Flag that read: "A Community Within a Community." We did not encounter any inmates until we crossed the courtyard in front of the dining hall and exited out onto the main thoroughfare in front of what Mr. R called Building A&B. I immediately noted a racial disparity; most of the inmates were black. When I asked Mr. R about the demographics of the prison, he estimated that the population was somewhere between 40-60% black. However, they were not dressed in the orange jumpsuits or black-and-white stripes that mainstream media convinces us is the norm. The inmate uniform consisted of blue jeans, a white T-shirt, a blue windbreaker jacket or jean jacket, and orange beanie hats. The footwear varied.

The inmates were walking about, going about their day or returning from working somewhere else. All of them were amicable. They greeted our group and politely excused themselves as they went about their business. Many were happy to see Mr. R, which suggested to me that he is well-liked and respected by the inmates. One inmate who walked by us had a sack of ramen noodles and Pepsi cans. Some inmates we saw were wearing yellow jumpsuits. Mr. R explained that these inmates in yellow were intake prisoners who were still being evaluated and assessed. The other inmates were “permanent Nottoway residents.” All inmates had ID badges that they must wear on their person at all times.

Mr. R then showed us the commissary, where inmates are able to buy snacks and toiletries, and also Buildings A&B and C&D. He noted that, in his opinion, Building C&D is more “ghetto” compared to Building A&B, though he didn’t exactly elaborate on why he felt that way. We followed a path behind Building A&B toward a hexagon-shaped building. Along the way, we ran into the prison’s senior psychologist, a relatively young white man with dark hair pulled into a neat bun. He had previously worked for the government with the Community Services Board (CSB) before going to work with Virginia’s Department of Corrections. At Nottoway, he works in reception and helps to assess inmates. He was extremely cordial and open to hearing our questions. He shared that there are a lot of inmates in prison with mental illnesses that have not yet been identified, meaning that a lot of mental illnesses are left untreated. He stated that 50% of mental illnesses at Nottoway are chronic, stemming mostly from the prison environment. A lot of inmates do not disclose their previous mental illnesses or their current symptoms of mental illness. Consequently, there are a lot of inmates with mental problems who are underrepresented. After leaving the psychologist behind, we continued walking to the Yard,

where a large number of inmates were gathered. When we arrived, the corrections officers were just beginning to herald them back into the building.

Mr. R pulled aside a young black inmate named Mr. D to speak to us. Shockingly, Mr. R had been Mr. D's teacher and coach when he was a kid. Unfortunately, things in his life took a turn and Mr. D ended up behind bars at Nottoway. Mr. D never got his high school diploma, but did earn his GED. He shared that he works in the woodshop, where he scraped boards. He hopes to learn more wood-working skills as well, because by working there he will one day earn a certificate that will help him to get a job. He was very polite, soft-spoken, and good-looking young man. He looked not much older than our group composed of 20-22-year-olds. After meeting Mr. D, I wondered how Mr. R felt about seeing one of his former students in prison. I wondered whether he ever asked himself if there was anything more that he could have done to keep Mr. D from ending up in prison.

From that point on, there were many interactions with inmates, some sobering and some slightly amusing. For example, as we were preparing to enter the hexagon-shaped building where solitary confinement was housed, another inmate was attempting to gain entry. One of my peers apologized for getting in the inmate's way and holding him up. The inmate replied: "Man, I'm locked up...I ain't got nothing but time." This was a funny, yet sobering exchange. After all, what is the significance of time to someone who is locked up? Depending on one's sentence, time may be more important to some inmates over others. I wondered if there were inmates who meticulously kept track of the days, weeks, months, and years, or if there were some who simply watched time pass by without a care. In many ways, doing time is giving up on time; and it's often very hard to make up for lost time.

Mr. R took us to the “Honor Block” where we were introduced to a diverse group of inmates who were very excited to talk to us. There were two correctional officers present; one on the block and another looking down on the block from inside of a caged-in booth. From this booth, the correctional officer above controlled all of the doors. The inmates were lounging around; sipping coffee at the metal lunch tables, playing pool, or just talking amongst themselves outside of their cells. One inmate had a small dog with him as his support animal, and another inmate possessed a hand-held electronic device that he was listening to music with.

The cellblock smelled musty. The doors to the cells were open, exposing the small, dark rectangular rooms that were lit only by a sliver of light from the tiny windows. There was one fluorescent light in the cell, but this light was not bright at all. The cells were narrow and compact. Inside, there was a toilet, a sink, a desk, and a bed (or bunkbeds), a shelf for personal items, and some hooks for hanging up clothing. Everything was metal and nailed to the floor.

One of the inmates, who I have chosen to nickname Mr. Activist, showed us around his cell and spoke to us about his activism against rape in prison. Mr. Activism is serving a 173-year sentence; he is never getting out of prison. “Serving time is not easy or fun or safe,” he said, discussing how he’s seen many guys walking around with their heads down and eyes averted after being raped by other inmates. He was very candid, sharing with us graphic examples of how guys would be “bleeding out of their [a**]” after being raped. As vile as this is to imagine, it is unfortunately the reality for those in prison. According to Mr. Activist, many of these victims become rapists or homosexuals as a result of being raped in prison. Mr. Activist has been working to stop this issue for the last twenty (20) years. In 2003, Congress enacted the Prison Rape Elimination Act (PREA) to address the need to protect those under the supervision of a U.S. Correctional Agency from sexual abuse and/or sexual harassment. The Virginia Department

of Corrections adopted a zero-tolerance policy for sexual abuse and harassment in accordance with the PREA. The aim is to protect employees and offenders from all forms of sexual misconduct. On one of the walls of the cellblock, there was a poster providing a phone number that inmates could call to report sexual assault or abuse.

Mr. Activist then spoke further on the trials and tribulations of life, and how he and others on the Honor Block have been fighting to get out. “Don’t judge us for where we are,” he said. After talking with him, we talked with two more inmates on the Honor Block. Both possessed last names that began with “W.”

Mr. W1 is a small, white male with a lot of tattoos adorning his body. He was wearing glasses, shorts, a white shirt, and flip flops. He has been in prison since 1987, for a total of about 31-32 years. He has moved from the highest level of security to the lowest level of security over time. He talked about how easy it is to get into trouble and how hard it is to get out. Though he tries hard to do good things, he acknowledges that he has a quick temper and a “small man complex.” He told us that he constantly has to check himself because he’s got to deal with people all day and can’t get away from them. He also shared about how he was impacted by the loss of his brother, who he had not expected to outlive. “When you’re doing time, your family does time too,” he explained. Despite the odds, Mr. W1 acknowledged his vices and takes pride in his personal evolution. He has a strong resolve to do better.

Mr. W2 is a large, black man who has been incarcerated for eighteen (18) years. He was wearing sweatpants, flip flops, and a white T-shirt. Drugs landed him behind bars in Nottoway. “I’ve learned my lesson,” he said. “I’ve had to change my life because I never want to come back to prison.” Like Mr. Activist and Mr. W1, he shared that prison is no joke, and that in order to do better, inmates have to want to do better and have to stay away from the wrong people. I

wondered whether any resources at Nottoway helped Mr. W2 to stay away from drugs or whether he did so by personal choice. I also was curious as to whether or not he had been clean for the entirety of his sentence or whether there have been peaks and valleys during his time behind bars.

On the cellblock there is a kiosk and a payphone that allow inmates to communicate with loved ones on the outside. If inmates pay \$85 for a small-handheld electronic device, they can use the kiosk to download music, send emails, and look at photos. Not all inmates utilize this privilege though. The biggest demands that inmates have are for food, education, and books. For them, “the essentials matter more than the fancy gadgets.” The inmates demand food for their physical health and wellness. They demand education for mental stimulation and the opportunity for self-growth and development. Mr. Activist had several books in his cell, and said that the Bible and several other books have helped him to expand his mind. They demand books because they are a positive way to help inmates pass time.

After talking with the inmates on the Honor Block, we headed back towards the Boulevard. As we walked along, we noticed that there were wires and red spray paint all over the prison’s fencing. Mr. R said that the wires were sensors used to ensure that no one was tampering with the fence or attempting to climb over. The red paint was used to ensure that none of the metal ties on the fencing were missing, as inmates sometimes used these inmates as weapons. As we headed back, the inmates were on their way to dinner at the dining hall. The inmates ate dinner at 3:15pm and were allowed only twenty (20) minutes to eat. When asked about what inmates would do for food later, Mr. R replied that they would remain “hungry as [sh*t]” until the following morning. Those who went to the commissary likely kept snacks handy in their cells, but those who did not have snacks would just have to put up with their hunger until

the next meal. Though Mr. R's comment was meant to be taken as a joke, I didn't find it funny. To be hungry for hours is no laughing matter, and I imagine that inmates can get "hangry" and therefore prone to violent outbursts.

We stood behind a row of blue mailboxes and watched the inmates as they went to dinner. There were inmates old and young, Black, White, and Latino, and friendly and unfriendly. Mr. R commented that the oldest inmate at Nottoway is 75, and will die in prison. Some inmates spoke to us, some glared at us, and others didn't even seem to care that we were watching them at all. Some were very polite, while some were spewing profanities. A lot of them greeted us and Mr. R, and a handful of inmates made fun of us. These reactions to our presence could have been due to many different reasons: embarrassment at their own circumstances, resentment at being observed as if they were animals, or indifference to seeing outsiders visiting the inside. It was probably very dehumanizing from their perspective. Making fun of us could have been their way of deflecting their emotional response at us; instead of seeing us as judging them, they were judging us.

This five-hour adventure ended on a good note. I found visiting Nottoway to be a valuable and eye-opening experience that brought a lot of what I had learned full-circle. I left with feelings of neutrality, as I wished we could have seen more. We saw some good, some bad, and some ugly. I was actually glad that there were no attempts to save face because then things would not have been authentic. Mr. R was a good tour guide; questionable at some times, but otherwise really informative and engaging. I think Nottoway is doing some good things for the inmates, though undoubtedly there are improvements that can be made. Overall, though, there was nothing that troubled me too much. They let us get more up close and personal than I

expected, but if given the chance to go back again, I would like to get more proximate and see even more.

F. The Call for Reform

Virginia isn't the most draconian state in the United States for incarceration, but that doesn't mean that Virginia's sentencing and incarceration policies do not need to change. As a result, many individuals and organizations have been working hard to get policy makers and correctional agencies to change the way the criminal justice system runs in the Commonwealth of Virginia. On January 20, 2018, I attended the first annual Virginia Prison Reform Rally on Richmond's Capital Square. I'd learned about the event via social media and had reached out to the organizers for more information about the event and what the goals of the rally were. My outreach allowed me to connect with M.B., a woman of color who had been serving at the Chair of the Coalition for Justice (CFJ) for fourteen (14) years. M.B. shared with me that the Coalition for Justice was founded in 1981 in response to the Contra Wars in Nicaragua. When she moved to Blacksburg, Virginia and became the Chair of the Coalition, she realized that she wanted "to work with greater intention in an intersectional way, with the understanding that all oppression is connected." The CFJ allies with organizations and individuals throughout the Commonwealth, as well as with some groups in North Carolina and elsewhere, to build a movement for a more just and equitable society. In addition to working as Chair of the CFJ, M.B. is a founding member of the Virginia People's Assembly, an annual assembly composed of activists from around the state who meet to network, workshop, and put forward a people's platform that addresses the needs of marginalized communities. The VA People's Assembly then presents their platform to the Virginia General Assembly during its legislative sessions and collectively responds to the policy initiatives and budget decisions that the state legislature puts forth.

This work led M.B. to the realization that all forms of oppression are connected to prison justice. This realization led the CFJ to form a sub-group on prison justice. “Yet, we decided that if we were going to tackle prisoner issues, we would want to do that as a prisoner-led initiative,” M.B. explained. “I knew a prisoner organizer at Augusta Correctional Center already, and in communicating with him, we discovered that we had both been thinking the same thing.” Her connection at Augusta, Ask, had the idea of forming the Virginia Prisoner of Conscience (VAPOC), with the aim of building a prisoner movement to end mass incarceration. However, in order to do this, Ask would need help on the outside. Thus, CFJ now sponsors VAPOC and Ask is a steering committee member for the CFJ.

“As our subgroup is prisoner-led, and we collectively work to facilitate their initiatives, the first thing we did was a state-wise conference call where prisoners led discussions on the need for reform,” M.B. shared. “From that call, we decided the next step was to organize the rally.”

In addition to working on organizing the rally, the CFJ started a Jailhouse Scholars program where prison activists lead classes via telephone calls on various topics, such as prison labor and truth in sentencing. Participants learn about these issues directly from prisoners, and the CFJ pays the Jailhouse Scholars at the rate of a community college instructor because the Coalition values these individuals’ labor. “The class has been very popular,” M.B. told me. At the time, she was also working on organizing a class for Spanish-speakers only so that immigrant prisoners could discuss their particular issues and challenges as well.

M.B. shared that another connection of hers who is incarcerated at Augusta Correctional Center, is a jailhouse lawyer who the CFJ often refers families of prisoners and prisoners to so that they can learn about their rights and next steps after incarceration. H.S. spends eight (8)

hours each day in the law library, and is often able to tell these individuals more than their public defenders can. “H.S. is amazing!” M.B. told me.

After corresponding with M.B. and learning more about the CFJ’s work, I was very excited to attend the rally in person as both a student observer and an ally to the criminally accused. I also was able to meet M.B. and see her work in action, as she was co-hosting the rally. Before the rally even began, I began connecting with the many people who showed up to stand in solidarity with those behind bars and share their stories with others. I was given a poster to hold that stated: “Mandatory Minimums Make Justice Impossible.” One gentleman I spoke with told me that he was there because he had spent thirteen (13) months in solitary confinement in a jail in the Hampton Roads area. He disclosed that under his supervision requirements, he should not have come up the Richmond at all; yet, he felt that this was an event worth breaking the rules for. Another gentleman I spoke to told me that he was attending the rally because he believed that prison reform is “our Commonwealth’s biggest civil rights issue.”

In addition to members of the CFJ, there were individuals from the NAACP, religious organizations, juvenile justice initiatives such as Art180 in Richmond, and scholars from educational institutions. I was surprised to bump into one of my own professors, Dr. D, who was also attending the rally because he cared deeply about the rights and humanity of those behind bars. This statewide network of individuals and organizations gathered in front of the Bell Tower on the State Capitol grounds to serve as a collective voice for those who could not be there. While there were many demands being made, the three primary demands were for humanity, equality, and rights. These demands came not only from the people who came to speak at the microphone, but from the prisoners on the inside who could only send us their messages via loved ones or letters.

“We are dealing with a broken system,” one of the speakers told the collective. “A system where we have to struggle for the most basic human rights. We need a change in our laws and policies, and we need a change in individuals. We need to hold people accountable and hold them to a higher standard. While it’s hard to change mentality, we are stronger together in solidarity.”

Another speaker came forth and talked about the collateral consequences of incarceration. He committed a barrier crime twenty-seven (27) years ago that was preventing him from applying to certain jobs. “I am not the same person I was twenty-seven years ago,” he shared. “I’ve turned my life around. Yet, I am denied the equal opportunity to succeed.”

A family member of an incarcerated individual shared with the gathering his letter from solitary confinement in one of Virginia’s prisons. The individual was thirty-eight years old (38) and had been incarcerated since the age of nineteen (19). “Conviction is the goal, not justice,” the man wrote in his letter, where he spoke about the effects of hyper mass incarceration, the abuses faced by individuals from other inmates and correctional officers in prison, and the dysfunction and injustice of the criminal justice system as whole. “I am not a threat to the community or to public safety,” he wrote. “Yet, they won’t let me out until 2044. Who is benefitting from my incarceration?” He closed his letter by calling for further organizing and networking, and stating that new truth-in-sentencing policies and the reinstatement of parole in Virginia were much needed.

One attendee used the rally as platform to remind everyone of the importance of civic engagement. The individual admitted that they had never bothered to vote until the 2016 election. “The General Assembly works for us!” they exclaimed, pointing up the hill to the Capitol Building above us. “Our votes count and our voices matter!” Other speakers called for a

change in the societal mindset, an increase in the felony theft threshold, and for the criminal justice system to fulfill its goal of rehabilitation.

“We are our brothers’ keeper,” M.B.’s co-host told us at the close of the rally. “United we stand, divided we fall. We have to get up and do something, as our system is broken.”

The Prison Reform Rally was powerful, moving, and insightful, yet unfortunately very short. There was a one-hour limit on the rally’s protest permit, and not everyone who wanted to speak were able to, which made many people upset. What made the rally come to an even more tense and abrupt ending was the fact that VA State Capitol Police had gathered very close by and were moving in to shoo everyone away as soon as the time limit was up. Expertly, the organizers noted that though they could no longer rally at the Capitol, there was no one to stop them from marching peacefully on the sidewalk. I did not join the march nor the debrief that M.B. invited me to afterwards due to my own time limitations, but was able to read the feedback and see the videos that were posted about the rally afterwards. The CFJ also made all inmate letters available on their website for people to read. The success of the first rally allowed the CFJ to return to Richmond the following year for a second annual Rally for Prison Reform, which I unfortunately was unable to attend.

G. Is Incarceration the Best Solution?

There are undoubtedly some individuals who deserve to remain behind bars for a long period of time. There are men and women who have committed crimes against humanity that are so heinous that long-term and even permanent incapacitation is necessary. Yet, the fact of the matter is that there are many people who are incarcerated in Virginia who really ought not to be. Everyone makes mistakes, and sometimes those mistakes require rehabilitation rather than incarceration. Prison should be a place where the criminally accused have the chance to learn

from their mistakes and turn over a new leaf. They should be allowed to show society that they are able to abide by the rules, and society should be willing to give them this second chance at being good, productive citizens.



III. A Second Chance

“The best way to find yourself is to lose yourself in the service of others.”

– Mahatma Gandhi –

“We are put on this earth not to see through one another other, but to see one another through.”

– Gloria Vanderbilt –

Virginia’s criminal justice system is not always retributive. For some defendants, the criminal justice system offers restorative alternatives to incarceration. One such alternative is community corrections, also known as local probation. I use these two terms interchangeably. Probation is defined as “a judicial decision which enables an offender to be released to the community with conditions of supervision as an alternative to the imposition of more severe punitive sanctions.”¹²⁵ Community corrections is often reserved for individuals who have committed certain misdemeanor offenses or for persons convicted of nonviolent felonies who are sentenced to twelve (12) months or less.¹²⁶ According to the Virginia Department of Corrections’ Monthly Population Summary, in September of 2018, there were over 58,000 individuals on probation in Virginia.¹²⁷

Community corrections aims to respond to the problem of crime in communities by utilizing the local community-based programs and services specifically designed to meet the rehabilitative needs of the criminally accused. The goal is to reduce recidivism, promote efficiency in the delivery of correctional services, and allow offenders to make restitution to their victims.¹²⁸

Community corrections may require individuals to complete community service, attend

¹²⁵ Hampton-Newport News Criminal Justice Agency, “The Definitions and Answers.”

¹²⁶ “CCD Introduction,” Internship Training Notes, May 2017.

¹²⁷ Statistical Analysis and Forecast Unit, “Monthly Population Summary September 2018,” *Virginia Department of Corrections*, <https://vadoc.virginia.gov/about/facts/research/new-popsom/2018/sep18popsummary.pdf>.

¹²⁸ “CCD Intro.” Internship Training Notes.

counseling or anger/violence management classes, undergo testing and/or treatment for substance abuse, or participate in other programs depending on the offenses or circumstances in question.¹²⁹

Being ordered to complete a term of probation provides offenders with an opportunity to redeem themselves in the eyes of the court and in the eyes of society. By giving individuals a second chance, community corrections fulfill the restorative goal of the criminal justice system. Many individuals, when given the chance to turn over a new leaf and clear their record, go on to live healthier, more productive lives in their communities. Prison, on the other hand, does not as easily afford the criminally accused the same chance at redemption.

A. An Internal Perspective

During the summer of 2017, I spent four months serving as an intern in the Community Corrections Division (CCD) of the Hampton-Newport News Criminal Justice Agency (HNNCJA). I had applied for this internship opportunity the previous summer but had not been able to secure the position at that time. When I received a call from HNNCJA the following year asking if I would still be interested in an internship, I immediately responded that I was definitely open to pursuing the opportunity to work in their office and was subsequently invited in for an interview. I began my internship in May and worked until my return to school in August. Interning with CCD was an immersive experiential learning opportunity that allowed me to observe the complexities of Virginia's criminal justice system from an insider perspective. As such, I was able to critically analyze the system through a lens that was both intersectional and

¹²⁹ "CCD Intro."

interdisciplinary so that I could better understand the *who*, *how*, and *why* behind these complexities.

I interned under the extraordinary tutelage and mentorship of C.T.J., a Panamanian woman of color who has worked in community corrections for fourteen (14) years. She is a senior local probation officer (LPO) who works on the Domestic Violence team for CCD. She has been elected to serve as HNNCJA's agency representative on the executive board for the Eastern Region of the Virginia Community Criminal Justice Association (VCCJA) four years in a row. Outside of her work as an LPO, C.T.J. is the wife of a retired Naval officer, the mother of two daughters, and a catalyst for change in the Hampton Roads community. She has been a member of the Hampton Roads Military-Civilian Family Violence Prevention Council for three years and has served on the Governor's committee to create a Standard Memorandum of Understanding for human trafficking victims in Virginia. In October of 2018, C.T.J. stood in solidarity with the family of Bellamy Gamboa, a young mother who was killed and callously disposed of by a former significant other, at a sigil held in recognition of Domestic Violence Awareness Month.¹³⁰

C.T.J.'s dedication to her work both inside and outside of her office was just one of the many things about C.T.J. that inspired me during the fourteen weeks I spent with her. What never ceased to amaze me was her care and understanding for others. Though always stern with her clients, it was evident that C.T.J. was invested in their success and redemption. If it was necessary for her to take punitive measures with one of her clients, she would not hesitate to do so. Yet, she always did her best to hear the reasoning behind a violation and offer a second chance before she did so. I could see that she had built strong rapport with many of her clients,

¹³⁰ Boykin, Nick and Brendan Ponton, "Virginia Beach Mother Remembered during Ceremony to Mark Domestic Violence Awareness Month," *WTKR.com*, 1 October 2018, <https://wtkr.com/2018/10/01/virginia-beach-mother-remembered-during-ceremony-to-mark-domestic-violence-awareness-month/>.

and I valued seeing how she acknowledged her clients as individuals first and criminal offenders second.

Working alongside her was an empowering experience that allowed me to obtain the skills that I would use if I chose to become an LPO in the future. Before I could get started on my work with CCD, I underwent a week of training on mental health and workplace safety, read over the Standard Operating Procedures of the Agency, and was assessed on my understanding of community corrections and pretrial services. This training set the foundation for me to understand the individuals I would be working with in CCD and the role that I would play as C.T.J.'s intern for the summer. I was not an errand-runner for C.T.J. I was her right-hand woman in the office, assisting her with client visits, auditing files, drafting documents, and shadowing her during court hearings. I was up-close and personal with a lot of confidential information and connected with many of her clients directly. On the last day of my internship, I attended a VCCJA meeting with C.T.J. where all of the community corrections offices from the Eastern Region of Virginia and their directors convened to discuss budgetary concerns, criminal justice legislation, and other important business. All of these experiences contributed to the holistic education I received on community corrections and the many observations I made about the role of community corrections in Virginia's criminal justice system.

B. The Bright Side

“I order you to report directly to CCD upon dismissal from this courtroom.”

As I sat in the Newport News Juvenile and Domestic Relations (JDR) court beside C.T.J., I wondered if this individual would become another one of our many open cases. As annoyed as the individual looked after hearing the judge’s final words, I’m sure they had no idea how fortunate they were to be in the hands of the Community Corrections Division of HNNCJA and not in the hands of the Hampton Roads Regional Jail.

When an individual enters the CCD waiting room with their court order following dismissal from court, he or she is reporting to the office for an intake. Intake is the processing of an offender’s basic information for their case file. During this process, the criminally accused’s criminal record is printed and placed in a file for their future LPO. Upon completion of the intake, the individual is assigned to an LPO and given a notice of their first appointment date. Failure to report to CCD and complete this process results in an automatic sanction for noncompliance with the judge’s court order, and can result in an offender being sent to jail on the original charge(s).

About a week later, the individual returns to CCD for their first appointment with their new LPO. One of my tasks as C.T.J.’s intern was to escort clients from the waiting room to her office. The clients were instructed to walk in front of me in the hallways as a safety measure; an unanticipated attack from behind could prove injurious or fatal. Since there were no metal detectors in our building, we could never be completely sure of whether or not an individual could be concealing a weapon or some other dangerous object. That particular lack of security was something I internally questioned many times, but I never pressed the matter. There were

other security measures in place that substantially lowered the risk of incidents. Those individuals without professional authorization to be in the building had to sign in and out with the security in the lobby of the building before getting on the elevator, which prevented unauthorized persons from accessing the HNNCJA offices or the Office of the Commonwealth's Attorney. Once signed in with security, the individual must sign in with the HNNCJA receptionist and wait to be called upon by their L.P.O. The waiting room and hallway to the L.P.O. offices are separated by a door that requires badge access to enter. If an L.P.O. does not let a client in, they cannot gain access to the L.P.O. office spaces. That was our second line of security.

Once I bring the individual into the office, C.T.J. cordially introduces herself to her new client, who will be known as "S" in her electronic notes, as formally LPOs refer to their clients as "subjects" and denote them as such in the community corrections case management system (PTCC). Prior to S's arrival, C.T.J. has already received S's file from the intake officers and has read over the court order. She collects from S the mandatory contact sheet that he or she must fill out each time he or she comes in for an appointment and adds that form to the file. These forms not only allow C.T.J. to keep track of whether S is coming to their appointments as ordered, but this form also allows C.T.J. to know if S has changed addresses, phone numbers, or employment so that she can update PTCC with that information. As this is the first meeting, C.T.J. must begin building an entirely new paper and digital case file for S, which takes a while to accomplish. These case files assist C.T.J. when she goes to court to testify against a client or provide evidence that the client has completed the terms of probation.

After explaining to S that they have been placed under court-ordered local probation with CCD, she reads over the judge's court order. The judge's orders are based on the facts of S's

case. Since C.T.J. works primarily with cases involving Domestic Violence (DV), most of the orders involve S having to undergo an anger/violence prevention program. If alcohol or drugs were involved in the case, S would likely be ordered to undergo substance screening as well. This information tells C.T.J. a lot about S's case, but not much about S as an individual. Thus, the next thing that C.T.J. must do is perform an assessment of S to determine what level of supervision that S will require while on probation.

The assessment process allows the criminally accused to be judged holistically and supervised according to their risk factors. As reducing recidivism is a goal of CCD, people who are at a high risk of reoffending are supervised with closer scrutiny than those who are at a lower risk. Offenders are assessed using Virginia's Offender Screening Tool (OST) and Modified Offender Screening Tool (M-OST).¹³¹ These are both standardized, objective assessment tools developed to assist in evaluating and predicting risk, and assigning a level of supervision to individuals placed on probation.¹³² S's OST and M-OST scores are based on their responses to a series of personal questions. These responses help LPOs to determine whether there are any mitigating or aggravating factors that will call for lesser or greater supervision levels. For example, having a lack of familial support, positive influences, or a history of drug abuse would increase S's score, meaning that C.T.J. may need to see S every two weeks. Conversely, having a steady job, supportive family and friend circles, and no alcohol or drug problems would allow S to only see C.T.J. once a month.

A potential limitation of these assessment tools is that for the most part they are based on self-reporting. While C.T.J. gets some ideas about S based on their prior criminal history and the

¹³¹ "The Definitions and Answers"

¹³² Ibid.

facts of their case on the court order, she still doesn't know all there is to know about S based solely on these assessments. Consequently, she does not know 1) if S is being honest and giving a full disclosure or 2) if S will be responsible and successfully complete the terms of probation as ordered. As a result, supervision level can be increased or decreased at any point during the period of probation as needed.

After completing the assessment, C.T.J. gets the chance to "hear and see S." Now, she gets to hear S's side of the story, asking them how and why they ended up in her office. Some subjects are very candid and will acknowledge their wrongdoing(s). Others will shift the blame onto anyone and everyone else. C.T.J. notes all of this in the file, aware that there are often three sides to any story: "his side, her side, and the truth." C.T.J.'s job is not to determine who was at fault or to place any blame on S. Her job is to ensure that S is held accountable for what he or she did and walks away knowing never to do it again.

CCD utilizes several evidenced-based practices for their clients. These are effective interventions that have been proven to reduce offender risk and recidivism, thus making positive long-term contributions to community safety.¹³³ These are rehabilitative services that a criminal offender would not have access to while in prison. The most common outcome for C.T.J.'s clients was to be referred to the Center for Child and Family Services (CCFS) in Hampton, VA to attend the Anger and Violence program. The CCFS program utilizes group and individual counseling to allow S to reflect on better ways to communicate with others, control his or her anger, and learn how to be a better partner, parent, and citizen. Most clients were assigned 18 weeks of counseling, but some were assigned less based on their offense. C.T.J. does not

¹³³ Ibid.

determine how long one must attend classes; CCFS actually performs an assessment of S when S reports following C.T.J.'s referral.

Another one of my responsibilities as C.T.J.'s intern was to collect the weekly progress reports from CCFS and file them away. I also had to note what the progress report said in PTCC. One thing I really liked about CCFS was its use of the Transtheoretical Model (TTM) of Change, also known as the Stages of Change Model, to monitor each client's progress¹³⁴. This model was developed in the 1970s and was designed for the purpose of examining and assessing individuals' decisions to change their behavior(s) over time.¹³⁵

“The TTM operates on the assumption that people do not change behaviors quickly and decisively. Rather, change(s) in behavior, especially habitual behavior, occurs continuously through a cyclical process.”¹³⁶

There are six stages of change: precontemplation, contemplation, preparation (determination), action, maintenance, and termination.¹³⁷ In the first stage, precontemplation, individuals often are unaware that their behaviors are problematic (or have problematic consequences) and do not see a need to actively make any changes.¹³⁸ It is not until the contemplation stage that individuals become more intentional about engaging in healthier behaviors and begin recognizing that their behaviors are harmful to either themselves or others.¹³⁹ Once open and willing to make changes to those behaviors, individuals enter the

¹³⁴ LaMorte, Wayne W, “*The Transtheoretical Model (Stages of Change)*,” *Boston University School of Public Health*, 2018, <http://sphweb.bumc.bu.edu/otlt/MPH-Modules/SB/BehavioralChangeTheories/BehavioralChangeTheories6.html>.

¹³⁵ LaMorte, “The Transtheoretical Model.”

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ Ibid.

preparation, or determination, stage of change.¹⁴⁰ This is where there is a drive to take immediate action to change negative behaviors and strive for a happier and healthier life.¹⁴¹ In the action stage of change, these changes have begun to take place and the individual is moving forward in the journey.¹⁴² The challenge at this point in the process, however, is maintenance.¹⁴³ In the maintenance stage, there is often a risk of relapse into negative behaviors if an individual has failed to sustain their behaviors for a long-term period of time or has decided not to continue working on changing their behaviors moving forward.¹⁴⁴ If, however, an individual has succeeded in maintaining their newfound behaviors, then they enter the termination stage of change, where they no longer wish to engage in the behaviors they began with, are determined to maintain a healthy lifestyle, and are confident that they will not relapse back into their former bad habits or behaviors.¹⁴⁵ This stage is rarely reached, given how cyclical the process is and the potential for things to go wrong. However, once one gets to this stage, they tend to stay.¹⁴⁶

There are limits to this model.¹⁴⁷ Every individual is different and may not conform to this model due to personal life factors.¹⁴⁸ Furthermore, not everyone is rational enough to apply this model to their life or is open to taking the necessary steps to change.¹⁴⁹ There is also no timeline for this process; some individuals may go through all six stages in a year while someone may still be in the precontemplation stage after a year. This is precisely why this is a theoretical model. Yet, for some individuals, and for the purposes of CCD and CCFS, using this model has

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

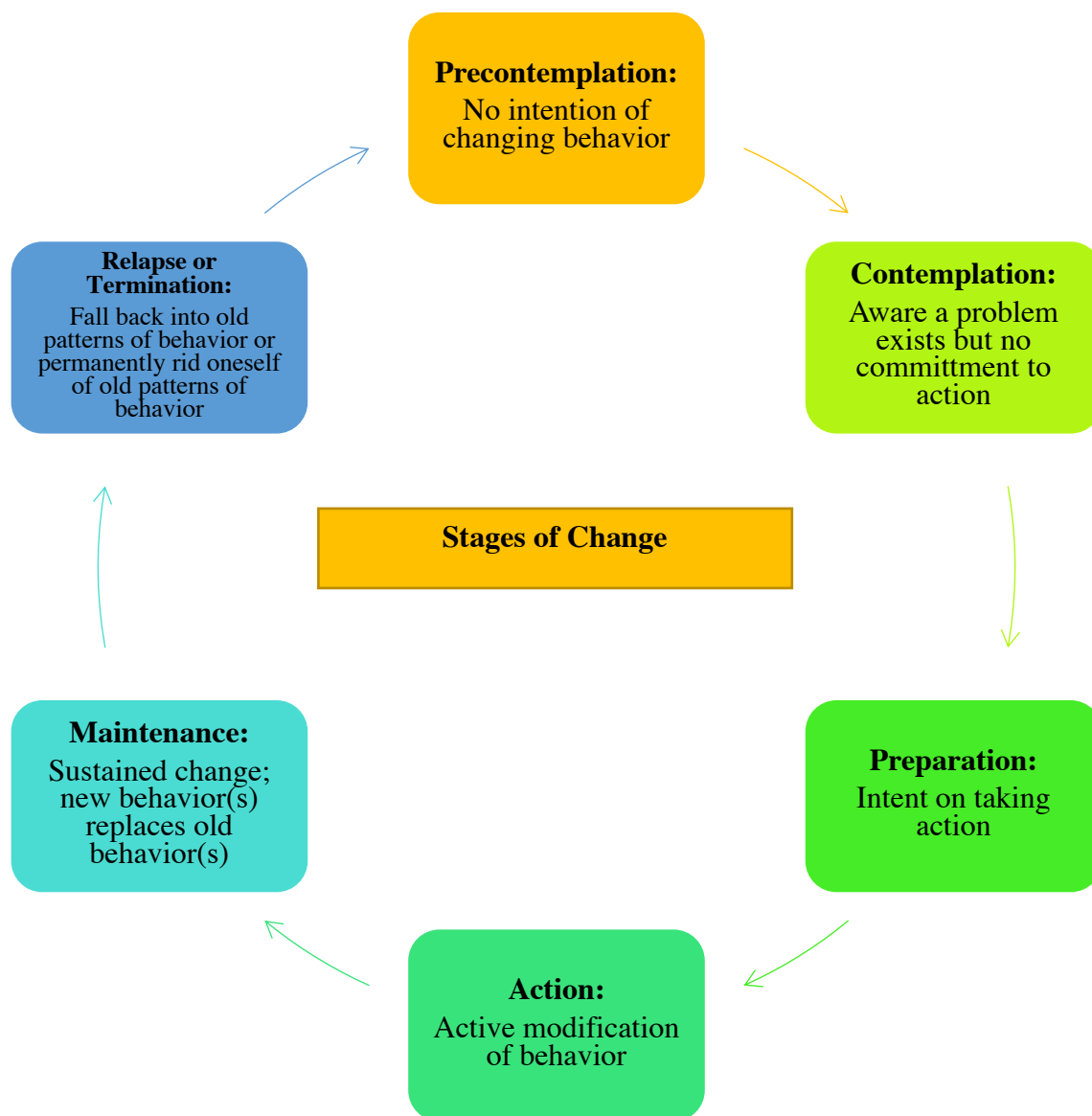
¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

helped many clients to come out of community corrections better than how they came in, which is the ultimate rehabilitative goal of the criminal justice system that incarceration often forgets. When the criminally accused are given the chance to become more aware of their behaviors, fully evaluate the individual and collective impacts of their behaviors, develop a desire to liberate themselves from their behaviors, and form helpful rather than harmful relationships, the transtheoretical model of change is most likely to be successful.¹⁵⁰

¹⁵⁰ Ibid.

Figure 5: The Transtheoretical Model of Change ¹⁵¹



¹⁵¹ Dean, Jessica, "Transtheoretical Model Showing Distinct Stages of Change," *ResearchGate*, November 2012, https://www.researchgate.net/figure/Transtheoretical-model-showing-distinct-stages-of-change_fig1_275555178.

Individuals can enter, exit, and re-enter this process at any time. CCFS's goal is to help individuals make intentional changes in their daily lives so that they no longer engage in the negative, self-destructive behaviors that brought them to CCD and CCFS in the first place. Upon completion of their time with CCFS, clients receive a formal certificate of completion that goes into their file with their progress reports and other documents. I had the honor of writing many of the "Successful Completion" letters to the court whenever a client completed their time with CCFS.

CCFS was not the only community partner that C.T.J. could refer a client to. Sometimes, in situations where the individual in her office was a victim of DV who acted in self-defense, she would refer them to Transitions Family Services, a community partner focused on advocating for victims of domestic and sexual violence. If an assessment from Transitions found the criminally accused to be a victim and not a perpetrator, they would report back to C.T.J. that S should not be on probation and should receive counselling instead of punishment. C.T.J. would then send a letter to the judge explaining the results of Transitions' assessment and ask the judge to release S from the terms of the court order.

Another place that C.T.J. could refer clients to was the Community Services Board (CSB). For clients with mental illnesses, the CSB was able to provide resources for medication, counseling, or therapy. Given that an estimated 26.2% of the U.S. population suffers from a diagnosable mental illness, C.T.J. had many clients who were in dire need of the resources that the CSB had to offer. C.T.J. had clients suffering from depression, schizophrenia, and dissociative identity (multiple personality) disorder. The CSB could also help individuals address the factors that often contribute to the chemical imbalances that cause mental illness, such as homelessness, stress, and lack of healthcare or access to affordable medications.

As much as C.T.J.'s clients dragged their feet and whined about the requirements of their supervision, many acknowledged that the services provided by these community partners had positive impacts on their lives and relationships with others. In this way, community corrections are a helpful and healthy alternative to imprisonment because it allows clients to maintain their ties to family, community, and employment. Having an incarcerated parent has been shown to have damaging effects on children and households, and being unemployed following a period of incarceration leaves many individuals jobless and unable to provide for their well-being. Furthermore, many individuals who have had their mental health compromised while in prison have high chances of reoffending, abusing substances, having toxic familial relationships, or dying suddenly after being released from prison.¹⁵² By giving the criminally accused the opportunity to clean up their act, change their ways, and prove to not only C.T.J. and the judge, but to the community at large, that they could redeem themselves after committing a crime, community corrections gives individuals a second chance that incarceration likely would not. On top of that, individuals are able to leave community corrections with a clean record at the end of their journey with C.T.J.

“I don’t want to see you back here again,” C.T.J. would always tell her clients upon successfully completion their time with her. “Please take care!”

C. The Dark Side

From an outsider perspective, it may seem that referring a criminal defendant to community corrections instead of sending them to jail or prison gives them a slap on the wrist. However, there are some elements of community corrections that are as punitive and restrictive as incarceration. There are very strict rules and requirements that clients must adhere to in order

¹⁵² Dumont et. al, “Public Health and the Epidemic of Incarceration” 6.

to remain in compliance with the court's orders. If for any reason a defendant violates the terms or refuses to comply, he or she faces serving the time behind bars that was on the table prior to their referral to local probation. One such restriction is the condition that clients on probation are not permitted to travel beyond the realm of the jurisdiction without permission. If someone who is on probation wishes to travel for a vacation or must travel for work, that individual must come in and request travel documentation from their LPO. Those documents must be kept on S's person at all times, and S must note where they are going, who they are going with, how long they will be there, the exact departure and return dates, contact numbers, and addresses. Upon return, S must notify C.T.J. In this way, probation inhibits an individual's liberty – freedom of movement – in a similar way that incarceration does. If S flees to another state, C.T.J. must be able to know S's last known movements so that she can report it. Failure to inform C.T.J. of departure or failure to notify her upon return can result in a punitive sanction.

Furthermore, probation can strip individuals of their right to privacy, especially if they happen to have a history of drug abuse. When individuals come in for a random drug screen, there is zero tolerance for fake urine samples. To ensure that there are no such cases, a screener goes into the bathroom and watches S urinate. Another way that CCD ensures that there are no fake urine samples is making drug testing random. S will never know when their test day is coming. Each day, clients must call a certain number and listen to hear if their number is called for the next test day. If it is not called, then wonderful. If it is called, S must report to CCD for the test. It is non-negotiable: S must find some time during the day to drop everything and get screened. One missed drug screen is counted as a positive test, leaving S liable to be sent back to court. It is inconvenient, but nonetheless necessary. Luckily, though C.T.J. is stern, she is very understanding. For example, when a client tested positive for THC (marijuana), C.T.J. recalled

that THC can linger in someone's system for up to thirty (30) days. Since S had tested positive not long before the second screening, C.T.J. did not count the following test as a positive, giving S the benefit of the doubt. If she had not done so, she could have violated S and sent them back to court to face the judge.

Another aspect of local probation that can prove burdensome for individuals is the frequency of visits. Depending on S's level of supervision, S may have to see C.T.J. more than once per month. If so, S may find themselves having to miss work or school in order to make it to their office visit. Though given their next appointment far in advance, it can be difficult for some clients to get to C.T.J.'s office due to transportation limitations, familial circumstances, or other obligations. Some clients had to bring their kids with them to their office visits because they either had no one to look after them or could not afford childcare. There was one client, a man, who came in with three small children; one was crying hysterically, another wanted to color with the crayons that C.T.J. kept in her office for situations like this one, and the third was an infant that I ended up holding so that the overwhelmed father could fill out his documents. As these office visits are a mandatory requirement for community supervision, failure to appear can result in a violation. C.T.J. always would provide intermediate sanctions for a missed office visit. First, she would call S over the phone to ask why he or she missed their appointment. If S did not answer, C.T.J. would have me send them a missed appointment notice in the mail with a new date. If S did answer, C.T.J. would ask S why he or she missed the office visit. Many times, a client would claim to have lost their appointment slip or have gotten the dates confused, or provide some other excuse. If this was the first time S has missed an appointment, C.T.J. would reschedule them for a new date. If S misses a second appointment, or subsequent appointments,

then he or she risks getting *show caused*. Failure to attend counseling as directed, or failing a drug screen, also could lead to S getting *show caused*.

When C.T.J. begins drafting a *show cause*, S is in trouble. A *show cause* letter informs the judge that S has failed to comply with the court order and the requirements of community corrections. I never had the opportunity to write a *show cause* letter myself, simply because they are much longer and more detailed about the facts of the case at hand. C.T.J., having more familiarity and awareness of each case, tended to write these herself so that I could focus on writing the successful completion letters. When the judge receives the *show cause* letter, a subpoena is issued for S to appear in court for a *show cause* hearing. At this hearing, S must explain to the judge why he or she failed to comply. In addition, C.T.J. may be asked to testify on the stand against S. Often times, clients will attempt to blame C.T.J. for his or her failure to comply. Luckily, C.T.J. keeps records of all of her phone calls and letters to S as evidence that she attempted to maintain constant contact with S and provide S with options and second chances. Sometimes, however, clients are willing to hold themselves accountable and own up to their noncompliance. The judge then decides whether to send S to jail on the original charge(s) or to refer them back to CCD with a warning.

CCD is the albatross around S's neck until he or she is released from supervision. One wrong move and S is liable to find themselves back in the courtroom facing jail time. In no way is probation the "easy way" to get out of trouble. Community corrections is indeed a punitive measure; it is just more restorative in nature than retributive. Though given a second chance, individuals on probation are restricted from living their lives with full freedom and privacy. Hence, just because these individuals are not restricted by steel bars and gray cement walls, they are not punished any less when ordered into community corrections.

D. The Emotional Toll

In addition to having multiple office visits each day, nearly two hundred case files to audit, numerous phone calls to make and answer, stacks of progress reports to organize and file away, a plethora of letters to write and send out, and weekly court hearings to attend in Newport News and Hampton, C.T.J. and the other LPOs must exercise a great amount emotional labor in their day-to-day work with CCD. As impartial agents of Virginia's criminal justice system, they must remain objective in their dealings with clients and refrain from letting their personal feelings interfere in their handling of any one case. This can at times be very difficult, and was an aspect of the position that I often struggled with over those summer months.

On my first day as an intern, I was informed upfront that I would see and hear some emotionally-jarring things both in the office and in the courtroom. I was advised not to take any of these things home with me at the end of the day. Little did I know that doing so would be much easier said than done. Throughout my time there, I had to give C.T.J. and the LPOs props for being able to remain composed when hearing clients address the harsh realities of life that they deal with every day. C.T.J. had clients who died before they could be complete probation; she had clients who attempted to kill themselves, such as one who threw herself in front of tractor-trailer on the interstate but miraculously survived her injuries; and clients who delved into unhealthy coping mechanisms, such as client one who abused alcohol so severely following the death of his partner that he developed cirrhosis of the liver and violent tendencies that led to him being dismissed from CCFS. Some stories were more difficult to shake off than others; some stories still linger with me now, even though it has been nearly two years since I worked alongside C.T.J. There are three stories that I don't think I'll ever be able to shake off completely.

Early one morning, C.T.J. received a phone call from a client in distress. Since I was working at her desk that morning, I was the one who answered the call. S was calling C.T.J.'s office for help, as he was in danger of violating his court order and did not want to be sent to jail for non-compliance. S was a homeless young man suffering a mental health crisis. In addition to being unable to care for his own needs, S was struggling to care for his ailing mother who had been admitted to the hospital earlier that morning. He had no means of transportation to get to and from his office visits, was unemployed, and was contemplating "ending it all" because he felt extremely overwhelmed. I stayed with S on the phone for half an hour, talking him down and trying my best to provide comfort and encouragement to him. Once he was calm again, I helped him to get in touch with the CSB so that he could get his necessary treatment and medication. I also took notes detailing what S and I discussed on the phone so that C.T.J. could follow up with him. At the end of our phone call, he thanked me and told me he felt much better after talking with me.

I had never talked to someone who was actively suicidal before. I honestly had no idea what I was doing. What I did know in that moment, however, was that 1) I needed to make sure S did not act on his intentions and 2) I needed to get S some help immediately. Even though I didn't know him or his case at all, I was invested in his well-being and did not want him to hurt himself. Whether my words helped in in the long run is a question that I unfortunately cannot answer.

One of the downsides of being a summer intern is not knowing the outcomes for the individuals I met during my time there. Though C.T.J. and I still talk with one another, her client information is confidential and thus she cannot share with me any updates. All we can do is reminisce upon what I already know about particular clients I met. C.T.J. had one client that I met towards the end of my internship who I often wonder about.

My first encounter with S was when I was escorting her to C.T.J.'s office for her first Office Visit. S was an older woman of color who was seemed very distant and reserved, and offered only very limited responses to C.T.J.'s questions. When filling out her M-OST and OST assessments, one of the questions C.T.J. had to ask was whether S ever witnessed any domestic violence between her parents/guardians as a child. S shared that she had not, but then muttered under her breath that she had experienced having violence directed towards her. She did not go into detail or expand on that disclosure, and there were no other sections on either assessment that questioned her childhood experiences.

My training during the internship taught me how to read between the lines when clients weren't completely forthright. In looking at her criminal record at a later time, C.T.J. and I saw a troubling history of sex-related offenses such as prostitution and sodomy that began at a very young age. I was already suspicious given S's spontaneous utterance, but her record served as confirmation. C.T.J. and I both realized that it was very likely that S had experience some form of sexual abuse or exploitation as a child.

In my studies in education and sociology, I have read many scholarly works that discussed the impact of a child's ACE (Adverse Childhood Experiences) score on their educational performance, behaviors, and social interactions. Many children and teenagers who have witnessed or experienced violence, neglect, trauma and/or abuse may find themselves experiencing homelessness or housing instability, suffering from physical, mental, and emotional health crises, abusing drugs or alcohol as a coping mechanism, or funneled into the juvenile and adult criminal justice system for committing crimes of survival. Many conversations have been had about the importance of having trauma-informed care practices within school systems to help teachers better respond to students who have faced trauma or adversity. Local probation serves as a type of trauma-informed care for adults within the criminal justice system. Taking into consideration both S's utterance and her criminal record, C.T.J. was able to refer S to a program that would best address her personal needs and history, via either counseling or therapy. Instead of being indifferent to her story and focused on punishing her wrongdoings the way that incarceration does, community corrections ensures that an individual's story is taken into account when trying to understand the wrongdoings and taking measures to prevent future wrongdoing.

Working with probation gave me hope for Virginia's criminal justice system. Simultaneously, however, it showed me that probation is not the best solution for everyone. Though I continue to believe in the merits of restorative justice, there was one case that reminded me that retribution and incapacitation cannot be eliminated from the system.

C.T.J. and I were coming out of a *show cause* hearing in Newport News Circuit Court early one June morning when she noted that there was a murder trial going on that I could observe if I was interested. Knowing that I aspired to be a criminal prosecutor one day myself, she gave me the day to observe the trial proceedings and get to know R.P. of the Commonwealth Attorney's Office, who was prosecuting the case. R.P. also had a law school intern working with her on the case, whom I had had some interesting conversations with in the past. Given the permission to spend the day as an onlooker, I was able to listen the testimonies of witnesses, observe the closing arguments for the case, and hear the verdict of the jury. I was able to give C.T.J. frequent updates and developments on the case, as she was in the office working.

DaShanika Sherrod was twenty-five years old when she was killed by her ex-partner. Having been in abusive relationship with Anthony Mark Smith Jr. for an extended period of time, the young mother of two had taken several measures to protect herself and her children, including taking out a restraining order against Smith and moving in with her family. On January 4th, 2016, Smith broke into the home where Sherrod was staying with her mother and two children. Smith went into the bedroom where Sherrod was sleeping and shot her in the head, killing her. Her two children were awake at the time.

Smith was charged with first-degree murder, criminal trespassing, and possession of an illegal firearm. At trial, Smith showed no remorse and actually appeared amused by his actions. A family member of Sherrod tearfully shared that the two children, both under the age of ten, have been separated due to having to stay with different family members. Other friends and family shared that Sherrod was a beautiful person and a wonderful mother who had not deserved to die in that manner.

The maximum penalty for Smith's crimes was two life sentences plus two years for the firearm possession charge and six months for trespassing. During closing arguments, Smith's attorney argued that if the jury found Smith guilty, "He will be locked in a cage for the rest of his life. He'll never see his children grow up because he'll be locked in a cage. He'll never experience becoming a man because he'll be locked in a cage. He'll never see the outside again because he'll be locked in cage. He will die at an old age while locked in a cage." The defense attorney, a younger white male, was hoping to secure some sympathy for his client in order to get life off of the table. The prosecutor, however, countered his argument with "What about DaShanika?" R.P. asked the jury to think about how "DaShanika doesn't get to see her children grow up, but she did nothing wrong. She did everything right. DaShanika doesn't get to become a woman, to follow her goals and aspirations, because this MONSTER took that away from her. Her children are separated and without a mother because Smith took that away from them. Locked in a cage is where he needs to be."

It took less than an hour for the jury to come back with a guilty verdict for Smith. Even after hearing that he would be spending the rest of his life behind bars, Smith did not show an ounce of emotion. His callous disregard for DaShanika Sherrod's life and those of her children demonstrated to me that there are some people who are better off behind bars than out in our communities.

E. Does Local Probation Work?

C.T.J. and I have kept in touch over the years, and I sometimes stop by her office when I'm back home in Hampton Roads. In October 2018, I interviewed C.T.J. over the phone about her work with community corrections to get her perspective on the effectiveness of probation over incarceration. C.T.J. shared with me that even though local probation is not always successful per se, she finds that it is a viable alternative to putting people behind bars for crimes that are relatively minor.

“A lot of the crimes that CCD handles are misdemeanors and first offenses, and many times they are caused by an individual's reaction to what's going on in their life or what they are going through internally. For example, mental health crises,” she explained. “Community corrections can address those issues better than imprisonment can. Through partnerships with organizations like the Center for Child and Family Services, the Community Services Board, and Transitions Family Services, we can provide them with more resources to help them not reoffend. Through this collaboration, CCD helps get individuals back on the right track. As a result, community corrections can address the needs of these individuals on the local level much better than the Department of Corrections can on the state level, because the D.O.C. has a lot of personnel and budgetary limitations.”

At the mention of the limitations of the D.O.C., I asked C.T.J. what some of the biggest challenges she sees facing community corrections or local probation officers in Virginia are. One challenge that I personally noted when I worked with in her office was the case load. Prior to my arrival as her intern, C.T.J. was handling nearly two-hundred cases single-handedly. She had commented to me once that “The case load is overwhelming and we are doing a lot.”

Surprisingly, C.T.J. did not bring up her case load of 185 clients as a limitation. Instead, she replied that one of the biggest challenges that she sees for CCD is addressing the needs of those with mental health issues. Another major challenge is finding inexpensive, in-patient treatment for those individuals struggling with addiction.

Despite these challenges, C.T.J. believes that local probation does a lot of good for the criminally accused. According to C.T.J. community corrections is good at staying abreast of all of the training needed to assist their clients. LPOs have to look at each individual case and assess the specific needs of clients based on what is learned about them, rather than judging all offenders in the same way.

“There’s no ‘cookie-cutter’ solution that works for every client,” she explained. “LPOs succeed in getting to the bare foundation and addressing why clients committed their crime(s) in the first place. They then look for the best means of preventing recidivism. Assessment tools like the M-OST and OST allow LPOs to better judge the needs of offenders and find the best solution for them, whether that be attending anger management courses or getting treatment for a drug addiction. Community corrections is about being both punitive and therapeutic.”

C.T.J. then added that, “We are bound by the ways of the courts, but are given the ability to address the needs in-house so that clients do not end up back in the courtroom.”

When I asked what C.T.J. what community corrections and LPOs could do better, she replied:

“We have to continue to stay abreast of what resources are available to our clients and work to try and find resources that meet their financial needs. For example, programs that are not extremely costly. Furthermore, community corrections and LPOs need to become more immersed in the community by getting into the community, being involved, and spreading the word about CCD. What we need to do better is inform the community about what community corrections is, what its goals are, and what its mission is.”

She emphasized that she is not referring only to other community agencies, CCD counterparts, or legal colleagues in the community, but also to the actual the residents of the communities served. “We have to show them that we are not just about punishment and the punitive aspect of the law. We have to show them the benefits that local probation supervision provides to the community and to public safety.”

That being said, C.T.J. believes that her work with CCD helps the criminal justice system achieve its four goals of retribution, deterrence, incapacitation, and rehabilitation. “Local probation meets the retribution goal as a punitive means of addressing crime. It requires the criminally accused to be held accountable for his or her actions by imposing restrictions and strict, rigid supervision requirements. Furthermore, it both deters and incapacitates the criminally accused by imposing sanctions for violations, stripping away some aspects of an individual’s autonomy, and mandating upstanding citizenship throughout the term of supervision. Knowing that at any time he or she could be sent to jail, individuals are likely to modify their behavior and less likely to recidivate. We start them on a clean slate, using the assessment tools to determine the necessary level of supervision, addressing each individual’s needs using these assessment

tools, utilizing proper sanctions for non-compliance, and obeying the court's orders while still meeting each individual's specific needs.

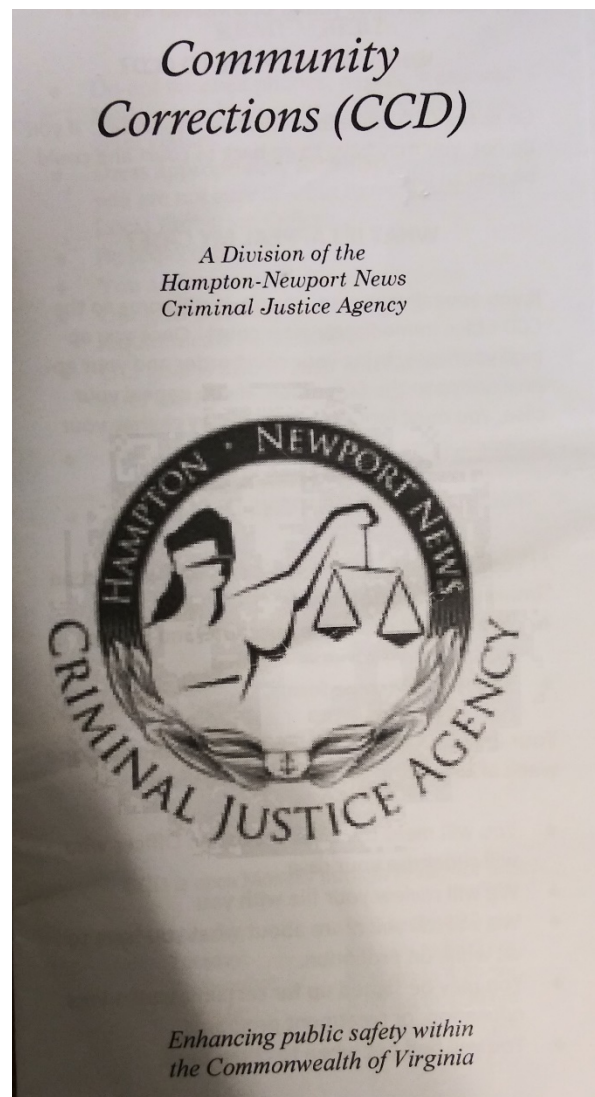
“There are instances where we have to address punitive sanctions, but these punitive measures are based on the individuals and how they've violated. We try to exhaust most measures to help rather than punish, and when we do have to punish our clients, we take the time to explain the sanction. By hearing the nature of the offenses, addressing trauma and assessing the backstory, and making an effort to actively understand why people make poor choices, we give our clients a clean slate to begin with and help them build a new and healthier foundation for their life.”

F. Seeing Each Other Through

The two quotes that begin this section are displayed across the walls of C.T.J.'s office. In addition to inspiring C.T.J. to do the work that she does, I believe that these words demonstrate C.T.J.'s character, the purpose of community corrections as a part of our criminal justice system, and the need for a new way of thinking about criminal justice and the criminally accused. C.T.J. has been dedicated to her work in CCD and the community for many years and does so without ever passing judgement upon the people she meets. As a probation officer, she is there to support individuals in complying with the court and bettering themselves for the future. What C.T.J. and the other LPOs focus on is redemption over condemnation. This makes them incredibly unique individuals, as they work within an institution and a society that often view the criminally accused as irredeemable.

It is so important that the criminal justice system sees people for who they are and not just for what they have done. While there is certainly a need to address wrongdoing, wrongdoing is often more complex than straightforward. Community corrections addresses and assesses these

complexities in a way that incarceration does not. I think the Commonwealth of Virginia would do well if more financial resources were allocated to community corrections over the Department of Corrections, because community corrections actually help people and invest in individuals' redemption. Incarceration just throws people away under the presumption that there is no help for them and no way of restoring their ability to exist productively in their communities and within society.



IV. Criminalizing Children

“They’re not just ‘bad’ kids.”

– G.L. –

Program Manager at ART180

“We have to stop locking up kids and throwing away the key.”

– Malcolm Jenkins –

Football Safety for the Philadelphia Eagles

Juvenile criminal cases trigger within me an emotional response that I can only describe as an intense blend of anger, disappointment, sadness, and shock. When I interned with community corrections, I spent a lot of time in Juvenile and Domestic Relations (JDR) Court. Juvenile cases were almost always the first cases on the docket and were, in my opinion, some of the hardest cases to observe. Seeing children as young as twelve-years-old brought into the courtroom in handcuffs and shackles to stand before a judge was disturbing and uncomfortable. Judges and attorneys would ask the children legal questions that would be challenging even for some adult defendants to answer. While I had already known that juvenile incarceration was a serious issue within our nation, watching children being sentenced to juvenile detention centers or adult prisons right before my eyes was much more troubling than reading about it. Hearing a judge conclude that “we should just wash its hands of this problem” when sentencing a young male offender to an extended period of time behind bars made my blood boil as I sat and watched Virginia’s criminal justice system condemn this child rather than give him a chance.

It makes no sense to me how callously Virginia’s criminal justice system can throw children out of society as if they are worthless and irredeemable. Alas, criminalizing children serves as another means through which Virginia’s criminal justice system violates the rights of the criminally accused. The juvenile justice system as an institution places the most vulnerable

citizens of our Commonwealth at a disadvantage within their communities and within society as a whole.

A. The Juvenile Justice System

The race-based and gender-based biases and disparities found within the adult criminal justice system also manifest within the juvenile justice system. According to Durnan and Harvell of the Urban Institute's Justice Policy Center, black youth are overrepresented in every aspect of Virginia's juvenile justice system.¹⁵³ Black youth constituted 71% of all admissions to juvenile correctional centers in 2016, despite only making up 20% of the Commonwealth's youth population.¹⁵⁴

In 2015, there were over 1,200 youth in custody.¹⁵⁵ Of these incarcerated youths, 93% were male and 90% had significant mental health treatment needs.¹⁵⁶ About half were aged sixteen (16) and below, and 95% were incarcerated for felony offenses.¹⁵⁷ In 2016, Virginia was spending almost \$171,600 to incarcerate one youth for a year, even though 90% of youths involved in the juvenile justice system are under some form of community supervision.¹⁵⁸ According to data gathered from the Department of Juvenile Justice, Virginia spends about \$15 on youth incarceration for every \$1 spent on community-based services.¹⁵⁹

What's even more disturbing about the Commonwealth's juvenile justice system, however, is that Virginia's education system is the number one contributor of youth to juvenile detention

¹⁵³ Durnan, Julia and Samantha Harvell, "Data Snapshot of Youth Incarceration in Virginia," 2016, 1.

¹⁵⁴ Durnan and Harvell, "Data Snapshot," 1, 5.

¹⁵⁵ "State-by-State Data," *The Sentencing Project*.

¹⁵⁶ Durnan and Harvell, "Data Snapshot," 1, 5.

¹⁵⁷ *Ibid* 4, 6.

¹⁵⁸ *Ibid* 2-6.

¹⁵⁹ *Ibid* 3.

centers.¹⁶⁰ According to Durnan and Harvell, Virginia’s system of public schools has the highest number of student referrals to the juvenile justice system in the United States. This is due to what is known as the school-to-prison pipeline.¹⁶¹

B. The School-to-Prison Pipeline

I do not recall ever hearing the term “school-to-prison pipeline” until I came to Richmond and began attending the monthly School Board meetings as a correspondent for local government affairs. It wasn’t until the news began to break about a civil rights investigation into Richmond Public Schools (RPS) for discriminatory suspensions and expulsions that I began to fully understand what the school-to-prison pipeline was and what its implications were for young black children in Virginia.

The school-to-prison-pipeline can be best described as an institutional mechanism that binds the public education system with the criminal justice system. The pipeline begins in the schools, where children who misbehave or violate the school rules find themselves at the mercy of the teachers, school resource officers, or administrators who must decide how to deal with them. These school officials have a variety of options available to them when it comes to disciplining an unruly child. They can give the child a verbal warning, make a phone call to the child’s parents, write up a conduct notice or behavioral referral, suspend students for a short or long period of time, or, in extreme cases, expel the child from the school. Note that this is not by any means an exhaustive list.

¹⁶⁰ Ibid 1.

¹⁶¹ Ibid 1.

With this being said, many public schools across the U.S. are being called out for calling in school resource officers to handle behavioral infractions. When these authority figures step in to intervene, the children in question often end up penalized by the criminal justice system or subjected to violence. Many of the incidents that have gone public have disproportionately been affecting black female students who are behaving in ways that should be considered typical of children and teenagers. For example, in a New York school in 2019, four twelve-year-old girls were strip searched for drugs by school administrators for appearing “hyper and giddy.”¹⁶² In 2015, a black teenaged girl was forcibly overturned while still in her desk and then thrown across the classroom by a school resource officer called in to remove her for not giving the teacher her cellphone. She and another female student were arrested and charged with disturbing the peace.¹⁶³ In 2012, a six-year-old black girl was handcuffed and charged with battery and criminal damage to property after she threw a temper tantrum at her elementary school.¹⁶⁴ As a result of such interactions with law enforcement within school settings, many students are funneled out of the classroom and into a courtroom, an alternative school or juvenile correctional center, or, in the worst-case scenarios, a jail cell. This systemic funnel is the school-to-prison pipeline.

Black children are impacted more often by the school-to-prison pipeline because they are more susceptible to harsher punishments and disciplinary sanctions than their white

¹⁶² Williams, Armstrong, “Not Separate, And Yet Unequal: The Criminalization of Black Children In Public Schools,” *Town Hall*, 7 February 2019, <https://townhall.com/columnists/armstrongwilliams/2019/02/07/not-separate-and-yet-unequal-the-criminalization-of-black-children-in-public-schools-n2540934>.

¹⁶³ “Settlement in Case of S.C. Deputy Who Roughed up High School Girl,” *CBS News*, 11 August 2016, <https://www.cbsnews.com/news/agency-for-south-carolina-ex-deputy-who-threw-girl-to-ground-settles-with-doj/>; The Associated Press, “Deputy Who Tossed a S.C. High School Student Won’t Be Charged,” *The New York Times*, 21 December 2017, <https://www.nytimes.com/2016/09/03/afternoonupdate/deputy-who-tossed-a-sc-high-school-student-wont-be-charged.html>; Ortiz, Erik, “Sheriff Says ‘Third Video’ Shows South Carolina Student Punching Officer in Classroom,” *NBC News*, 27 October 2015, <https://www.nbcnews.com/news/us-news/sheriff-says-third-video-shows-south-carolina-student-punching-officer-n452481>.

¹⁶⁴ Williams, “Not Separate, And Yet Unequal.”

counterparts.¹⁶⁵ A report published by the Government Accountability Office (GAO) in 2018 found, after analyzing the Department of Education’s national civil rights data from 2013-2014, that black students, male students, and students with disabilities in K-12 schools are overrepresented when it comes to school suspensions.¹⁶⁶ While black students comprise 16% of the public-school population nationwide, black students are subjected to 31% of the school disciplinary actions that result in suspensions, arrests, or expulsions.¹⁶⁷

This is due largely in part in part to misconceptions about the age, innocence, and culpability of black children.¹⁶⁸ Studies have found that black boys as young as 10 and black girls as young as 5 are looked at as older, less innocent, more culpable for wrongdoing, and less in need for nurturing than their white counterparts of the same age.¹⁶⁹ As a result, they are punished more severely when they engage in childish behaviors such as having temper tantrums or talking back to adults.¹⁷⁰ They are not afforded the same benefit of doubt that their white counterparts are afforded and are not given second chances to clean up their acts.

The GAO further found that the overrepresentation of black youth was true regardless of the type of punishments administered, the type of school being attended, and the poverty rate at the schools.¹⁷¹ However, the GAO stated that while these disparities in discipline “may support a

¹⁶⁵ Bernstein, Robin “Let Black Kids Just Be Kids,” *The New York Times*, 20 January 2018, <https://www.nytimes.com/2017/07/26/opinion/black-kids-discrimination.html>.

¹⁶⁶ Lopez, German “Black Kids Are Way More Likely to Be Punished in School than White Kids, Study Finds,” *Vox*, 5 April 2018, <https://www.vox.com/identities/2018/4/5/17199810/school-discipline-race-racism-gao>.

¹⁶⁷ Lopez, “Black Kids Are Way More Likely to Be Punished.”

¹⁶⁸ Bernstein, “Let Black Kids Just Be Kids.”

¹⁶⁹ Goff, Philip Atiba, “Black Boys Viewed as Older, Less Innocent Than Whites, Research Finds,” American Psychological Association, 6 March 2014, <https://www.apa.org/news/press/releases/2014/03/black-boys-older>; Downey, Maureen “New Study: Black Girls as Young as 5 Seen as Less Innocent than White Peers,” *The Atlanta Journal-Constitution*, 27 June 2017, <https://www.myajc.com/blog/get-schooled/new-study-black-girls-young-seen-less-innocent-than-white-peers/2NT0aL6SIbhpjG1N0Yz4zM/>.

¹⁷⁰ Bernstein, “Let Black Kids Just Be Kids.”

¹⁷¹ Lopez, “Black Kids Are Way More Likely to Be Punished.”

finding of discrimination,” the findings “alone do not establish whether unlawful discrimination has occurred.”¹⁷² The GAO is effectively saying that there are other factors that could be at play other than racial bias or systemic racism.¹⁷³ For example, in many school districts a lack of school social workers or psychologists have led to school security guards and resource officers assuming the responsibility of dealing with troubled students.¹⁷⁴ Their solution to behavioral infractions tends to be imposing harsh disciplinary sanctions, and in some cases, arresting students for misbehavior and charging them with actual criminal offenses.¹⁷⁵

Students who have been expelled from school are three (3) times more likely to become involved in the criminal justice system within one (1) year of the expulsion.¹⁷⁶ Furthermore, high school dropouts are about 63 times more likely to be incarcerated during their lifetimes than those individuals who have graduated from high school and attained some form of higher education.¹⁷⁷ In the community and in school settings, police are more likely to use force against black children, which Goff explains is due to a tendency of police officers to unconsciously dehumanize black people.¹⁷⁸ Researchers hypothesize that this tendency could be due to negative interactions that exist between black children and police officers.¹⁷⁹ Community policing plays a strong role in this. Recently in the City of Richmond, a police officer was reprimanded after he told a group of black middle-schoolers who were congregated outside the school building to “Just wait ‘til your [a**]es turn 18, then you’re mine.”¹⁸⁰ The officer and the students allegedly

¹⁷² Ibid.

¹⁷³ Ibid.

¹⁷⁴ Williams, “Not Separate, And Yet Unequal.”

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

¹⁷⁹ Goff, “Black Boys Viewed as Older, Less Innocent Than Whites.”

¹⁸⁰ “Officer in Viral Video Outside Richmond School to Be Disciplined, Offers Apology to Parents,” *WTVR.com* ,4 April 2019, <https://wtvr.com/2019/04/04/richmond-police-officer-in-albert-hill-middle-school-video-removed-from-community/>.

had a verbal altercation leading up to the officer’s inappropriate utterance.¹⁸¹ A parent commented that this display demonstrated an example of an authority figure speaking down to children of color.¹⁸²

In her 2018 Op-Ed written in the New York Times, Bernstein entreats school officials and law enforcement to “let black kids just be kids.”¹⁸³ However, the strict “no tolerance disciplinary regimes” found in schools and the historically damaged police-civilian relationships in many communities of color do not allow for this reality.¹⁸⁴

C. Richmond Public Schools

According to school psychologist Cara Jean O’Neal, black students make up 23% of Virginia’s total public-school population but comprise 59% of short-term suspensions, 57% of long-term suspensions, 43% of expulsions, and 50% of criminal referrals from schools to juvenile courts.¹⁸⁵ Forty percent (40%) of all disorderly conduct charges in VA originate in the schools.¹⁸⁶

In 2017, the U.S. Department of Education was asked to launch a probe into Richmond Public Schools’ disciplinary practices at the request of several advocacy organizations, including the American Civil Liberties Union (ACLU), the Legal Aid Justice Center, Advocates for Equity in Schools, and the National Association for the Advancement of Colored People (NAACP).¹⁸⁷

¹⁸¹ “Officer in Viral Video to Be Disciplined.”

¹⁸² Ibid.

¹⁸³ Bernstein, “Let Black Kids Just Be Kids.”

¹⁸⁴ Williams, “Not Separate, And Yet Unequal.”

¹⁸⁵ O’Neal, Cara Jean, “Brown Bag Lecture: Education, Not Incarceration,” *Bonner Center for Civic Engagement*, 25 January 2019.

¹⁸⁶ O’ Neal, “Education, Not Incarceration.”

¹⁸⁷ McClellan, Matthew, “Child Advocates Confront RPS Board amid Federal Discrimination Probe,” *WRIC.com*, 18 April 2017, https://www.wric.com/news/child-advocates-confront-rps-board-amid-federal-discrimination-probe_20180320013017740/1059591402.

The complaint alleged that Richmond Public Schools was punishing black students and students with disabilities more often and more harshly than their peers.¹⁸⁸

These accusations were not new. According to K.L., a well-known attendee of School Board meetings and a vocal member Advocates for Equity in Schools, RPS's actions towards children of color and disabled children were abusive in nature.¹⁸⁹ K.L. would often come to the podium to accuse school administrators and Board members of contributing to the school-to-prison-pipeline or violating students educational and civil rights. In March of 2017, K.L. harshly chastised a School Board member for the actions she had allegedly taken against a black student during a disciplinary hearing.¹⁹⁰ "You declared him guilty before he even came through the door!" K.L. exclaimed angrily, stating that the student in question had been sent to alternative school at the outset of the hearing.¹⁹¹

Out of pure curiosity, I looked into Richmond Public School's statistics on disciplinary action. As a frequent attendee of Richmond's School Board meetings, I was able to get my hands on the hard data when it was published for the community. The Figure 6 below is a chart constructed based on the data provided in the annual report of all disciplinary actions recorded for the 2016-2017 school year.¹⁹²

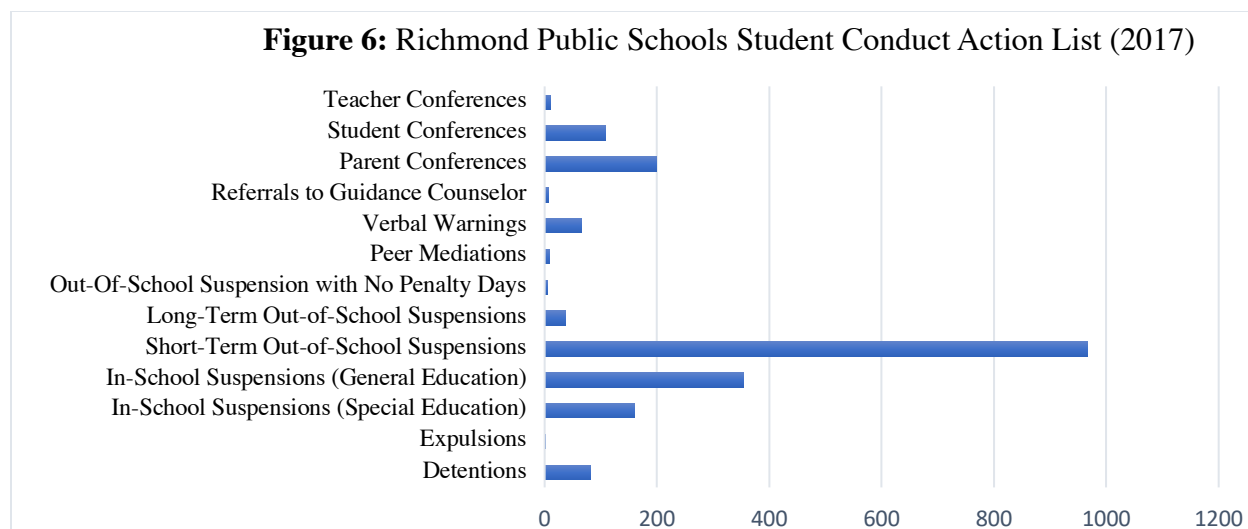
¹⁸⁸ McClellan, "Child Advocates Confront RPS Board."

¹⁸⁹ Ibid.

¹⁹⁰ Jiggetts, Alicia "School Board Recap: March 20, 2017," *RVAGOV.com*, 20 March 2017, <https://www.rvagov.com/single-post/2017/03/25/School-Board-Recap---March-20-2017>.

¹⁹¹ Jiggetts, "School Board Recap."

¹⁹² Richmond Public Schools, "Student Conduct Action List 2016-2017."



During the 2016-2017 school year, RPS dished out 967 short-term suspensions. This means that nearly 1000 of Richmond's students found themselves temporarily prohibited from attending school due to a behavioral infraction. While schools reserve the right to punish poor behavior and keep troubled students from causing disruptions, the use of out-of-school suspensions (OSS) disrupts childhood education by barring them from learning. Due to a lack of time and resources, teachers often cannot remediate these students. As a consequence, these students are often left behind their peers and unable to catch up on the material missed. Furthermore, an additional consequence of out-of-school suspensions is that by pushing students out of school, students face increased susceptibility to police contact within their communities. Children with working-parents or guardians who cannot be home to supervise them are highly likely to get into trouble with police when left to their own devices.

A big issue with this list of disciplinary action items is it is unclear whether any of these actions actually get to the root of the problems that many of the children in schools are facing. For students from unstable families or communities, being forced out of school and forced to stay at home can serve to exacerbate their poor behavior. It is very troubling that RPS is more likely to use OSS than in-school-suspensions (ISS), as ISS at least allows students the

opportunity to learn and attend school, even if they are not allowed in their normal classroom setting. What this data appears to illustrate, however, is that it is more expedient for RPS to get rid of troubled students than to try and keep them in-house. This is due in large part to the limits on time and resources.

Parent conferences are utilized the most out of the three types of conferences and teacher conferences are utilized the least. What is unclear is what distinguishes these conferences from one another and who is involved and invited to attend. Teachers have several students to manage on a daily basis and so it is clear that they cannot utilize conferencing during every single case. However, busy parents and guardians also may not be able to make conferencing work for their schedules. There also may be parents who are not interested in conferencing at all. Students cannot be reasonably expected to have productive conferences on their own, as students may not feel comfortable opening up to authority figures who they perceive as out to get them. They're more likely to shut down than share their problems with adversarial adults.

The lack of referrals to guidance counselors in RPS illustrates what many parents and school activists have been saying about the lack of essential personnel in the schools. There are not enough of these counselors available to meet student needs. Instead of investing so much in school resource officers who are not equipped to handle troubled students with care and compassion, it is argued that school districts like Richmond Public Schools need to invest in social workers, psychologists, and guidance counselors who can help these students do better and access the resources and supports they need to succeed. However, RPS will only be able to do this with the appropriate funding, and as of now, it is unclear when, or if, such funding will become available.

D. Bon Air

Many of the children who fall prey to the criminal justice system in Virginia find themselves waking up each morning to the brick walls of the Bon Air Juvenile Correctional Center.¹⁹³ As of 2017, Bon Air is the only youth prison operating in the Commonwealth.¹⁹⁴ Advocates and formerly incarcerated youth from organizations like RISE for Youth have worked tirelessly over the years to get the number of youth imprisonment facilities from eight down to one. Beaumont Juvenile Correctional Center was closed in 2016 after a passionate group of students lobbied the state legislature for an end to youth incarceration.¹⁹⁵

Bon Air is located in a small town located about twenty minutes away from Richmond.¹⁹⁶ Due to its centralized location in the state, 75% of the incarcerated youth housed there are over an hour away from their home communities.¹⁹⁷ Most of the juveniles at Bon Air come from the Eastern Region of the Commonwealth, which encompasses the Hampton Roads area.¹⁹⁸ The location of Bon Air places limits on how often the youth offenders can get visits from loved ones.¹⁹⁹

Bon Air is said to resemble adult correctional facilities in many ways.²⁰⁰ The facility was not designed with therapeutic treatment in mind.²⁰¹ M.J., a youth incarcerated for second-degree murder, shares in a documentary his experience being housed on the maximum-security

¹⁹³ Pollock, Nicolas “An Inside Look at Juvenile Detention,” *The Atlantic*, 16 March 2018, <https://www.theatlantic.com/video/index/555659/inside-juvenile-detention/>.

¹⁹⁴ Pollock, “An Inside Look at Juvenile Detention.”

¹⁹⁵ Noe-Payne, Mallory, “How a Group of Teens Helped Convince Lawmakers to Close a Youth Prison,” *WVTF.org*, 21 February 2019, <https://www.wvtf.org/post/how-group-teens-helped-convince-lawmakers-close-youth-prison>.

¹⁹⁶ Pollock, “An Inside Look at Juvenile Detention.”

¹⁹⁷ *Ibid.*

¹⁹⁸ *Ibid.*

¹⁹⁹ *Ibid.*

²⁰⁰ *Ibid.*

²⁰¹ *Ibid.*

cellblock.²⁰² He describes his day-to-day experiences as very structured; he searched constantly wherever he goes, is told when to eat, sleep, and bathe, and is often isolated from others when he is not in classes.²⁰³ M.J. shares that one of the good aspects of his experience is being able to decorate his room; he is an artist who enjoys drawing and writing, and as such has adorned his wall with images and words.²⁰⁴ He shares that his artistic outlet allows him to visualize what he could be doing if he were free and not locked up.²⁰⁵

Andy Block, former director of the Department of Juvenile Justice in Virginia, and Valerie Slater, executive director at RISE for Youth, have been vocal proponents of an end to the Bon Air youth prison.²⁰⁶ The massive, isolated facility in the middle of the Commonwealth does not, in their opinions, do the work that it needs to do for the youths housed inside.²⁰⁷ Slater often questions why there are no smaller, juvenile justice facilities located in the communities where youths are coming from.²⁰⁸ Given that troubled youth often come from “war zones” and have complicated childhood traumas, Slater believes that families and communities need to be a part of the rehabilitative process for these youths.²⁰⁹

“Bon Air doesn’t prepare these youths for reentry,” Slater says in the documentary.²¹⁰ Even though Bon Air works hard to rehabilitate the youth offenders before releasing them back into the world, the unstable surroundings that they often return to can make that rehabilitative work

²⁰² Ibid; Pollock, Nicolas, “Virginia’s Juvenile Justice Reform,” *The Atlantic*,” 16 March 2018, <https://www.theatlantic.com/projects/juvenile-justice/>.

²⁰³ Pollock, “An Inside Look at Juvenile Detention.”

²⁰⁴ Ibid.

²⁰⁵ Ibid.

²⁰⁶ Ibid; Pollock, “Virginia’s Juvenile Justice Reform.”

²⁰⁷ Ibid.

²⁰⁸ Ibid.

²⁰⁹ Ibid.

²¹⁰ Ibid.

fall apart.²¹¹ “You’re putting them back in the same communities with the same issues that landed them in juvenile detention in the first place.”²¹²

D.M. grew up in an unstable community in Newport News.²¹³ Surrounded by violence and constantly struggling with housing instability, D.M. began carrying a gun on him as a teenager for protection.²¹⁴ “Carrying a gun becomes as normal as putting on your shoes when you go out,” he explained, talking about how the dangers of getting off the bus in certain neighborhoods and his need to protect his sister from harm made him insistent on having a gun on his person at all times.²¹⁵ When it was discovered that D.M. had the gun in school, he was arrested and charged with possession of an illegal firearm and with bringing a weapon into a school building.²¹⁶ D.M. states that he did not regret carrying the gun; he just regrets that he took it to school with him.²¹⁷

D.M. was fortunate not to be sent away to Bon Air.²¹⁸ He qualified for a diversion program that allowed him to remain close-to-home but with supervision by the DJJ.²¹⁹ About 80% of juveniles who are given lesser sentences tend to qualify for such programs if they are not given probation or community service instead.²²⁰ D.M. was sent to the Tidewater Youth Services’ Apartment Living Program in Virginia Beach, about forty-five (45) minutes away from his home in Newport News.²²¹ Here, he was able to live independently and build the skills he needs to

²¹¹ Pollock, “Virginia’s Juvenile Justice Reform.”

²¹² Ibid.

²¹³ Ibid.

²¹⁴ Ibid.

²¹⁵ Ibid.

²¹⁶ Ibid.

²¹⁷ Ibid.

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ Ibid.

²²¹ Ibid.

productive.²²² He took HVAC classes at a local college and also worked at deli during his time in the program.²²³

While Bon Air provides juvenile offenders with the same opportunities to build skills, Bon Air is not the best place for these youths to be building them.²²⁴ It isolates young people from the people and communities needed to help them rehabilitate.²²⁵ The environment within the facility is also not conducive to therapeutic work, as therapy sessions are held within empty cells.²²⁶ Slater and Block have sought to have a juvenile facility placed in the Hampton Roads area, and also strive to have smaller, therapeutic facilities within each community.²²⁷ However, residents in the City of Chesapeake opposed the idea of the facility due to public safety concerns.²²⁸ Slater disapproved of the location for the proposed facility, which was a former military base located in the middle of nowhere.²²⁹ Block's vision for a new juvenile justice facility included carpets, greenspaces, and drywall instead of brick walls.²³⁰ He wanted the place to look and feel like a healing or restorative space, rather than a punitive or retributive space.

Z.B. grew up in Newport News like D.M. and also recalls having a childhood where she was surrounded by shootings, fighting, and drugs.²³¹ "Kids shouldn't have to see things like that," she said.²³² These things led her and other children like her to grow up fast and engage in risky behaviors.²³³ She was arrested after she and some friends attempted to rob a drug dealer for some

²²² Ibid.

²²³ Ibid.

²²⁴ Ibid.

²²⁵ Ibid.

²²⁶ Pollock, "An Inside Look at Juvenile Detention."

²²⁷ Ibid; Pollock, "Virginia's Juvenile Justice Reform."

²²⁸ Pollock, "Virginia's Juvenile Justice Reform."

²²⁹ Ibid.

²³⁰ Ibid.

²³¹ Ibid.

²³² Pollock, "An Inside Look at Juvenile Detention."

²³³ Pollock, "Virginia's Juvenile Justice Reform."

money.²³⁴ During the commission of this crime, one of her close friends was killed.²³⁵ Z.B. did two years at Bon Air.²³⁶ Now living independently, she has her own apartment, a job, and aspires to enlist in the military.²³⁷ She says that for kids who grew up in communities like where she came from, it can be rough and traumatizing.²³⁸ While she does not critique Bon Air, she comments that the DDJ cannot expect to “swoop in” and tell the kids to do better.²³⁹ She calls for investment in communities first, to allow healing and rehabilitation take place there.²⁴⁰ Block echoes her sentiments, noting that “public safety and rehabilitation are inextricably linked.”²⁴¹

E. Can We Dismantle This System?

I have attended the annual March for Juvenile Justice organized by Art180 for three years in a row during my time in Richmond. Art180 is a non-profit organization that collaborates with incarcerated youth to use the visual and performing arts to advocate for themselves. Each year, youths and young adults impacted by the juvenile justice system share their stories about being impacted by the school-to-prison pipeline and the juvenile justice system. The goal of this annual community gathering is spread the message that youth prisons don’t work and that young people should be invested in, not incarcerated.

Taekia Glass is the program coordinator for juvenile justice programs at Art180 and Gina Lyles is the program director of Art180. In 2018, the two gave a talk at the University of

²³⁴ Ibid.

²³⁵ Ibid.

²³⁶ Ibid.

²³⁷ Ibid.

²³⁸ Ibid.

²³⁹ Pollock, “An Inside Look at Juvenile Detention.”

²⁴⁰ Ibid.

²⁴¹ Ibid.

Richmond entitled “Arts, Advocacy, and Alternatives,” where they talked about the organization and how youth should be seen as the experts in resolving the issues within the juvenile justice system.²⁴² Using creative expression to do social justice work allows youth to challenge their circumstances and make important stakeholders pay attention.²⁴³ Creative advocacy works well because it is non-offensive, non-threatening, and innovative.²⁴⁴

For Gina Lyles, juvenile justice is personal. Growing up in-and-out of foster care caused her to act out as a teenager, and eventually she wound up in a juvenile detention center.²⁴⁵ Her time in a youth prison did not rehabilitate her; instead, she ended up back in prison as an adult.²⁴⁶ “There were a lot of fights, a lot of kids who were depressed, with drug issues, who were suicidal,” she shared in a previous interview.²⁴⁷ “It was a very toxic environment.”²⁴⁸

Her experiences are what have led her to advocate for a reduction in the number of youths incarcerated and the development of new strategies for justice.²⁴⁹ “Incarceration is not the best course of action for these kids,” she shared.²⁵⁰ “Youth need options so that they will be productive citizens.”²⁵¹ Like Block and Slater, Lyles and Glass support community-based programs that will provide youth with skills, employment opportunities, and personal development.²⁵² Furthermore, Art180 wants to inspire policy changes around pre-K through third-grade suspensions and the

²⁴² Glass, Taekia and Gina Lyles, “Brown Bag Lecture: Arts, Advocacy, and Alternatives,” *Bonner Center for Civic Engagement*, 26 January 2018.

²⁴³ Glass and Lyles, “Arts, Advocacy, and Alternatives.”

²⁴⁴ *Ibid.*

²⁴⁵ Hipolit, Melissa, “Is Virginia’s Juvenile Justice System Doing What It Should Be Doing?” *WTVR.com*, 14 April 2019, <https://wtvr.com/2015/11/06/is-virginias-juvenile-justice-system-doing-what-it-should-be-doing/>.

²⁴⁶ Hipolit, “Is Virginia’s Juvenile Justice System Doing What It Should Be Doing?”

²⁴⁷ *Ibid.*

²⁴⁸ *Ibid.*

²⁴⁹ Glass and Lyles, “Arts, Advocacy, and Alternatives.”

²⁵⁰ *Ibid.*

²⁵¹ *Ibid.*

²⁵² *Ibid.*

role of school resource officers in schools.²⁵³ They propose new guidelines for officers in the form of a Memorandum of Understanding (MOU) and a new curriculum for teachers centered around understanding the school-to-prison pipeline and how not to push children into the pipeline.²⁵⁴

Art180 has also worked with police officer training initiatives in the City of Richmond, where they've collaborated with the police department to rewrite police training manuals, discuss how officers can interact differently with youth in the community, and adopt trauma-informed care practices.²⁵⁵ Broadly, Art180 hopes to engage legal experts, community organizers, advocates, youth, and other credible messengers and stakeholders in the crusade to end the criminalization of youth.²⁵⁶ G.L. wants the community to stop looking at juvenile offenders as "just bad kids."²⁵⁷

Dr. O'Neal believes that the dismantling of the school-to-prison pipeline must begin within the educational institutions.²⁵⁸ The lack of cultural competence and implicit biases among teachers and school administrators, in addition to the misidentification of special-needs students and lack of trauma-informed practices, are all factors that must be addressed within schools in order to weaken the educational system's impact on youth incarceration.²⁵⁹ Dr. O'Neal believes that culturally responsive teaching and discipline practices are a necessity.²⁶⁰ Having one standard way of teaching and disciplining students does not allow root problems to be addressed, and often lead to reactive rather than proactive responses to behavioral infractions.²⁶¹ School-based mental health supports and trauma-informed practices are needed for students like D.M. and Z.B. who

²⁵³ Ibid.

²⁵⁴ Ibid.

²⁵⁵ Ibid.

²⁵⁶ Ibid.

²⁵⁷ Ibid.

²⁵⁸ O'Neal, "Education, Not Incarceration."

²⁵⁹ Ibid.

²⁶⁰ Ibid.

²⁶¹ Ibid.

were highly susceptible to risky behaviors after being exposed to violence and instability in their communities at young ages.²⁶² Furthermore, because there is a lack of communication between the educational system and the juvenile justice system – despite the relationship the two have forged in order to create the school-to-prison-pipeline – Dr. O’Neal proposes inviting all stakeholders and students to the table to have conversations about dismantling the pipeline.²⁶³ By forging authentic relationships between students and school officials, communities and police departments, affected juveniles and juvenile justice system administrators, Dr. O’Neal believes that the structure of the pipeline will crumble.²⁶⁴

Policymakers have also been taking active stances on the matter of juvenile incarceration and the school-to-prison pipeline in Virginia. During the 2019 General Assembly session, several of the Commonwealth’s leaders supported legislation in the House and Senate that aimed to reform school disciplinary practices.²⁶⁵ Leaders like Delegate Jeff Bourne, Senator Jennifer McClellan, and Delegate Mike Mullin are concerned about the number of children charged with disorderly conduct in the schools.²⁶⁶ Disorderly conduct, which is defined as “disrupting an activity with the intent to cause public inconvenience, annoyance or alarm,” is a misdemeanor criminal offense that is punishable by a fine of up to \$2500 or up to a year in jail.²⁶⁷ While these state leaders acknowledge that punishment for misconduct is necessary, they believe that using criminal sanctions to hold children accountable for their behaviors is not the best approach.²⁶⁸ Delegate

²⁶² Ibid; Pollock, “Virginia’s Juvenile Justice Reform.”

²⁶³ Ibid.

²⁶⁴ Ibid.

²⁶⁵ Mattingly, Justin, “Virginia Lawmakers Want to Limit Criminal Charges for Student Misbehavior in School,” *Richmond Times-Dispatch*, 13 January 2019, https://www.richmond.com/news/virginia/government-politics/virginia-lawmakers-want-to-limit-criminal-charges-for-student-misbehavior/article_9fc28756-176e-55af-8672-c652ac08c717.html.

²⁶⁶ Mattingly, “Virginia Lawmakers Want to Limit Criminal Charges for Student Misbehavior.”

²⁶⁷ Ibid.

²⁶⁸ Ibid.

Bourne stated that the use of disorderly conduct charges allows behavior that simply needs to be corrected to be criminalized instead.²⁶⁹

Unfortunately, the bills introduced by Delegates Bourne and Mullin did not pass the House of Delegates.²⁷⁰ Leaders in opposition to the bill were hesitant to remove a charge of disorderly conduct from the list of disciplinary actions that can be taken against students.²⁷¹ Other stakeholders who expressed opposition to the bill stated that the school-to-prison pipeline is a myth.²⁷² Between 2013 and 2018, over 7000 disorderly conduct charges were filed against children in the Commonwealth, with nearly two-thirds of the complaints made against black students.²⁷³ Delegate Mullin remains steadfast in his belief that misbehavior in classrooms should not lead to criminal charges.²⁷⁴ The fact that an autistic child who kicked a trash can while in his classroom and then was tackled by a police officer after resisting arrest has been held in a juvenile correctional center for three years does not sit well with Delegate Mullin, and he firmly believes that teachers and principals are better equipped to handle classroom disruptions than police officers and courtrooms.²⁷⁵

It is obvious that dismantling the school-to-prison pipeline and reforming the juvenile justice system is going to take a lot of work by a lot of different individuals and entities. Yet, given the ability of youth to influence the closure of one of the Commonwealth's juvenile corrections

²⁶⁹ Ibid.

²⁷⁰ Mattingly, Justin, "House Subcommittee Votes down School Discipline Bills," *Richmond Times-Dispatch*, 21 January 2019, https://www.richmond.com/news/virginia/government-politics/general-assembly/house-subcommittee-votes-down-school-discipline-bills/article_10d97450-64ad-5d2d-b4a2-3c83b5e86dfc.html.

²⁷¹ Mattingly, "House Subcommittee Votes down School Discipline Bills."

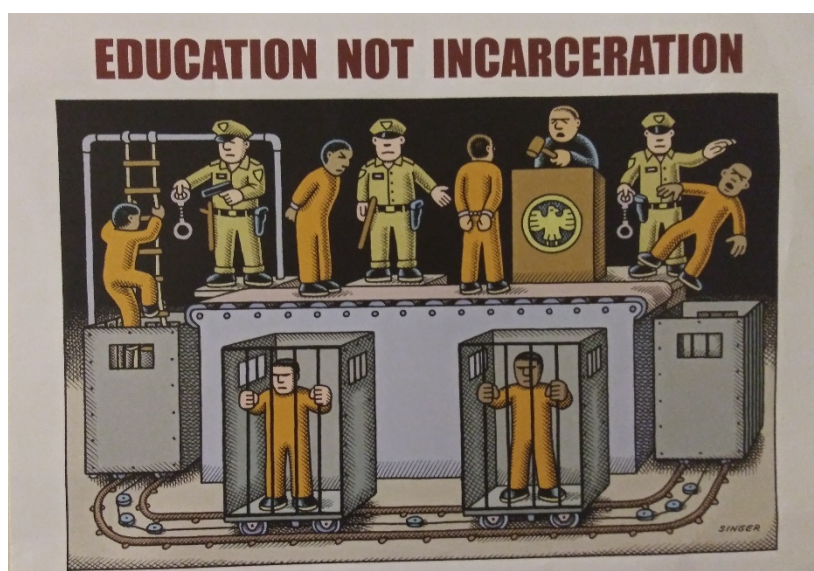
²⁷² Ibid.

²⁷³ Ibid.

²⁷⁴ Ress, Dave, "Is Disruption in School a Crime?" *Daily Press*, 6 December 2018, <https://www.dailypress.com/news/politics/dp-nws-disorderly-students-crime-20181206-story.html>.

²⁷⁵ Ress, "Is Disruption in School a Crime?"

centers, it is clear that reform is possible.²⁷⁶ While many juveniles are grateful for the efforts being put forth to advocate for incarcerated children, one of the students with RISE for Youth commented that it is disappointing that he had to be incarcerated in order to get the services he would have needed in his community.²⁷⁷ Had there been more investment in his community and his education, perhaps he would not have ended up behind bars prior to his eighteenth birthday.²⁷⁸ In a meeting with Delegate Aird in February of 2019, where he and other members of RISE were sharing their personal stories about youth incarceration, the young man shared that he advocates for more supportive environments for troubled youth and for juvenile corrections facilities to be more proximate to home for the juveniles held within them.²⁷⁹



V. Life after Incarceration

²⁷⁶ Noe-Payne, “How a Group of Teens Helped Convince Lawmakers to Close a Youth Prison.”

²⁷⁷ Ibid.

²⁷⁸ Ibid.

²⁷⁹ Ibid.

“Virginia is the worst state in the United States for people who have made mistakes.”

– R.W. –

Co-Founder, Bridging the Gap in Virginia

“Although many challenges still exist, the restoration of basic rights was life changing for so many.”

– J.B. –

Vice-President, NAACP Rockingham County/Harrisonburg Branch

In many ways, the criminally accused in Virginia end up being permanently punished by the criminal justice system. One of the worst characteristics of our criminal justice system is its inability to forgive formerly incarcerated individuals once they have been released from jail or prison. Even after an individual has done their time behind bars and has paid their debt to society for their wrongdoings, the punishment often continues for a long time after the criminally accused leaves the gates of the prison behind. In addition to being deprived of rights and dignity while in prison, the criminally accused find themselves deprived of rights and dignity upon being released from prison. The labels of “former felon,” “ex-con,” and “criminal” are sticky ones that are not easily removed.²⁸⁰ These labels eventually become a part of an individual’s identity, defining not only how he or she views himself but also how he or she is perceived by other members of society.²⁸¹ Furthermore, these labels create barriers to the reentry process that hinder the ability of the criminally accused to reintegrate into society after having been estranged from it for a long or short period of time. By being deprived of basic civil rights and hindered in the process of reentering society, the criminally accused are treated as second-class citizens whose life after incarceration consists of constant battles with social, political, and economic inequalities.

²⁸⁰ Adler, Patricia and Peter Adler, “Theories of Deviance,” *Constructions of Deviance: Social Power, Context, and Interaction*, Boston, MA: Cengage Learning, 70-71.

²⁸¹ Adler and Adler, “Theories of Deviance,” *Constructions of Deviance*, 71.

A. Socioeconomic Barriers

The mark of a criminal record bars individuals from employment opportunities, housing eligibility, eligibility for government assistance, educational opportunities, and many other resources. Due to the racial disparities of the system, a vast majority of the individuals facing these obstacles to reentry are people of color. Devah Pager conducted a study in 2003 on how the mark of a criminal record effects employment opportunities and found that it is not just the record itself that is a barrier, but also the race of the individual with the record.²⁸² She performed an audit study where she used matched pairs of white and black applicants, who were sent out to apply for jobs with the exact same resumes.²⁸³ The only difference was that some resumes indicated a felony conviction on record and some did not.²⁸⁴ Pager found that 17% of whites with a criminal record received a call back from a potential employer compared to 5% of blacks with a criminal record.²⁸⁵ She also found that a black person with no criminal record was less likely to be called back than a white person with a criminal record.²⁸⁶ Thus, while the criminal record significantly reduces any applicant's chances for employment, racial biases and stigma are also playing a role in employers' decisions to hire formerly incarcerated individuals or those with criminal records.²⁸⁷ In the City of Richmond, where much of the population is composed of people of color from lower socioeconomic backgrounds, I have seen Pager's findings hold true on several occasions.

²⁸² Pager, Devah, "The Mark of a Criminal Record," *Constructions of Deviance: Social Power, Context, and Interaction*, Boston, MA: Cengage Learning, 217-228.

²⁸³ Pager, "The Mark of a Criminal Record," *Constructions of Deviance*, 219-220.

²⁸⁴ Ibid 219-220.

²⁸⁵ Ibid 220-233.

²⁸⁶ Ibid 222-223.

²⁸⁷ Ibid 223-224.

My community engagement in the City of Richmond put me in proximity to many people who possessed these sticky labels and were struggling with the consequences associated with the mark of a criminal record. Serving as a program assistant for the City of Richmond's Center for Workforce Innovation (CWI) for three semesters, I encountered many individuals who were down on their luck and trying to get back on their feet following a period of incarceration. The Center for Workforce Innovation is a city agency that is a part of Richmond's Office of Community Wealth Building. The Center provides individuals with the necessary resources to seek out and obtain employment. Participants are able to come into the Center to use computers, make calls, view job listings, get help from support staff and case managers, and attend various workshops, classes, and trainings. My role at the Center for the most part was assisting at the front desk and aiding those who needed one-on-one help on the computer. I was also able to perform other tasks such as facilitating my own resume workshop and performing an inventory.

One of the first individuals I worked with on a job application was a young man of color who was only one year older than I was at the time. He was looking for a job in landscaping but was worried that the felony on his record would lower his chances of getting a job. A semester later, during a resume workshop I was facilitating at the Center, I encountered another young man of color who was interested in obtaining a warehouse distribution position with Amazon. Though present and listening as I spoke to the group about the importance of a resume, the gentleman stated that even with a good resume, the background check would deny him access to the position once the employers found out he had a felony on his record. This young man ultimately ended up leaving the workshop and never returned to complete his resume at all.

A third individual, whom I encountered in my final semester at the Workforce Center, was a woman of color who I grew rather attached to in the few minutes that I spoke with her. She

came into the Center to ask about job listings, explaining that she had cooking experience and was interested in working in the food industry. As I walked with her over to the resource tower, on which all of the Center's job postings are kept, she explained to me that she was actually a chef and was hoping to work in one of the hotels in the city instead of working at a fast food restaurant. Yet, the felony that she had on her record from over ten years ago was serving as an employment barrier for her. In fact, the reason she was so desperate for work was because she had been denied food stamps and other forms of governmental assistance because of that felony. As a result of being turned down at the Social Services office, she had no steady income for food, housing, or any more of life's essentials. Obtaining a job would allow her to finally be able provide for herself.

Hearing her story made me feel both sad and angry. The sadness stemmed more from my empathetic feelings towards her as a person; I could feel her struggle and see the desperation in her eyes, and my heart ached for her. The anger stemmed from my outrage at the law. I did not want to believe that a felony committed such a long time ago could still be affecting someone's ability to get the necessary assistance to live. Yet, I discovered that it was very much the truth. There is a federal law on the books from 1996 that states that those individuals convicted of drug-related offenses are permanently ineligible for benefits.²⁸⁸ Though some states have worked to roll back this restriction, the federal law makes this very difficult.²⁸⁹ In Virginia, the law states that individuals cannot be denied solely based on a felony offense of possession, but notes that other conditions must be met before individuals can be eligible for assistance, such as having

²⁸⁸ Wiltz, Theresa, "States Ease Access to Welfare and Food Stamps for Convicted Drug Felons," *PBS News Hour*, 9 August 2016, <https://www.pbs.org/newshour/nation/states-ease-access-welfare-food-stamps-convicted-drug-felons>.

²⁸⁹ Wiltz, "States Ease Access to Welfare and Food Stamps for Convicted Drug Felons."

fulfilled all obligations to the court and undergoing drug treatment and periodic drug screenings.²⁹⁰

While Virginia's policy may appear more reasonable and more progressive than the federal law, one must take into account factors such as a person's socioeconomic status or access to resources. Court costs can be expensive and may take a while to pay off, especially if the individual in question does not have the ability to pay the fines and/or restitution required of the court right away. This hinders people's ability to meet the condition of fulfilling all court obligations. Furthermore, drug treatment and drug screenings can be problematic due to costs, time, and accessibility. Some people cannot afford to pay for the treatment or cannot get to a treatment facility due to the availability of facilities, transportation limitations, or daily obligations such as work, school, and family. Thus, it appears that Virginia's version of the law does very little to lift the constraints for the criminally accused. While some people may be able to meet all the conditions and eventually become eligible to apply for benefits, there will be many others who will be unable to get the assistance that they need in order to live.

As I did not know the status of this woman's obligations to the court system or her history with drug treatment, I could not determine the reason behind her being deemed ineligible for SNAP benefits in Virginia. Yet, given the mere fact that the drug offense in question occurred over a decade ago, one would think that her crime would not have served as a major deterrent. Unfortunately, that was not the case, and is not the case for many people living in the Commonwealth of Virginia. Since Social Services could not help this woman, the next best place she could go to was the Center for Workforce Innovation. My colleague and I encouraged the

²⁹⁰ Code of Virginia, § 63.2-505.2. "Eligibility for food stamps; drug-related felonies." *Virginia Decoded*. 2005. <https://vacode.org/63.2-505.2/>

woman to become a participant of the Center, talking to her about the resources available and giving her the dates and times for our information sessions. Unfortunately, when I asked my colleague if the woman had returned to CWI for an information session, my colleague told me she had not seen her at all. We have not seen that woman again since. Though disappointed that she did not come back, I still wished the best for her in her search for employment, housing, and food security. While I had listened to many personal stories from people at the Workforce Center, hers was one that resonated with me for a long time.

All of this being said, I must share that not all of the people I met at CWI who were formerly incarcerated were at bad places in their lives. One gentleman I spoke with was A.H., a participant at the Center with a very intriguing life story. He'd become involved in selling drugs at the age of ten, distributing the drugs out of his mother's home. The discovery of his actions prompted his mother to put A.H. out of the house at a young age, which led to his further engagement with drugs and other criminal activities in his local community. A.H. compared his "career" as a drug dealer to that of being an entrepreneur. "It was a business, and I was good at it," he explained. "I knew how to market, sell, and maintain customers. I have a creative mind – a smart mind – like a businessman."

Unfortunately, this career path resulted in A.H. finding himself behind bars on several occasions. He also found himself living a rough life "on the streets," recalling how he'd nearly lost his life after being shot in the abdomen. A.H. described his younger self as "angry" and "always looking for a fight." As he got older, however, A.H. said that he underwent a change in mindset, thanks to a male mentor who took the time out to really talk to him and try to get through to him. This mentor saw the potential that A.H. had and had faith in him. After a while, A.H. came around and acknowledged that he had to put his skills to good use and do better

things. He was tired of being just the “ex-con” or the “inmate.” He needed to get his life on the right track so that he could have a better future. That is how he found his way to the Center for Workforce Innovation. Now, A.H. is working at a good job here in the City of Richmond and is living a more positive and productive life.

“I’ve done some bad things,” he acknowledged. “But I’ve also done some good things too.”

A.H. makes a very crucial point in his statement about how he has done both good and bad in his life. Many individuals who were incarcerated in the past have moved on to become productive members of society who often give back to their communities in significant ways. One such individual is R.W., who I also met through the Center for Workforce Innovation. R.W. is not a participant of the Center; he is a community member who is authorized to facilitate workshops at the Center. R.W. is one of the founders of Bridging the Gap in Virginia, a non-profit organization whose mission is to help individuals impacted by the criminal justice system in Virginia overcome the barriers to societal reentry.²⁹¹ The “barriers” that R.W. and Bridging the Gap in Virginia address are those to employment, transportation, housing, and financial security.²⁹² Their goal is to “provide a bridge to success to those men and women struggling with addiction, incarceration, chronic homelessness, and lack of employability.”²⁹³ Their organization partners with public and private agencies and faith-based organizations to “create a unique blend of services to reduce recidivism, homelessness, unemployment, and relapse.”²⁹⁴

²⁹¹ “Welcome to Our Page!” *Bridging the Gap in Virginia*. <http://www.bridgingthegapinvirginia.org/index.html>

²⁹² *Bridging the Gap in Virginia*.

²⁹³ Ibid.

²⁹⁴ Ibid.

I had the opportunity to sit down and observe R.W. facilitate his “Overcoming Barriers” workshop at the Center for Workforce Innovation in March of 2018. One of my colleagues at the Workforce Center provided me with R.W.’s contact information so that I could give him a call prior to attending the session and ask whether he would be open to a short interview. R.W. was delighted to oblige and welcomed me into the session with open arms. His audience was small; he only had four attendees, all of whom were women of color of varying ages. All were very friendly towards me as I joined in on the session.

R.W. graduated from Virginia State University and used to be a teacher prior to his time in the criminal justice system and before his work with Bridging the Gap. During his teaching career, R.W. experienced several incidents of violence from students that put his life at risk. He recounted having student point a gun in his face when he was teaching at a high school in New Jersey, in addition to having to wrestle a knife-wielding student who had already injured another teacher while he was teaching in Petersburg, Virginia. During that time in his life, R.W. was also engaged in drug use, and he noted to those of us present that he could not help those students do their best when he was not at his own best. Eventually, he stopped teaching altogether. His drug use is what resulted in him being incarcerated during a later period of his life.

Hearing these anecdotes solidified my understanding of why R.W. is doing the work that he is doing. Seeing the way in which he facilitated the workshop and spoke with those of us present in the room, I was not surprised to learn that he had prior teaching experience. It was seeing how he was able to combine his ability to teach with his personal experiences and interactions with the criminal justice system that inspired me. He was not some “outsider” preaching to the participants about how to improve their lives post-incarceration. He was an

“insider” who knew about the struggles of reentry himself and thus had the legitimacy to speak to participants in a manner which they could understand and be receptive to.

From the moment I entered his classroom and took my seat, I could both see and feel the passion that R.W. had for his work. His “Overcoming Barriers” workshop was more like a motivational seminar from my perspective as an observer. His loud, booming voice was not at all intimidating; his tone conveyed his strong desire to see everyone in that room embrace their goals and aspirations so that they could “move up another level” in their post-incarceration journey. He did not have to say “You can do it!” or “I believe in you!” out loud in order to convey that message to the group. That message was clearly articulated with all of the other things that he said throughout the session.

“Yesterday I had a bad day, and I felt like giving up,” one of the participants shared. “But I didn’t give up...I persevered even more.”

“You changed to a positive mindset,” R.W. replied. “That what you have to do. You have to go after it! You have to go the extra mile!”

Sitting in on that session, I felt like I was observing a professional career coach hard at work. He instructed participants on how to prepare for interviews by doing their “homework” of researching the position and the skills needed for the job. He then talked about the importance of perfecting their resumes and cover letters, pointing them to the resources of the Center for Workforce Innovation for guidance and assistance in doing so. Furthermore, he discussed the importance of having an elevator speech, which he said was a key aspect of showing both confidence and a willingness to move forward. I found R.W.’s template for an elevator speech to be a very useful and effective one, especially for those individuals who may not initially know

what to say or where to start in selling themselves to an employer for a job. Though not very long, the statement conveys a sense of confidence and determination to succeed in whatever area of work one is aiming for. R.W. wrote it on the whiteboard for everyone to read.

Sir/Ma'am:

If given the opportunity, I will meet and/or exceed the goals and objectives for this position.

“Sell you, despite your mistake,” he told the group. “You don’t want to discuss your conviction. You want to discuss the knowledge, skills, and abilities that you have that will allow you to do the job. Don’t even give them the opportunity to question the conviction.”

R.W. has no objection to calling out Virginia’s criminal justice system as being systemically and structurally racist. Referencing Virginia’s long history of systemically oppressing African Americans, R.W. noted that Virginia’s criminal justice system is designed in a way “to keep a foot on the necks of colored people” and prevent them from achieving a better quality of life. Fighting against what he calls “Republican protectionism,” R.W. has ensured that he becomes a known face at the Virginia General Assembly when the state legislature is in session. He quipped that the legislators “hate to see him coming.” R.W. has written several bill proposals to change Virginia’s criminal laws and statutes and has also proposed amendments to Virginia’s Constitution. His goals are to change sentencing guidelines, ensure judicial compliance, reimplement parole, allow for expungements for nonviolent crimes committed over ten years ago, and reduce the number of prisons being constructed via legislative means. These five items on R.W.’s agenda are what he deems as being crucial to transforming Virginia’s current criminal justice system.

For R.W., the most rewarding part of his work is seeing individuals move forward and obtain a better quality of life. He stated that “each day is a new opportunity to help someone.” His work with Bridging the Gap allows him to provide individuals with the necessary tools for obtaining that better quality of life. Personally, I see his work as fulfilling the promise of rehabilitation that the criminal justice system does not. R.W. told me directly that we’re dealing with a system in Virginia that chooses to be punitive over redemptive. Bridging the Gap in Virginia is one of the means through which the criminally accused can gain that redemption and start their life anew.

“It’s one thing to be punished,” R.W. said. “But it’s another thing to be punished for life.”

B. Deprived of Rights

Regrettably, punishing the criminally accused for life is precisely what the criminal justice system in Virginia is designed to do. Felon disenfranchisement is yet another means of permanently punishing the criminally accused. When an individual is convicted of a felony, he or she loses the right to vote, serve on a jury, become a notary public, run for public office, and own a firearm. Though this policy appears race-neutral, as any felon in Virginia is stripped of his or her rights when convicted, the initial implementation of this policy was motivated by racist ideology. During the Virginia Constitutional Convention of 1901-1902 in Richmond, felon disenfranchisement was implemented as a means of blocking black constituents from voting.²⁹⁵ According to Carma Henry’s 2013 article on voting rights reform, “the Virginia Democratic Party had decided that African Americans were gaining too much political clout after the Civil

²⁹⁵ Henry, Carma. “Virginia’s restoration of voting rights: An American issue.” *The Westside Gazette*. 13 June 2013. <http://thewestsidegazette.com/virginias-restoration-of-voting-rights-an-american-issue/>

War.”²⁹⁶ The constitutional convention was organized for the purpose of resetting the balance of power.²⁹⁷

One of the most vocal proponents of the disenfranchisement was Virginia Delegate Carter Glass, a newspaper mogul who would later in life become a United States senator.²⁹⁸ His plan for the new constitution was “a classic example of the Jim Crow Black codes.”²⁹⁹ It was designed to include a “felony disenfranchisement” law that would bar people convicted of a felony from voting in the Commonwealth.³⁰⁰ He is infamous for his statement that his plan “will eliminate the darkie as a political factor in this State in less than five (5) years, so that in no single county will there be the least concern felt for the complete supremacy of the white race in the affairs of government.”³⁰¹ His plan was adopted as a part of Virginia’s Constitution, and its malignant effect has been long-lasting.³⁰² Over a hundred-thousand people of color have been disenfranchised over the last century thanks to the law that Delegate Glass implemented.³⁰³

Luckily, several of Virginia’s most recent governors, both Republican and Democrat, have taken the initiative to change this via the Office of the Secretary of the Commonwealth’s Restoration of Rights (ROR) program. Just as the Virginia Constitution allows for those civil rights to be taken away, it also allows the Governor of Virginia the sole discretion to restore them.³⁰⁴ The Office of the Secretary of the Commonwealth is responsible for many things, such as the appointments to boards and commissions around the Commonwealth, maintaining relations

²⁹⁶ Henry, “Virginia’s restoration of voting rights.

²⁹⁷ Ibid.

²⁹⁸ Ibid.

²⁹⁹ Ibid.

³⁰⁰ Ibid.

³⁰¹ Ibid.

³⁰² Ibid.

³⁰³ Ibid.

³⁰⁴ “Restoration of Rights.” *Office of the Secretary of the Commonwealth*. <https://restore.virginia.gov/>.

with Virginia's Native American tribes, overseeing the Council on Women, and the restoration of rights program. Restoration of rights is one of the biggest divisions in the Secretary of the Commonwealth's office.

I joined the Office of the Secretary of the Commonwealth's Office as a ROR intern in February of 2016 under the gubernatorial administration of Governor Terry McAuliffe. Not only was this my first ever professional internship, but it was also my first major engagement with Virginia's criminal justice system from an insider perspective. During my three semesters with ROR, I helped to further the Governor's efforts to restore the rights of non-violent felony offenders who are no longer incarcerated or under court supervision by processing petitioner contact information, scanning the necessary documents into the ROR database, putting together grant packets containing a personalized letter from the Governor and Secretary, the restoration grant order, and a voter registration form, assisting with the ROR archives, and performing a number of other important tasks. The McAuliffe administration was a great administration to serve under, as the McAuliffe administration has restored more rights to disenfranchised Virginians than the previous three governors combined, though his predecessor Governor Bob McDonnell had put forth significant efforts in restoring voting rights. It felt very rewarding to play a role in furthering a progressive policy initiative.

In April of 2016, I got an email from my ROR supervisor informing me that instead of coming into the office as I usually did on Friday mornings, I should go to the State Capitol building. The email was rather vague; he didn't tell me why I should go to the Capitol building or what would be going on there. All I knew was that whatever was going to happen had something to do with the restoration of rights program. I arrived early and explored the Capitol grounds for a while before taking a seat at the top of the steps below the main entrance to the

Capitol building. There really was no one around save for one other woman who seemed to be waiting too. Yet, as time passed, more people arrived at the Capitol to sit or stand and wait. Listening to their conversations, it was evident to me that none of them really knew why they were gathered at the Capitol either.

“Maybe he’s going to recognize us or something?” I heard one man suggest. His companion simply shrugged.

By the time my co-workers arrived and joined me on the steps of the Capitol, a large crowd was gathered. To my dismay, they still did not let me in on the secret. Fortunately, though, I did not have to wait very much longer to find out, as the doors to the Capitol building suddenly opened up and the Governor came down the steps and took his place at the podium. He and his staff were greeted by claps, cheers, and a lovely song from a gospel choir group. This performance made everyone feel even more curious about what the Governor was going to say.

Finally, the Governor turned to the crowd to reveal the reason behind this gathering and to tell us what we had waited so long to hear. At this point, the suspense was killing me and I just wanted to know what was happening.

Governor McAuliffe shared with all of us assembled the groundbreaking news that he would be restoring the rights of over 200,000 formerly convicted non-violent felons who had finished paying their debts to society and had put in the work to better themselves. He denounced the racial prejudices upon which the rights deprivation provision was founded and discussed how justice could not be served in a system founded on injustice. He further emphasized the importance of the right to vote and of being active participants in civil society. Many of the

people in the crowd were overcome with emotion by the announcement. People were crying, giving thanks to God, applauding, cheering, and chanting “Thank you, thank you, thank you!”

“No, thank you!” Governor McAuliffe responded. Upon leaving office as Governor in 2018, McAuliffe reportedly stated that restoring the rights of these individuals and many others was the accomplishment that he was most proud of.³⁰⁵

I was very proud of the Governor for what he had done and of myself for playing a small role in helping him to get it done. After all, without the team behind the scenes to help him process the petitions and disseminate the grants, it simply could not have been done. I was invited to stand with the Governor along with the rest of the staff of the Office of the Secretary of the Commonwealth for a group photo, and was also able to take a photo with just the Governor and I. I have kept that picture stored away as one of my most treasured memories.

Despite the excitement and cheer around the order, Governor McAuliffe was promptly sued for issuing this order. Republicans in the Virginia General Assembly felt that the order was too extreme and was an attempt by McAuliffe to sway the 2016 presidential election. Though given the authority to restore rights by the Constitution, these leaders felt that the Governor was overstepping his authority by restoring so many people at once. The Supreme Court of Virginia sided with the Republican leaders and effectively struck down the Governor’s order. After being forced to turn over the list of people who had been restored under the Governor’s order, the Secretary of the Commonwealth’s Office had to return to restoring rights on an individual basis. Those individuals who had been restored on April 22, 2016 automatically had their grants voided and their rights taken away for a second time, despite none of them committing a second crime

³⁰⁵ Associated Press, “Outgoing Va. Gov. McAuliffe says rights restoration his proudest achievement,” *WTOP.com*, 10 January 2018, <https://wtop.com/virginia/2018/01/gov-terry-mcauliffe-final-state-commonwealth/>.

that would legally warrant the stripping away of their civil rights again. As a result, only about 173,000 people have had their rights restored after the order was struck down, even though the order had originally restored over 200,000.

I was furious when I found out about the lawsuit and the outcome of it, though arguably the Governor was a bit more so than me. I listened to him giving a press conference following the announcement of the suit, and he was very much a ferocious lion standing behind the podium as he chided his adversaries. When I asked my ROR supervisor about what provision in the VA Constitution the Supreme Court used in voiding the Governor's executive order, he bluntly replied that the Court felt that "since a blanket restoration of rights had never been done before, it should not be done at all." I was not (and still am not) satisfied by this illogical reasoning from the Court. I am sure that there were some underlying prejudicial reasons behind the Court ruling against Governor McAuliffe. Unfortunately, there is no definitive way to prove it.

In addition to the lawsuit, there was additional uproar from the general public around the announcement. Many people did not like the idea of "criminals" being given their civil rights back. In many articles, the headlines stated that "felons" and "convicts" and "criminals" were being restored their rights. They failed to emphasize that only nonviolent felons were the people to which the Governor's blanket restoration order applied. There was also a belief that "these people" now had access to firearms, which was completely false. The Governor does not restore gun rights at all. People who wish to have their right to own a firearm restored have to petition the Circuit Court in the city or county where they live.³⁰⁶ To me, these demeaning and factually ignorant articles and comments were further evidence of how harshly former criminals are

³⁰⁶ "Restoration of Firearm Rights." *Virginia State Police*. 1 July 2015.
http://www.vsp.state.va.us/Firearms_Restoration.shtm.

stigmatized in our society. Even when the criminally accused work hard to redeem themselves, they are still ostracized and marginalized by people who do not even know who they are or what their personal narrative is.

In the three semesters I served as a ROR intern, I am sure that I entered well over a hundred new petitioners into the ROR database to be considered for restoration and prepared the grant packets for at least a hundred restored citizens. While I greatly enjoyed my time working with the Restoration of Rights program, I eventually found myself desiring more one-on-one interactions with the people I was serving. Even though I did get to talk to petitioners on the phone every now and then, and it was indeed heart-warming to hear the hope and excitement in people's voices when I told them that their rights had been restored, I still felt that the interpersonal aspect of the job was very lacking. I knew my work behind the scenes in the office was very important, but it felt odd to be processing the applications and preparing the grant packets of individuals who I would likely never get to meet in person. That is, until I met J.B.

I met J.B. during the summer of 2016 at a leadership institute for Virginia21, a nonprofit and nonpartisan organization that aims at empowering college students and millennials to fulfill their civic duty of voting and communicating with elected officials. J.B. is an older man of color who at the time I met him was attending community college. J.B. has since graduated from the community college and now is attending a four-year university. I recall feeling very inspired by J.B. over the week I got to know him. J.B. was a very engaged listener and eloquent speaker who was open to sharing his past with the others around him, most of whom were significantly younger than him. He had several good insights and creative ideas and was just an all-around great person to talk with. I'll never forget how J.B. boldly asked a VA Senator who was having dinner with us whether he would support increased funding for higher education. The rest of us

present laughed, but J.B. was quite serious and persistent in his ask. I know that I personally at that moment would not have dared to speak up like that, but J.B. had no hesitations whatsoever. J.B.'s ask was definitely effective, though, as the Senator did end up supporting our lobbying efforts in the long run.

I didn't see J.B. anymore after the leadership institute, though we maintained friendship via social media. In December of that same year, however, I ran into J.B. at the Governor's mansion where Governor McAuliffe was having a dinner party to celebrate both the Restoration of Rights staff and the people who were no longer disenfranchised by the criminal justice system. I did not know that J.B. was going to be there, so it was great getting to see him and to know someone who the ROR program touched personally. I was also pleased to see so many of the other people present who had had their civil rights returned to them after fulfilling their debts to society.

In keeping up with J.B. over the years, I've learned a lot about him and have come to admire him even more. He is hands-down one of many people who motivates me in my crusade for justice for the criminally accused. J.B. has spent over thirty years of his life in and out of jails and prisons in Virginia. As such, the criminal justice system of Virginia has impacted his life in many ways. J.B. shared with me his critiques of the system and was candid in expressing his feelings towards it as a whole. His first critique was that the criminal justice system failed to address the factual issues and conditions that led to him be in the system in the first place. Secondly, J.B. stated that there was no rehabilitation in Virginia's jails and prisons, which he explained only leads to criminals becoming better criminals.

This lack of rehabilitation ties into J.B.'s third point, which is that his experience with the criminal justice system led to the formation of a mentality where J.B. thought that he was

supposed to be in prison because the environment nurtured such a mentality. “If a person is told that he or she is something long enough, the tendency to believe what they’re told takes root,” J.B. told me. “Many times, I came out the same way I went in. My thinking and understanding, or the lack thereof, had not been addressed.”

J.B. had been out of prison for about twelve years when Governor McAuliffe restored his rights civil rights. When I asked J.B. how he had felt in that moment when he received his restoration grant, he told me that his first thoughts were that his labor to change his life and stay clean and sober had not been in vain. Secondly, he felt that his prayers, and those of so many other convicted felons, had been heard and answered. Yet, J.B. told me he also became angry in that moment. He wanted to know why previous Virginia governors had not done this a long time ago. “Of course, I know the answer,” he told me. “But it’s still shameful.”

I asked J.B. about what he saw as some of the unjust characteristics of the criminal justice system in Virginia and what he suggested as potential ways to change those behaviors. J.B. lamented that the system took away parole, has made educational and trade training opportunities very limited, and has horribly managed facilities. J.B. was also very critical of the ways in which the criminal justice system doubles as an economic enterprise that further disadvantages the criminally accused who are behind bars.

“The system has allowed businesses to financially rape the prison population by over charging them for goods and other necessities they need. The mark up on canteen items is outrageous. There are no real medical services available to those incarcerated. Everything is about a dollar. U.S. prisons are at the top of the U.S. stock exchange. So, what does that tell us? The prison system is strictly about profit. They are not interested in rehabilitation. They want to lock people up for as long as they can. It’s really disgusting. And Virginia leads the pack.”

The primary changes that J.B. wants to see for Virginia's criminal justice system is the return of parole and mandatory education for all offenders. He finds the educational component especially crucial because "As a man thinketh, so is he."

In addition to remaining clean for nearly two decades and getting an education, J.B. gives back to his community in many ways. He works as a Residence Life Coordinator at a residence home for nonviolent offenders who are working to put their best foot forward as they reenter society. J.B. is also an active member of his local NAACP branch, where he recently honored Dr. Martin Luther King's legacy by reciting Dr. King's "I've Been to the Mountaintop" speech. Furthermore, he is a very talented fisherman and is a part of a group of fishing enthusiasts known as Team Donzi, who spend time fishing with one another and teaching children in the community how to fish as well. He is a man of faith who values family, friendship, and fun.

I am very proud to know J.B. and am so glad that the Governor did the right thing by restoring the rights of this exceptionally hardworking man.

C. The Dilemma of Post-Incarceration Punishment

"Don't do the crime if you can't do the time!" is a dismissive statement that is often directed at the criminally accused from law enforcement, legal officers, and the general population. It is a colloquial phrase that is used to demean the individual for what he or she has done, to discourage him or her from committing additional crimes, and to deter other individuals from committing crimes. I have always assumed that the "time" being spoken of was just limited to the actual amount of time that a person spends behind bars. I now know that this is not the case.

My work with the Restoration of Right's Program and the Center for Workforce Innovation have led me to the conclusion that Virginia's treatment of formerly incarcerated individuals presents us with both a moral and an ethical dilemma. R.W.'s point about lifelong punishment conveys to me that Virginia has become by nature a punitive rather than redemptive state, and I strongly believe that this needs to change.

Morally, Virginia residents, law enforcement officers, and policymakers have all forsaken the virtue of forgiveness. We have collectively decided that it is acceptable to hold people's mistakes against them for the entirety of their lives and to simultaneously classify them untrustworthy individuals who are undeserving of the basic essentials of life. Despite having never met these individuals, we condemn them to a lifetime of struggle and ignore their constant attempts to show us that they have changed from who they used to be and just want to be treated equally and with dignity like everyone else. We judge them on their past and don't even bother to think about their futures, effectively casting them off as "those people" who have no hope and no prospects.

Ethically, Virginia's criminal justice system has allowed racially charged and discriminatory policies to remain on the books. By allowing such laws, policies, and provisions to stand, Virginia's government is complicit in fostering injustice throughout the Commonwealth's cities, counties, and communities. Our leaders are sending the message to Virginia residents that the criminally accused are deserving of maltreatment, neglect, and persecution. Allowing the words "felony" and "misdemeanor" to determine whether a person has the right to earn a living, live in a safe community, have access to government benefits, go to school, or have a say in their government is absolutely wrong, as essentially, the criminally accused are being denied the right to live happy, healthy, and productive lives. People are denied

opportunities without even having their character, credentials, knowledge, and ability to succeed taken into account. People who could have been potential assets have been thrown away like garbage simply because they have made a few mistakes in the past that we have decided are unforgivable.

Where is the rehabilitation and redemption? Where is the caring and compassion? Where is the justice?

Evidently, it is not in the Commonwealth of Virginia.

I believe that Virginia residents, and the U.S. society as a whole, must move away from the “once a criminal, always a criminal” mindset and learn how to give the criminally accused the second chances that they rightfully deserve. Furthermore, I believe we need to ensure that our laws and policies around criminal justice are redemptive and not just punitive. In doing so, we can resolve the Commonwealth’s moral and ethical dilemma. By choosing to support the criminally accused during their journey of recovery and reformation, we as a Commonwealth can stop the clock on the time that people are serving outside of jail or prison. We can end the permanent punishments that were only meant to be temporary by being willing to forgive the criminally accused for their mistakes and helping them to shake off the sticky labels that we as a society have given them.



VI. Conclusion

“The arc of the moral universe is long, but it bends toward justice.”

– Rev. Dr. Martin Luther King Jr. –
Civil Rights Leader

“The most difficult and urgent challenge today is that of creatively exploring new terrains of justice, where the prison no longer serves as our major anchor.”³⁰⁷

– Angela Davis–
Author, *Are Prisons Obsolete?*

My civic engagement in the community has taught me that change does not happen overnight. Even when changes are taking place within a community, the impacts of those changes may not be immediately visible. Sometimes, several small reforms efforts or policy initiatives can produce better outcomes than huge, sweeping measures from higher authorities. For me, the means of creating change is not the most important. I also do not consider the end result the most important aspect of social change efforts. For me, the most important aspect is the process of change; the work that individuals and groups are doing to promote social justice and societal progress. The words of Dr. Martin Luther King and Angela Davis remind me daily that the struggle for change is a constant, ongoing struggle that requires long-term commitment, direct and indirect service and action, and infinite hope. Though I know that I personally cannot overhaul the entire criminal justice system of the Commonwealth and rebuild it by myself, I am committed to the continuous work of prison reform and restorative justice for the criminally accused.

³⁰⁷ Davis, *Are Prisons Obsolete?* 21.

A. Taking the Rough with the Smooth

During my service work with a Richmond-based advocacy group focused on addressing youth homelessness and housing instability, many of the youth who shared their personal stories emphasized the importance of taking the rough with the smooth. To take the rough with the smooth means to acknowledge the negative aspects of a situation but never lose sight of the positive ones. It means being able to see the bright side even while in the darkness, and believing in the potential for change. In Figure 7 below, I placed the various aspects of Virginia's criminal justice system into three categories: bad, moderate, and good. The bad aspects are those areas in which reforms are still desperately needed. The moderate aspects are the areas in which there is on-going progress, but with significant limitations in place. The good aspects are the areas in which progress is ongoing or has already been made, with little-to-no limitations. This figure is purely subjective. I constructed this chart based on my personal perspective on the criminal (in)justice system and the analyses I conducted within this paper.

Figure 7: Categorizing Criminal Justice

Bad Aspects	Moderate Aspects	Good Aspects
Discriminatory Policing	Community Corrections	Restoration of Rights
Rate of Incarceration & Incarceration Numbers	Legal Protections for Inmates (ie. PREA)	Ban the Box
Mandatory Minimums	Community-Based Programs	Closing Youth Prisons
Three-Strikes Laws		Community Advocates and Policy Makers
Truth-In-Sentencing		
Solitary Confinement & Super-Maximum-Security Prisons		
Healthcare (physical and mental) for Inmates		
School-to-Prison Pipeline		
Collateral Consequences		

Virginia's criminal justice system is problematic, to say the least. It is an injustice system that constantly threatens the civil rights and liberties of the criminally accused due to its harsh and often discriminatory policies and practices. In many respects, there are more bad things going on within the system than good things. Yet, this narrative does not have to define the Commonwealth of Virginia. Change and progress are taking place every single day across the state. The narrative of criminal injustice can be rewritten if we all make an effort to create change and build empathy for the criminally accused. We have to work on changing our practices, revising our policies, and challenging our misperceptions of criminality. We must look at crime and punishment holistically, and ensure that the legal system applies equally to all groups of people. We must do better to address mental illness, socioeconomically challenged communities, and childhood traumatic experiences. We must push our policymakers and government leaders to do the heavy lifting and hauling out of injustice while grassroots organizers and individuals sow the seeds of change.

Reducing the number of people in Virginia's prisons will require policy change, first-and-foremost. Mandatory minimum laws need to be rewritten so that the time-served is proportional to the crime committed. There is no justifiable reason that an individual who commits aggravated vehicular manslaughter serves less time than someone who possesses marijuana. Even if Virginia does not legalize marijuana in the near future, the abuse and possession of marijuana should be decriminalized. Three-strikes laws should also be rewritten so that legal actors understand that three-strikes laws apply to subsequent incidents of recidivism, not to individual criminal charges. The revision of these practices will subsequently lead to modifications in truth-in-sentencing.

Within the prison environment, the use of solitary confinement should be eliminated. The damage that the practice does to the mental health of confined individuals is too great and has no true benefit, and additionally constitutes cruel and unusual punishment. Inmates who are problematic should be sanctioned in ways that do not involve physical or psychological harm to their being. If there is a need to temporarily separate problematic inmates to a separate cell or cellblock for a temporary period of time, there should be a time limit on how long inmates can be placed under such conditions and humane standards for how they should be treated while subjected to such isolation. The physical health needs of inmates in prison should also be addressed promptly by prison officials, as inmates have the right to seek the medical attention they need. Physical and mental health professionals should be available to inmates at all times. Any incidents of interference with or denial of care should be treated as prison-sanctioned abuse.

School disciplinary policies must be revised in order to dismantle the school-to-prison pipeline in Virginia, and teachers and school resource officers should receive education about implicit bias and cultural blindspots, training in trauma-informed care and de-escalation tactics, and receive more tools to help them connect with and provide resources to their troubled students. Educational systems need to invest in school psychologists, therapists, and counselors as essential school personnel, instead of school resource officers who police and punish them. Children should not be manhandled and incarcerated for being disruptive. Their innocence should not be stripped away in the one place where they spend the majority of their young lives. Youth prisons should be rehabilitative, community-based institutions and adult prisons should not even be an option for youth criminal offenders.

More money should be invested in community corrections and community-based programs for adult and juvenile offenders. The Commonwealth's money would be better spent

on restoration than retribution, as there is more to gain from a productive citizenry than an incarcerated citizenry. The civil rights of the criminally accused should be restored upon their release from prison, as they have done their time for the crime(s) committed. Even if there is a longer waiting period for violent offenders, nonviolent offenders should not be deprived of their citizenship after they've paid their debts to society. A criminal record should not be grounds for employment, educational, or housing discrimination, and people who need socioeconomic benefits should not be denied help for mistakes made during the past. A lifetime of punishment is obnoxiously unjust.

This is my vision for a more just Virginia. Though I know these changes will not occur overnight, and many may not occur anytime soon, I know that these social, political, and economic changes are reasonable, possible, and still conducive to protecting the public while preserving the goals of the criminal justice system.

B. Infinite Hope

Taking the rough with the smooth allows me to remain hopeful and optimistic rather than nihilist and pessimistic. I am continuously inspired by the social justice work that I see policymakers and community advocates doing to make change, and also by the good work that the individuals around me are doing in the community. Dr. D, who attended the Rally for Prison Reform with me back in 2018, brings his passion for teaching and mindfulness to the Richmond City Jail. Dr. D began teaching at the Richmond City Jail in the Spring of 2013 as a part of his exploration of Buddhism in preparation for a Chaplaincy-sponsored trip to South Korea. The goal of that trip was to journey to South Korea with a group of UR students and compare and

contrast Buddhism and Christianity within the Korean context. Dr. D joined UR's Buddhist Chaplain at the City Jail for a few sessions with the male inmates. He shared with me that:

“We sat in a place designated at the time as “the sanctuary.” It was a room wall papered from floor to ceiling with pictures of great civil rights leaders, like MLK and Malcolm X, as well as other heroes like Muhammad Ali. It felt good to be in that space with these men. Although I knew they had committed crimes, I chose to see them as fellow men who were just as good as me (and maybe even better than me), but who had chosen or had fallen victim to life paths that led them to a space of incarceration.”

After those initial sessions, the educational director at the Richmond City Jail invited Dr. D back to teach classes on current events. Over the next few years, he would go back to the city jail to teach these classes. After a yearlong sabbatical in Southeast Asia from 2016 to 2017, Dr. D grew in his mindfulness practice. When he returned to Richmond in the Fall of 2017, he began to experiment more and more with mindfulness. During the 2017-2018 academic year, he worked with the women's group at the City Jail and was “always impressed with how often they wanted to meditate with [him] at the start of [their] class.” Dr. D mused that:

“If I forgot to bring my Himalayan singing bowl to chime at the start of class, the group was really let down! They just wanted to always start class with that moment of calm and relaxation. And the spaces we opened and the conversations we shared were vulnerable, sincere, and yet empowering. I knew mindfulness had something to do with it.”

Dr. D is not the only professor at the University of Richmond who is doing great outreach work with the incarcerated population. Dr. S, who I journeyed to Nottoway with in the Fall of 2018, also teaches classes at the City Jail. Her dream goal is for inmates to be able to attend college-level courses at UR and have students and criminally accused individuals learn and grow in their knowledge together. More often than not, students will come and go within carceral institutions, essentially “invading” these spaces from a position of privilege; why can inmates not come and go within educational institutions in the same manner? When people with differences

are brought together and have the opportunity to get to know each other based on real personal interactions, rather than preconceived notions based on societal stereotypes and stigma, people are often able to see through their differences and forge meaningful relationships.

Dr. G, Director of the Bonner Center for Civic Engagement at UR and instructor of a first-year seminar course on the power of storytelling, provides students with the opportunity to connect with the youth imprisoned at the Bon Air Juvenile Correctional Center. Each year, her students collaborate with the juveniles at Bon Air to share their stories through the written word or visual art. Like Dr. D, the students are able to learn how the individuals behind bars are not bad people; they are people who have done bad things. At the close of the Spring 2019 semester, Dr. G's students and the youth at Bon Air created a collection of their stories where they used poetry, personal anecdotes and reflections, and drawings to illustrate their shared experiences and humanity, despite their different positions in the world. In the introduction to this collection, Dr. G's students write:

“Humans are complicated beings. We may all be different, our backgrounds polar ends, our circumstances extreme or easy, yet being a human is what we all ultimately share.”³⁰⁸

C.L., one of the student contributors to the collection, shared with me that Dr. G's course provided her with a new perspective on connecting and relating to people who the average person would probably never meet. The course additionally demonstrated the power of stories to break down the walls and bridges that separate “us” from “them.”

³⁰⁸ The Storytellers. “Collection of Stories from Bon Air.” 2019. Print.

J. L., a Richmond senior scholar and filmmaker, was inspired to create a short, poetic film about the youths she interacted with at Bon Air. After her time in Dr. G's class came to an end at the close of her freshman year, J.L. was left feeling that there was so much more that she wanted to say to her friend at Bon Air that she did not get the chance to. As a result, she resolved to go back to Bon Air and build new relationships with the young people behind bars, and used her passion for filmography to share the voices and stories of these youths with students at UR who would likely never have the chance to meet the incarcerated youth at Bon Air. Seeing the emotion on J.L.'s face as she recollects the things she treasured about the youth she met – the way one snorts when he laughs but denies that funny fact about himself, the one who considers himself a “skill collector” and is learning how to be a master quilter, and the one whose bright smile she says she'll never forget – shows her genuine understanding of the shared humanity that exists despite differences. J.L. expresses her continuous gratitude to Dr. G for providing her with the opportunity to make these connections. Personally, I wish I had taken this course with Dr. G as well.

Another fellow scholar and UR senior, B.R., worked with the Campaign for Youth Justice in Washington D.C. to end the practice of trying youth as adults and holding them in adult jails and prisons. B.R. has worked as tutor and mentor for students in the City of Richmond and will move on to a teaching career following graduation. For him, stopping youth incarceration in adult facilities is important because it is an individual rights issue due to the terrible reality of abuse and soul-crushing conditions that juveniles face in adult facilities. He also states that imprisoning youth makes neither scientific nor economic sense. B.R. shares:

“Youth in adult facilities face higher rates of abuse and sexual assault in adult facilities than they would in juvenile detention centers or other youth programs. To avoid such abuse, some prisons will place youth in solitary confinement to ‘protect’ them from the other prisoners.

However, research on solitary confinement has demonstrated that this treatment has serious mental health implications for any prisoner, but especially for youth. Therefore, so long as they are held in adult facilities, youth are faced with one of two options: abuse and sexual assault or cruel and unusual punishment.

“Good scientific and economic reason point away from treating youth as adults in the criminal justice system. The development of the human brain does not end until age 25, and treating teenagers as fully developed adults capable of the same decision-making processes and reasoning capacities simply does not align with the reality of science. Also, because their brain is still developing, youth are more open to rehabilitation and would therefore benefit much more from education and rehabilitation programs than from incarceration. Incarceration is terribly expensive and placing youth in these facilities without access to rehabilitative services will likely make them more of a long-term economic burden on the state. If we invested in their rehabilitation and future, which would be much cheaper than incarceration, these youths could become active participants in the economy and far less of a financial burden.”

B.R. enjoyed working for the Campaign for Youth Justice because he received a crash course on the reality of juvenile incarceration and had the opportunity to learn from people very closely connected to the issues on the ground. He shared with me that he is “always energized by the opportunity to work with people passionate about the cause they fight for, and similarly developed a passion for youth justice issues.”

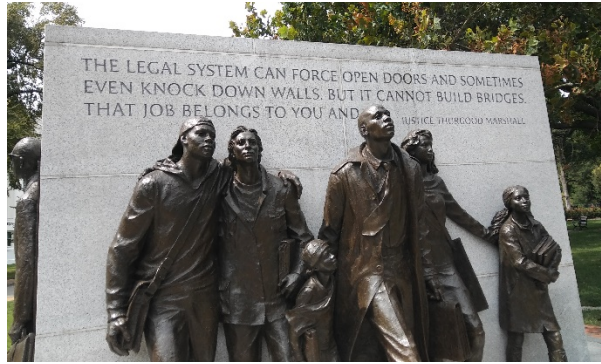
Knowing that there are young people like J.L. and B.R., professors like Dr. D, Dr. S, and Dr. G, and other passionate advocates and changemakers like M.B. and C.T.J. who I highlight in this paper, gives me infinite hope for the future of the criminal justice system. As the only Criminal Justice scholar on campus, I often felt like I was alone when it came to fighting injustice and that no one else around me cared about the issues within the criminal (in)justice system. I am so happy that I was not alone and am not alone.

C. The Scholar’s Story Continues

On April 12, 2019, I made a commitment to continue fighting criminal injustice. Though my wallet bemoaned the sudden loss of \$250, my decision to attend the University of Maryland’s

Francis King Carey Law in Baltimore was a personal and professional gain for me and for criminal justice systems across the nation. By securing my spot as a J.D. candidate in the Class of 2022, I was ensuring that my journey as a criminal justice scholar would continue. After three years of legal education and practice, I intend to return to the Commonwealth of Virginia as a licensed attorney so that I can join the ranks of attorneys and advocates who are striving to reform the criminal (in)justice system. I've received a lot of snide comments about how poor I will be if I pursue a career in criminal advocacy; some people believe that I am too optimistic and idealist, and will not have these same passions after completing law school. Though I know that the future is uncertain and unpredictable, I remain firm in my present-day convictions. Even if I do change course, I know that justice will consistently be my end goal in all that I will do. Even if I don't become the richest lawyer in the country, I will be content with being one of the most just.

My hope is that this paper, and the stories I have shared within it, serves a reality check for those who do not realize what's going on in the Commonwealth of Virginia and a call-to-action for those individuals who want to reform the system. Like the students in Dr. G's class, I found that storytelling is a valuable means of opening one's own eyes and the eyes of others. The civil rights and liberties of the criminal accused need protection from the criminal (in)justice system. They need protection before incarceration, during incarceration, and after incarceration. I believe that I have the power to be a protector of these rights, and I hope that the individuals who read this paper will make a similar commitment.



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