

## **Prison terms to be reviewed**

### **Va. to unveil program to address time served for technical violations**

FRANK GREEN

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On July 1, Virginia will break new ground in an effort to reduce a prison problem bedeviling much of the nation.

At issue is Virginia's share of the hundreds of thousands of men and women imprisoned, or reimprisoned in the United States each year, because they broke rules - not because of new criminal convictions.

They are called "technical violators," probationers and parolees who violated the conditions set for their freedom. Their offenses range from failing to report to their probation and parole officers on time, to failing drug tests.

And they are a significant part of the reason why the prison population in Virginia and in the United States has been steadily breaking records for years.

Prison often is imposed on technical violators because there are strong political or bureaucratic incentives to do so.

Virginia will try a two-stage effort. The first, to take effect July 1, involves voluntary sentencing guidelines for judges aimed at ending the disparity in the way technical violators are punished across the state.

For example, in Alexandria, 91 percent of technical offenders are incarcerated; next door in Fairfax County, 46 percent are.

The second phase, possibly to take effect next year, will use risk assessment to predict which technical offenders are most likely to commit new crimes and need to be imprisoned, and which do not.

The first stage will not be without controversy.

For instance, while marijuana use will weigh heavily in determining whether a violator needs to be imprisoned, it will not count toward the length of the sentence.

Also under the guidelines, the admitted use of drugs such as cocaine or heroin will not count toward sentence length, as long as there are no drug-test results to back up the admission.

That, said Richard P. Kern, director of the Virginia Criminal Sentencing Commission, is because an in-depth study of how judges sentenced such offenders showed those usually were not factors considered when judges determined a sentence.

Many criminologists and policy-makers, such as Kern, believe technical violators, as a group, represent a relatively low threat to public safety and do not belong in cells meant for dangerous offenders.

Other experts disagree. They urge caution when it comes to using alternatives to prison for technical violators. They say many belong behind bars and the threat of prison is needed to keep the others in line.

Virginia's approach to the problem is the first of its kind in the nation.

Last year, the General Assembly asked the Virginia Criminal Sentencing Commission to develop the guidelines for probation and post-release supervision violators who committed crimes on or after Jan. 1, 1995.

Virginia ended parole for all crimes committed on or after Jan. 1, 1995.

Most prison inmates released with convictions for crimes that occurred after Jan. 1, 1995, are on probation. A small number are on post-release supervision, which also has rules that can be violated.

Under the guidelines, a judge will use a point system to determine whether an offender requires a jail or prison sentence, and then how much of a sentence.

In developing the guidelines, the sentencing commission looked at hundreds of past cases to see what most often has happened to offenders who commit certain types of violations. For example, Kern said, marijuana use has not been a significant factor when judges determine sentence length.

The next phase, which may take effect next year, will involve developing a way to determine the likelihood an offender will break the law again or be a risk to public safety requiring prison.

This "risk assessment" scheme also would predict which offenders do not require imprisonment.

If the scheme goes into effect, it probably will divert "a fair number of these people" into an alternative program such as inpatient drug treatment or closer supervision, Kern said. Other states also are looking at the problem and largely doing so quietly, so as not to appear being soft on criminals.

According to some Virginia officials, the stakes are high.

In 2002, the most recent complete year for which figures are available, 1,551 technical probation and post-release violators were sent or returned to prison in Virginia. An additional 207 parole violators were incarcerated.

That's roughly one in six prison admissions for that year.

An estimated 3,000 technical probation violators are now in state prisons - about 10 percent of the prison population.

Technical violators stay an average of nearly two years. "With an average per capita cost of nearly \$23,000, you're talking some real money," Kern said.

There are enough to fill several prisons. Just this year, the General Assembly approved more than \$120 million in new prison construction to add about 1,400 beds. And more prison construction is needed.

"This is a population that has slipped under the radar screen and now we're going to have to deal with it," said Kern.

Barry Green, deputy secretary of public safety for Virginia, said, "We've got to find a way to deal with this better without any additional threat to the public or we're going to bankrupt ourselves."

"This is not in any way being soft on crime," he quickly added. "This is looking at being smarter . . . A lot of these folks are just screw-ups."

Michael A. Wright, chief probation and parole officer for the Richmond district - the busiest in the state with 3,000 offenders - acknowledged that many who have their parole or probation revoked in his district return to jail or prison.

He said that some are revoked because they are abusing drugs and there is no money for residential substance-abuse treatment.

Because of budget cuts, money that was supposed to last a year for the inpatient program was used up in two months, Wright said. "We have a lot of funding for out-patient treatment and we're trying to use it as productively as we can," he said.

"We can probably come up with a thousand people who are using drugs right now. But what are we going to do with them?" he asked.

"The bottom line is, folks who are going to use are going to use. . . . The judges are frustrated . . . they see the same people day in and day out come back to them because of continued drug use," he said.

"There's a certain reality in Richmond," he said. Unlike some other localities, "we have so many offenders who . . . don't seem to be threatened or concerned about incarceration. It doesn't seem to deter them whatsoever," he said.

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