

Prisons And Prisoners: The Virginia Way And The Alternatives



PRISONS AND PRISONERS: THE VIRGINIA WAY AND THE ALTERNATIVES

They are the kinds of kids that are called "super predators." No conscience, no empathy. We can talk about why they ended up that way, but first we have to bring them to heel.

– Hillary Clinton, 1996

Over 700,000 prison inmates are released each year [and] they are perhaps the most disadvantaged group of job seekers [in the United States].

– Steven Raphael, "The New Scarlet Letter?" 2014

The United States spends \$80 billion annually imprisoning more people than any country in the world. Our incarceration rate of 698 per 100,000 citizens is higher than that of Cuba, nearly nine times more than that of Germany, six times higher than that of Canada and more than four times the rate of the United Kingdom (see Graph 1).

In 2015, the Commonwealth of Virginia spent \$1.13 billion operating state prisons that held more than 25,000 inmates. Almost 8,000 additional prisoners were held in local jails.¹

Most of those imprisoned in the United States (86 percent) are confined in prisons operated by individual states and local governments, and more are imprisoned for drug-related offenses than any other reason. However, the average amount of time that a newly committed prisoner spends behind bars is only slightly longer than two years. Thus, more than 700,000 individuals are released from prison each year.² Their re-entry into society often is difficult and a very high proportion of these individuals find themselves back in prison within a few years. A September 2015 study of recidivism of those released from prison by the Commonwealth of Virginia revealed that 54.7 percent were

rearrested within 36 months, while 23 percent were sent back to prison during the same period.³

In any case, currently an estimated 23 million convicted felons are living in the United States outside of prison.⁴ This suggests that more than 570,000 such individuals reside in Virginia.

Many prisons in the United States are operating near or above their rated capacity. In 2010, the prison populations of 30 states (not including Virginia) exceeded levels judged to be higher than their rated capacity. The Federal Bureau of Prisons also was operating at over 100 percent of its rated capacity.

Interestingly, despite rather rapid growth in the rate of incarceration per 100,000 citizens in Virginia between 1990 and 2010, the Commonwealth's

¹ Virginia Department of Corrections, Management Information Summary Annual Report, fiscal years 1990-2015, and Comprehensive Annual Financial Reports, Virginia Department of Accounts, 1990-2015.

² Danielle Kaebler et al., Correctional Populations in the U.S., 2014, Bureau of Justice Statistics, U.S. Department of Justice, December 2014.

³ Virginia Department of Corrections, "Recidivism at a Glance," September 2015.

⁴ Nicholas Eberstadt, "Why is the American government ignoring 23 million of its citizens?" The Washington Post (April 1, 2016), www.washingtonpost.com.

rate in 2014 still was about one-third below the national average and only about one-quarter that of national leader Georgia (see Graph 2). Currently, we imprison 2,330 men and 460 women per 100,000 citizens. Incarceration rates are highest in southern states and lowest in northeastern states.

Virginia's Evolving Approach

In 1994, at the urging of Republican Gov. George Allen, the Democratic-led Virginia General Assembly abolished parole for violent offenders. Sixteen other states have similar statutes that eliminate the possibility of discretionary parole for certain crimes. In addition, Virginia (along with 23 other states) has a habitual offenders law (often referred to as “three strikes and you’re out”), dictating that individuals convicted of a third violent felony, and who have been released from prison between convictions, will be sentenced to life in prison with a reduced or zero possibility of parole. There is a comparable federal “three strikes” statute, but in 2015 the U.S. Supreme Court ruled 8-1 that the “three strikes” law was unconstitutionally vague and could result in excessive prison terms unrelated to the facts of a particular case.⁵ This decision did not explicitly apply to existing state laws, for example, those in Virginia, but rendered them suspect. In any case, whether such state and federal laws effectively reduce crime remains a subject of debate.⁶

The guiding hypothesis behind such laws is easily understood: Society is thought to be better off when criminals no longer are on the street. A U.S. Department of Justice study tracked 404,638 prisoners in 30 states after their release from prison in 2005 and found that 67.8 percent were rearrested within three years and 76.6 percent within five years. Property offenders (burglary, larceny, theft, shoplifting, etc.) were the most likely to be rearrested – 82.1 percent within five years.⁷ Thus, the argument is straightforward: Removing such individuals from open society directly diminishes crime rates and increases citizen safety. Supporters point to significant reductions in crime

rates in most states and large metropolitan areas in recent years as evidence in favor.

Virtually nothing of calculable economic worth comes without a price being paid, however. The abolition of parole, the imposition of “three strikes” laws, reduced judicial discretion and longer sentences have increased the size of prison populations. Alas, operating prisons is expensive. In the Commonwealth’s FY 2015, \$2.7 billion was budgeted for public safety (7.6 percent of the overall expenditure budget, down from 10.76 percent in FY 1990). In FY 2015, the operation of prisons cost \$1.13 billion, or 41.8 percent of the total public safety budget.

Funds allocated to prisons compete with other state budget priorities, such as road and transportation projects, medical care and education. These spending categories have received fewer dollars because of the increase in expenditures on public safety and corrections.

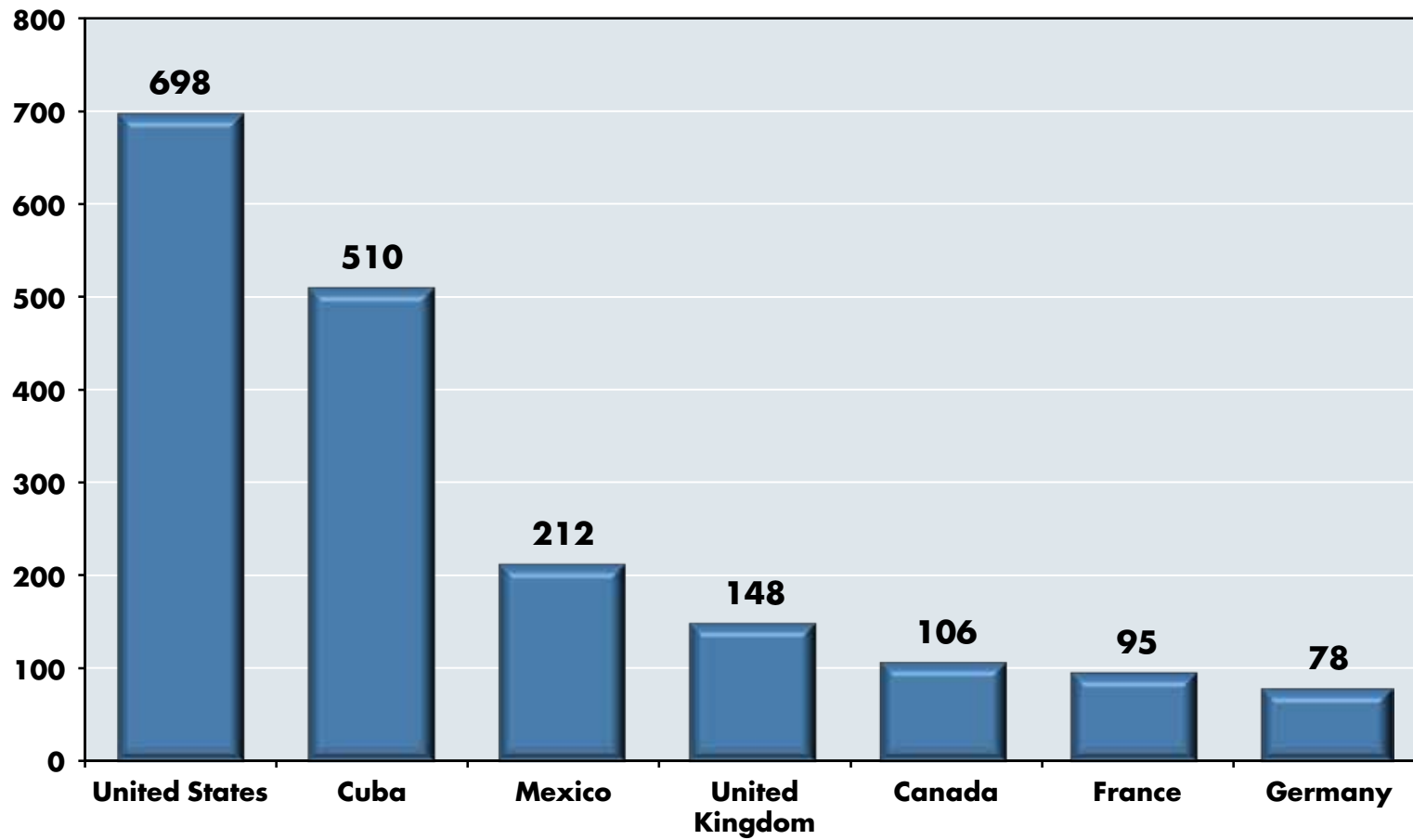
Even though prison expenditures have become a relatively less significant part of Virginia’s state budget in recent years, in absolute terms, those expenditures continue to rise. Until recently, the primary reason was the rising number of people imprisoned. Graph 3 reveals that in 2014, the Commonwealth had 37,544 individuals in its “supervised” prison population. “Supervised” includes those released from prison but on parole. Note, however, that this population tripled between 1980 and 1994, the year Gov. Allen took office, and since then has only increased – by a bit more than 40 percent. Thus, the notion that Allen and the General Assembly initiated a “get tough” regime with respect to crime in 1994 is only partially supported by the facts.

⁵ *Johnson v. United States* 576 U.S. ___, 2015.

⁶ See, among many, E.Y. Chen, “Impacts of Three Strikes and You’re Out on Crime Trends in California and Throughout the United States,” *Journal of Contemporary Criminal Justice*, 21 (June 2008), 345-70.

⁷ www.nij.gov/topics/corrections/recidivism/pages/welcome.aspx.

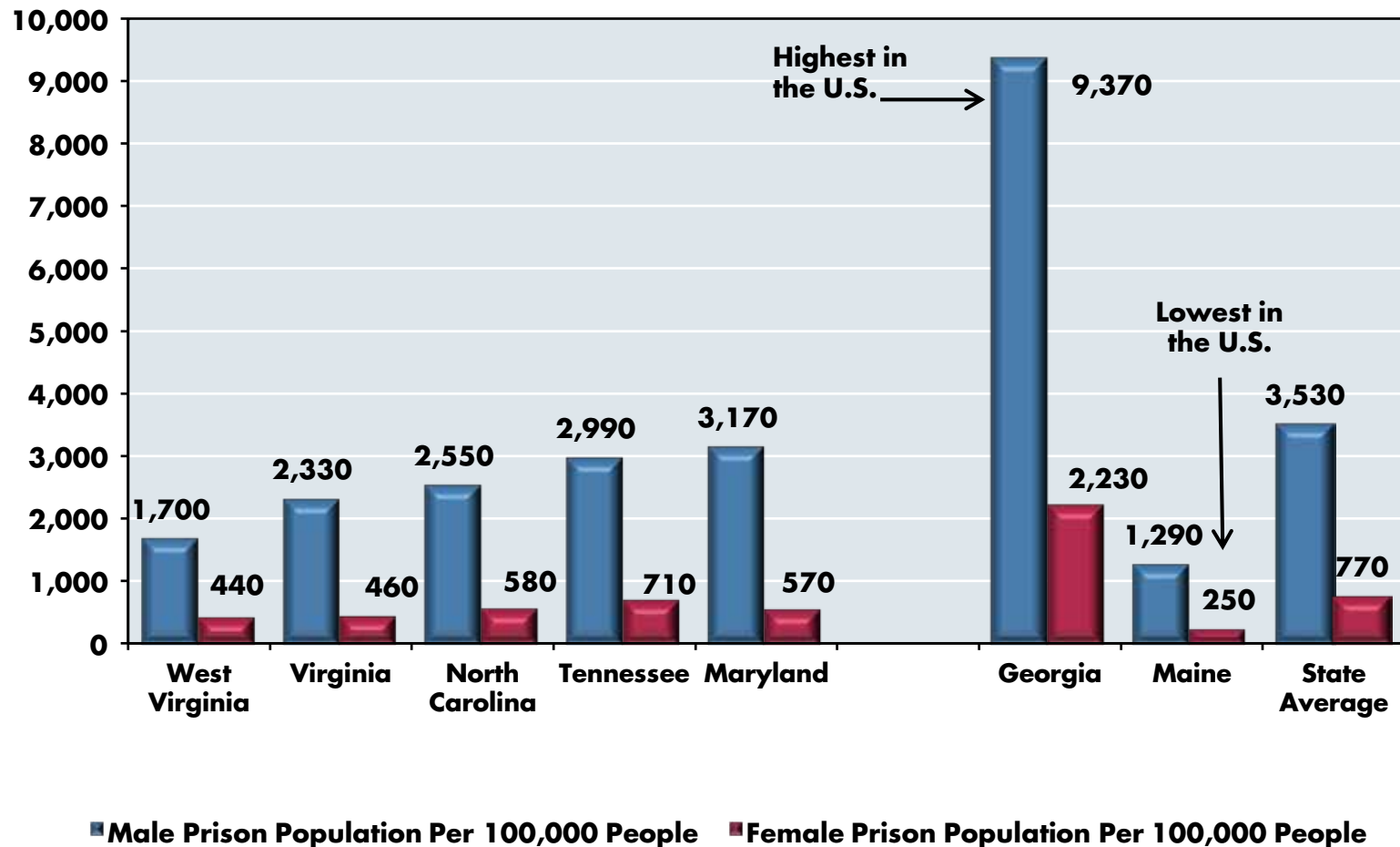
GRAPH 1
INTERNATIONAL IMPRISONMENT RATES, 2013



Source: Roy Walmsley, "World Prison Population List, 10th Edition," International Centre for Prison Studies, 2015

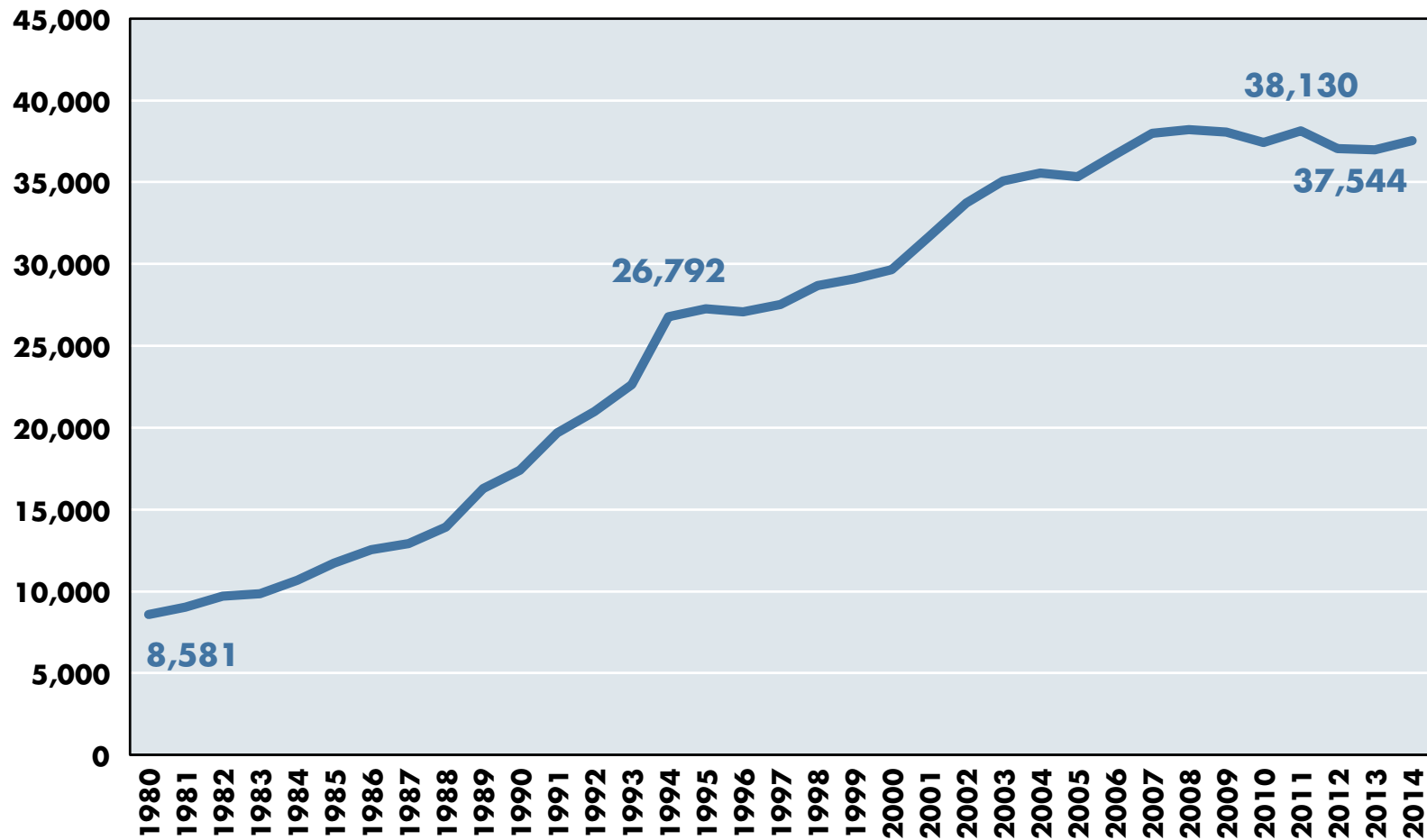
GRAPH 2

INCARCERATION RATES PER 100,000 CITIZENS: SELECTED STATES, 2014



Source: Danielle Kaeble et al., "Correctional Populations in the U.S., 2014," Bureau of Justice Statistics, U.S. Department of Justice, December 2014

GRAPH 3
SUPERVISED PRISON POPULATIONS IN VIRGINIA, 1980-2014



Source: Virginia Department of Corrections, Management Information Summary Annual Report, fiscal years 1990-2015. Note that "supervised" individuals include those who are on parole.

EXPENDITURES ON PRISON OPERATIONS

The increase in the prison population readily translated to higher expenditures (see Table 1). Nevertheless, as a proportion of overall state government expenditures, prison operating costs have declined, peaking at 3.79 percent in 2002 before dropping to 3.21 percent in 2015.

Further, in real terms, prison operational expenditures actually have declined in Virginia when viewed on a per capita basis. One can see in Graph 4 that in 1990, prison operations cost \$31,657 per inmate when expressed in 2015 prices. By 2015, real per capita operating costs had fallen to \$27,928. Indeed, even total expenditures on prison operations only increased by 3 percent between 2000 and 2010 after inflation was taken into account. By 2012, real, inflation-adjusted spending on prison operations in Virginia was almost identical to that in 2002. Once again, the perception that the Commonwealth's prisons have become a financial "black hole" is not really supported by the data.

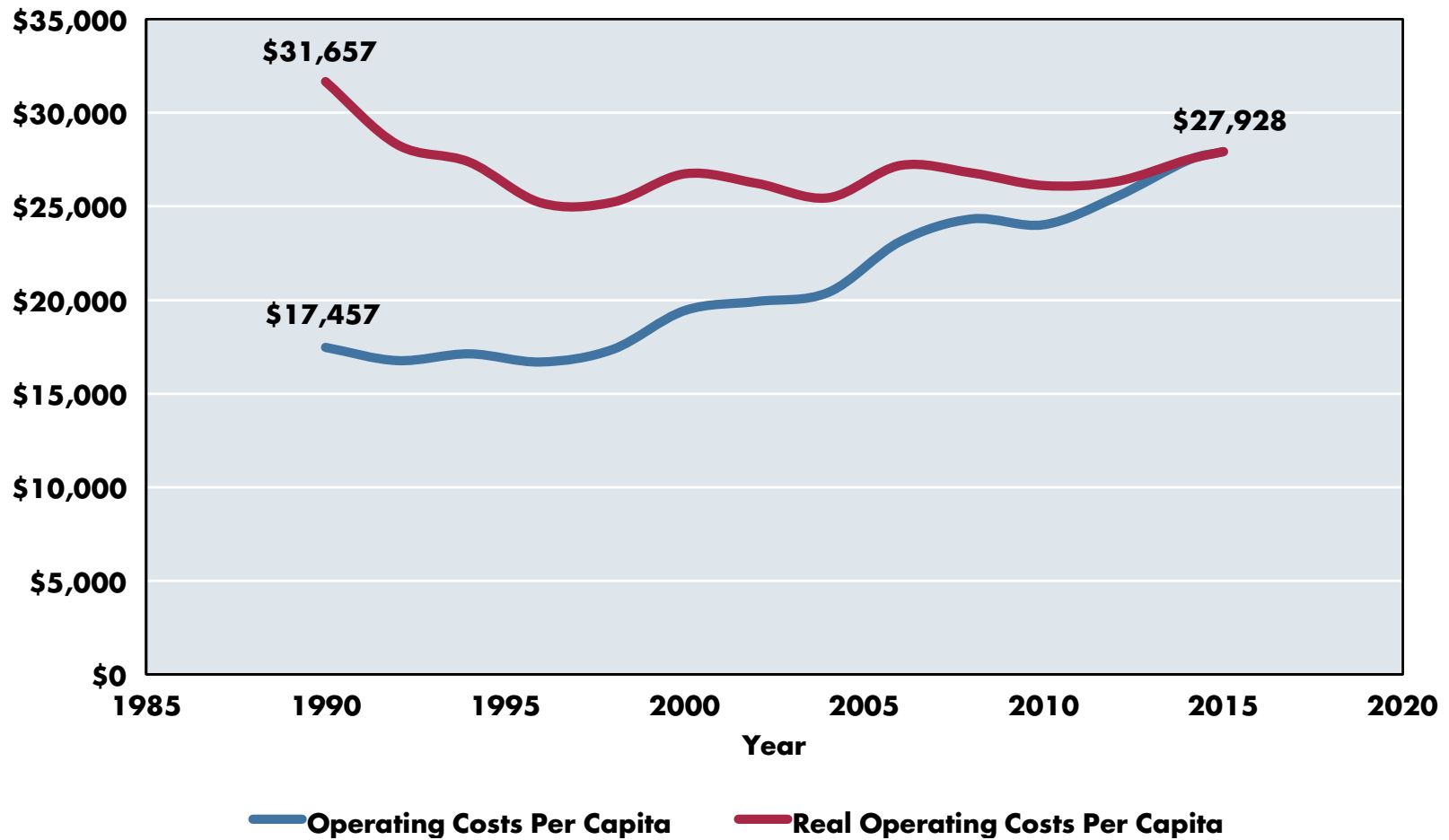
TABLE 1
CHANGES IN PRISON OPERATING COSTS IN VIRGINIA, 1990-2015

Year	Total Expenditures (Millions of \$)	Percent of Commonwealth Total Expenditures	Operating Costs Per Prisoner	Medical Costs Per Prisoner
1990	\$363.3	2.96%	\$17,457	NA
1993	\$397.3	2.82%	\$16,304	NA
1996	\$529.5	3.08%	\$16,676	NA
1999	\$688.2	3.29%	\$17,351	\$2,538 (14.6%)
2002	\$805.9	3.79%	\$19,913	\$3,028 (15.2%)
2005	\$859.32	3.63%	\$21,248	\$3,389 (16.0%)
2008	\$1,041.89	3.59%	\$24,332	\$4,393 (18.0%)
2011	\$1,022.42	3.19%	\$24,380	\$4,870 (20.0%)
2015	\$1,131.18	3.21%	\$27,928	\$5,749 (20.6%)

Sources: Virginia Department of Corrections, Management Information Summary Annual Report, fiscal years 1990-2015, and Comprehensive Annual Financial Reports, Virginia Department of Accounts, 1990-2015

GRAPH 4

MONEY AND REAL PRISON OPERATING COSTS PER CAPITA: VIRGINIA, 1990-2015



Source: Virginia Department of Corrections, Management Information Summary Annual Report, fiscal years 1990-2015

MEDICAL COSTS

New inmates at Virginia prisons often bring with them a variety of physical and mental problems. For many, because of their lifestyles – which may have included drug use – their physical condition often is less than optimal. Some exhibit conspicuous mental illness. One study⁸ found that 56 percent of the inmates in state prisons exhibit some sort of mental illness, while 53 percent suffer from drug dependence.⁹

In addition, the prisoner population itself gradually has been graying, not the least because early release and parole have become less possible for a wider range of prisoners. The aging of the prisoner population has resulted in more prisoners exhibiting documentable heart and respiratory system problems, diabetes, eyesight challenges, etc. Fully 41 percent of Virginia's prisoners were 55 years or older in 2011 – much higher than the 25 percent national average.¹⁰ This differential appears to reflect relatively more rigorous parole policies in the Commonwealth.

The Code of Virginia §53.1 provides the possibility of geriatric parole for prisoners who are over 60 and have been in prison 10 years, or who are over 65 and have been in prison five years. However, a prisoner's medical condition is not listed as one of the conditions that might support a geriatric parole.

Whatever the sources of the medical cost challenges, collectively they have become increasingly important programmatic and fiscal considerations for all states, including Virginia. Table 1 reveals that medical costs now account for more than 20 percent of prison operational costs in the Commonwealth.

The news gets worse. There is a federal prohibition on the use of Medicaid or Medicare funds to serve prisoners, and therefore Virginians must bear the great majority of the medical financial burden of handling the individuals we ultimately choose to lock up.

8 D.J. James and L.E. Glaze, "Mental Health Problems of Prison and Jail Inmates," U.S. Department of Justice, September 2006.

9 Nevertheless, it is not abundantly clear whether these percentages represent actual increases relative to the past, or instead if they simply reflect more accurate reporting in recent years.

10 Pew Charitable Trust, State Prison Health Care Spending, 2014.

A Snapshot Of Prisons And Corrections In Virginia

VIRGINIA'S STATE PRISONS

The Department of Corrections in Virginia operates 27 prisons. Twenty-three of the prisons are located within 75 miles of the North Carolina/Tennessee borders. The most northerly prison is in Augusta County in the Shenandoah Valley, south of Harrisonburg. Figure 1 illustrates the southern, non-urban bias of Virginia in terms of where its prisons are located.

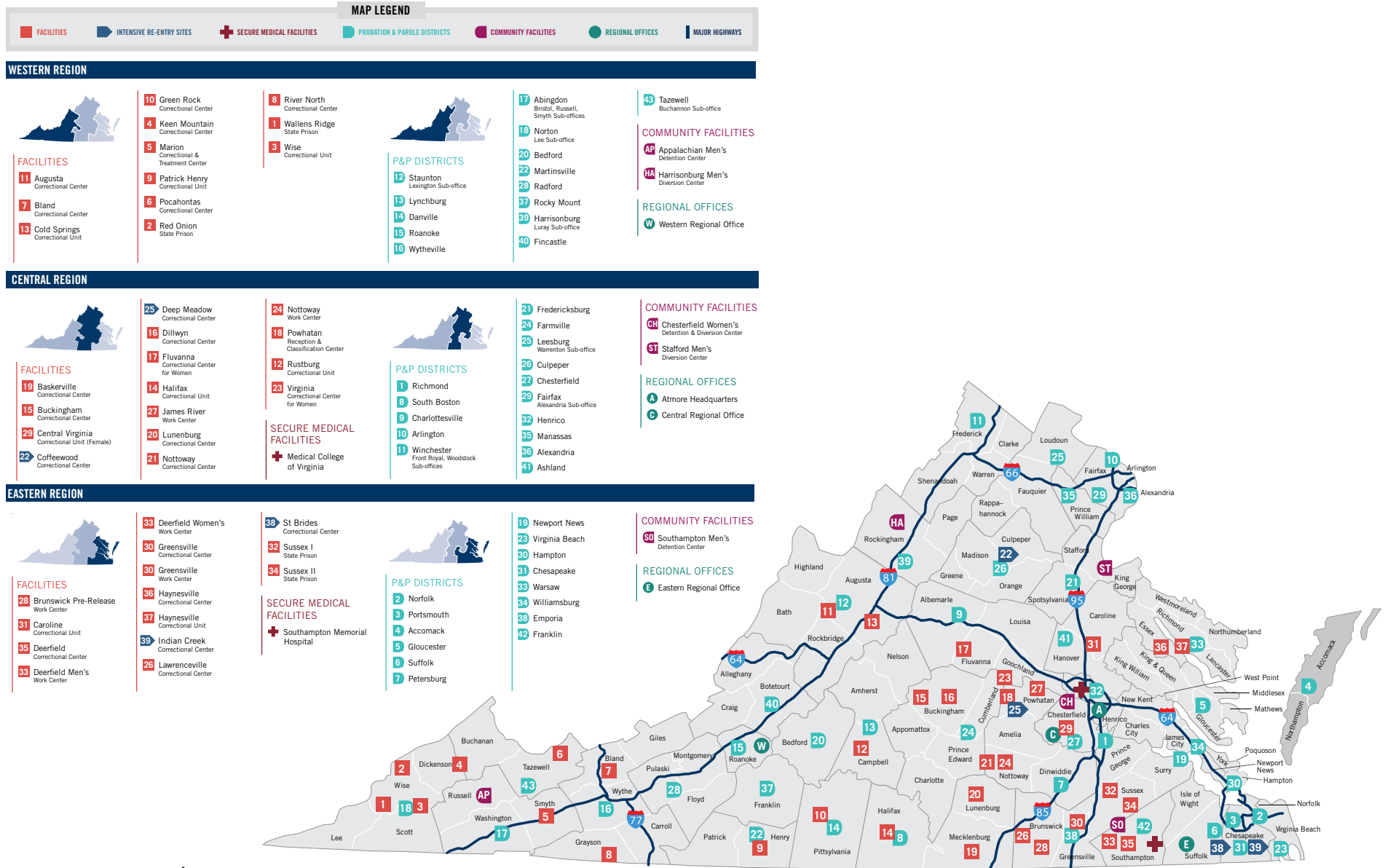
In 2015, the total number of inmates actually held in Virginia's state prisons was 25,701, while another 7,779 state prisoners were being held in local jails. The state also operates 43 probation and parole centers that are more or less uniformly distributed across the state. Further, there are two federal prisons in Virginia.

There is one privately operated prison in Virginia, the Lawrenceville Correctional Center, which held 1,570 prisoners in 2014. The Lawrenceville facility is operated by the GEO Group, an international corporation that manages prisons in the United States, the United Kingdom, Australia and South Africa. GEO Group operates under a contract with the Commonwealth of Virginia and typically houses long-term prisoners who have not exhibited significant behavior problems. The theory is that privately run prisons are more efficient than those operated directly by governments because they are more flexible, can more easily contract for goods and services, and can provide incentive pay to employees. Whether or not this is true, there has been little movement in Virginia toward creating more privately operated prisons.

The Department of Corrections also operates two secure medical facilities. One is located in Richmond at the VCU Medical Center and the other is at Southampton Memorial Hospital in Franklin.

The Virginia Department of Corrections imprisons all those convicted whose sentences exceed one year, but local jails may request that an inmate be retained in a local jail for family reasons or because of a work-release program.

FIGURE 1
LOCATIONS OF STATE PRISONS IN VIRGINIA



Source: Virginia Department of Corrections

WHO IS IMPRISONED IN VIRGINIA?

To be imprisoned, one first must be arrested. Far more young people, men and African-Americans are arrested than would be true if their arrest rates reflected their respective proportions of the Virginia population. Graph 5 reports the percentages of arrests made in Virginia of various segments of our population for Group A offenses (more serious incidents such as murder, rape, stolen property and fraud) and Group B offenses (relatively less serious incidents such as disorderly conduct and liquor violations). Individuals who identify as being white racially constitute about 70 percent of the Commonwealth's population, but comprise only 54.2 percent of the Group A arrest pool and 61 percent of the Group B arrest pool. African-Americans, who constitute 19.2 percent of Virginia's population, account for 44.7 percent of Group A arrests and 37.9 percent of Group B arrests. Men, who make up 49.2 percent of the state's population, nonetheless are responsible for 70.1 percent of Group A arrests and 74.1 percent of Group B arrests. Young people (ages 18-24) comprise about 10 percent of the Commonwealth's citizenry, but account for 35.6 percent of Group A arrests and 24.4 percent of Group B arrests.

Clearly, arrests are not uniformly distributed across the demographic characteristics of Virginia's population. Recent incidents in locations such as Ferguson, Mo., have called into question the fairness and equity of American law enforcement with respect to African-Americans. Do African-Americans, because of their distinctive economic and social characteristics, actually commit more crimes than other racial and ethnic groups, or are the police especially sensitive to their behavior and also more likely to decide to arrest them?

The evidence available strongly points to increased police focus on African-Americans in most communities and a greater tendency on the part of police to place African-Americans under arrest in circumstances that might lead to a discussion or a warning— but not the arrest—of a member of a different racial or ethnic group. By the same token, the economic circumstances and distinctive cultures of specific ethnic and racial communities could also play a role in generating behavior that potentially leads to arrest. Arrest rates of Asian-Americans, for example, typically trail their proportion of the population by a wide margin. It is an easy out to observe that the relationships among

race, gender, age, and police attention and arrests are complicated. Even so, it is true.

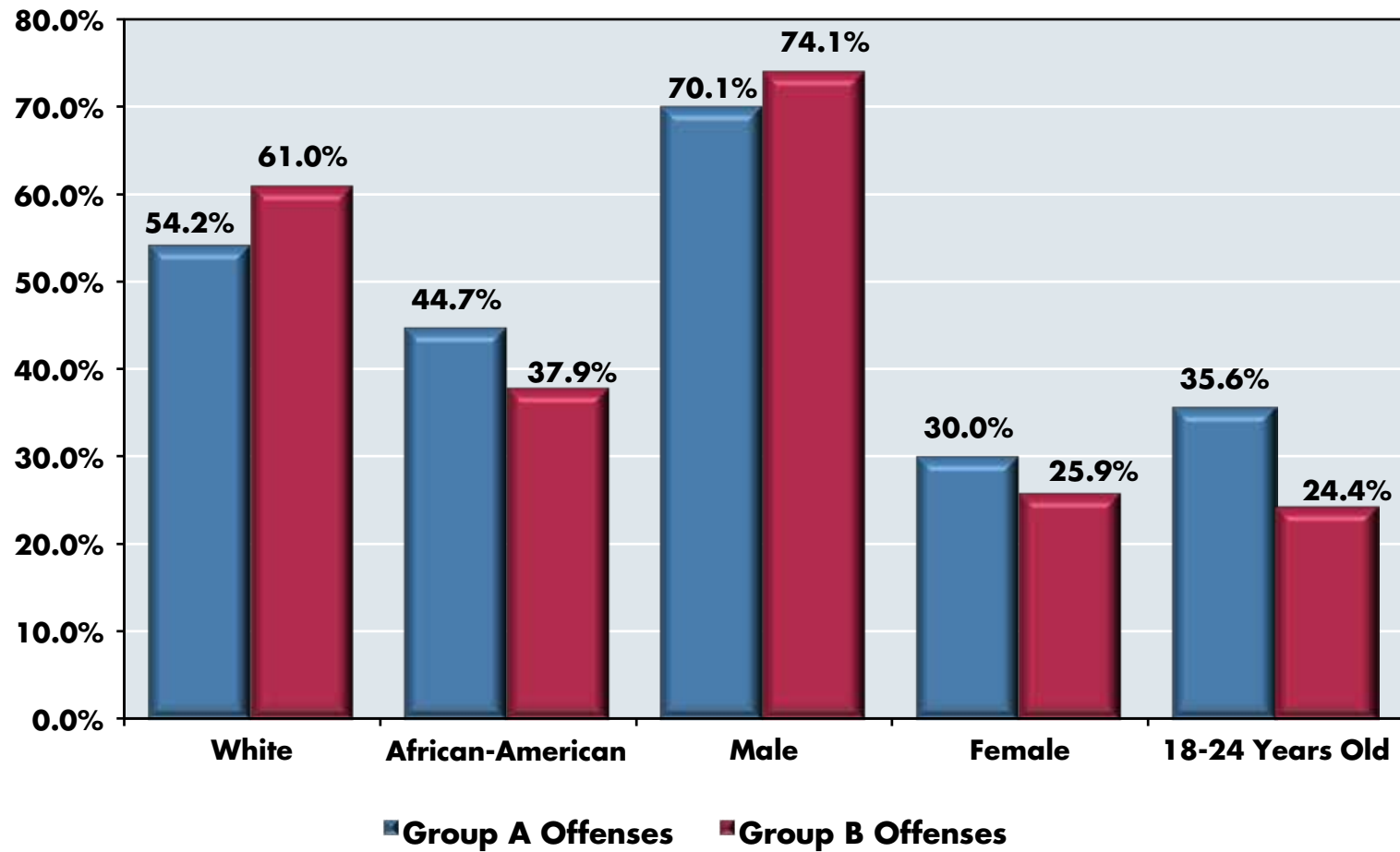
Regardless, arrests frequently lead to convictions. For 2012, the U.S. Department of Justice reported a 93 percent conviction rate (by plea or trial) for charged federal offenses.¹¹ The upshot is that arrests often lead to convictions, which in turn often lead to jail terms. Table 2 reports data relating to the characteristics of the inmates in our state prisons between 2004 and 2014. Virginia's prison population is predominantly male and African-American, though the percentage of African-American inmates declined 4.8 percent between 2004 and 2014. One also can readily detect the gradual aging of the inmate population.

Table 3 shows that with the exception of drug-related crimes, the ostensible reasons for the imprisonment of individuals in Virginia have remained rather stable over time. Offenses such as murder, rape, robbery, assault and burglary by no means have disappeared and have maintained their importance. Here, however, a caveat is in order. The offenses in Table 3 are categorized by the nature of a perpetrator's most serious crime and hence a murderer who also is a burglar is classified as a murderer rather than as a burglar. There is no double counting even though there may have been multiple offenses.

¹¹ <https://en.wikipedia.org/wiki>.

GRAPH 5

PROPORTION OF ARRESTS: THE IMPACT OF AGE, RACE AND GENDER FOR GROUP A AND B OFFENSES IN VIRGINIA, 2014



Source: Virginia Department of Corrections, "State Responsible Offender Population Trends," fiscal years 2004-2015

TABLE 2

CHARACTERISTICS OF VIRGINIA PRISON POPULATIONS OVER TIME

Characteristic	2004	2007	2011	2014
Percent Male	92.50%	92.30%	92.90%	92%
Percent White	34.90%	36.00%	36.20%	38.60%
Percent Black	63.20%	62.20%	60.70%	58.40%
Percent Hispanic	1.40%	1.60%	2.25%	2.10%
Age: 18-24	16.00%	13.70%	12.90%	10.50%
25-34	33.80%	33.70%	33.20%	32.50%
35-44	30.60%	30.10%	26.00%	26.50%
45-54	15.00%	16.20%	19.80%	20.20%
55-59	2.40%	3.50%	4.50%	5.50%
60-64	1.10%	1.50%	2.10%	2.80%
65+	0.87%	0.90%	1.40%	2.00%

Source: Virginia Department of Corrections, "State Responsible Offender Population Trends," fiscal years 2004-2015

TABLE 3

PERCENT OF PRISONERS IN VIRGINIA STATE PRISONS CATEGORIZED BY MAJOR OFFENSE

Offense	2004	2008	2012	2015
Murder/All Homicide	10.8%	10.9%	10.8%	10.9%
Rape/Sexual Assault	10.1%	10.3%	10.5%	10.5%
Robbery	14.9%	14.8%	16.7%	16.5%
Assault	9.8%	11.3%	10.8%	10.8%
Burglary	9.8%	8.7%	8.5%	8.7%
Larceny/Fraud	16.3%	15.3%	13.2%	13.4%
Drug Possession	NA	NA	6.4%	5.0%
Drug Sales	NA	NA	8.3%	10.5%
Heroin/Cocaine	11.4%	3.9%	NA	NA
Other Drugs	3.4%	11.4%	NA	NA

Source: Virginia Department of Corrections, Management Information Summary Annual Reports, for the fiscal years ending 2004, 2008, 2012 and 2015

The Decline Of Parole In Virginia

The introduction of the “you must serve out your sentence” and “three strikes and you’re out” laws, combined with reduced judicial latitude and mandatory minimum sentences, has resulted in a decline in the number of prisoners eligible for parole in Virginia. Between 2010 and 2014, that number fell by 6,146, representing a decline from 18 percent to 12 percent of the prison population.¹² Further, even when eligible, fewer paroles are being granted now. For example, in 2010, the Virginia Parole Board granted parole to 28 percent of the drug-convicted criminals that received a parole hearing. By 2014, approvals had declined to 17 percent.

Additionally, those who violate their parole conditions now are resentenced and end up spending increasingly lengthy subsequent terms in Virginia prisons. In 2010, the mean time served by parole violators was 96.9 months. By 2014, it had risen to 129.3 months.

Some parole violations are “technical” in that they occur when an individual breaks one of the rules outlined in his or her probation – for example, a failure to meet his or her parole officer, or skipping a drug test. In 2010, 14 percent of all parole violators sent back to prison were charged with technical violations. However, by 2014, this had risen to more than 30 percent.¹³ It appears that more rigorous standards have been applied in recent years.

¹² State Responsible Confined Offender Profile, FY2010-2014, Virginia Department of Corrections Statistical Analysis and Forecast Unit, July 2015, 3.

¹³ State Responsible Confined Offender Profile, 4 and 5.

Crime Rates And Incarceration

Crime rates are an obvious place where the proverbial rubber meets the road when one talks about theories of crime and punishment. If “taking criminals off the street” is a viable strategy, then (holding other things constant) one should observe declining crime rates when more convicted criminals are held inside prisons. By themselves, declining crime rates would not signal that such a strategy should be pursued unless one also took the costs of the strategy into account. Falling crime rates would, however, tell us whether potentially we might be on the right track.

The data in Table 4 inform us that crime rates in Virginia have been declining in every major category except for drug-related offenses. In some cases (aggravated assaults and burglaries), the declines have been dramatic.

A clear majority of drug-related offenses involve marijuana and typically result in misdemeanor charges rather than more serious felony charges. Meanwhile, cocaine arrests have declined, while those relating to heroin have increased.

Some law enforcement officials suggested to us that the rise in marijuana-related drug arrests reflected both increased marijuana use and the need of police to satisfy performance-based measures of their activities. “If they want to count arrests, we’ll give them what they want,” averred one policeman. In any case, the number of drug/narcotic offenses per 100,000 citizens rose by 13.4 percent between 2008 and 2013, even while many other crime rates were falling. More than 60 percent of drug arrests in 2014 were related to marijuana. The Virginia Department of Corrections reports that about 80 percent of inmates in its control have some relationship to substance abuse.¹⁴

Generally falling crime rates are, however, broadly consistent with what has become known as the “incapacitation” hypothesis – taking criminals off the street reduces crime rates. Even so, it is most important to note that the observed decline in crime rates instead could be due to a plethora of other factors, including changing demographics (such as a decline in the number

¹⁴ <https://vadoc.virginia.gov/offenders/institutions/institutions-overview.shtm>. Accessed April 22, 2016.

of young men ages 16-25), larger police presence, improved economic conditions, reduced racial and ethnic discrimination, increased use of antidepressant drugs, diminished levels of lead in water supplies and in the air, the declining profitability of certain crimes because of new technology, and the legalization of abortion, to name only a few of the possibilities that have received attention from reputable analysts.

Regardless of which of these reasons actually are important, **it seems likely that the law of diminishing returns applies to law enforcement and imprisonment. Arrests focused on the most serious crimes and habitual criminals likely will reduce crime rates; however, as the volume of arrests increases, less serious crimes receive more attention and less dangerous criminals are arrested. Hence, each incremental arrest generates a progressively smaller decline in crime rates. Steven Levitt of the University of Chicago, who in a 2004 study argued that higher incarceration rates were responsible for as much as one-third of the drop in crime rates in the 1990s,¹⁵ agrees that the law of diminishing returns likely applies and that “sharply declining marginal benefits of incarceration are a possibility.”¹⁶**

The evidence on this issue is mixed, with other researchers finding incarceration to be much less important a factor in terms of reducing crime rates. Further, there is other evidence that is discordant. For example, during the first half of this decade, incarceration rates did not change much nationally, but most crime rates continued to decline. Further, as Table 5 reveals, for Virginia, surrounding states and the United States, a positive correlation actually existed between changes in incarceration rates and changes in the crime rate between 2008 and 2013. Thus, rising incarceration rates have been associated with higher crime rates rather than lower crime rates.

Several states now are conducting what amounts to real-time experiments concerning the relationship between incarceration and crime rates. States ranging from California, New York and Michigan to Delaware, Nevada and

Utah have lowered their incarceration rates by a variety of means and have witnessed continued declines in their crime rates. They reduced incarceration by: (1) reclassifying crimes to reduce the possibility of jail time; (2) more extensive use of probation; (3) shorter sentences; (4) more lenient parole standards; and (5) enhanced post-parole work with former inmates in order to reacclimatize them to society and find them jobs.

It is fair that to say that the available reputable research concerning the determinants of crime rates does not point to a single cause for the declines we have observed.¹⁷ Even so, the consensus is that increased incarceration probably does not account for more than 10-15 percent of observed declines in these rates, according to most studies. Graph 6 summarizes what appears to be today's state of knowledge with respect to why crime rates have been declining. Note that the percentages are approximations and typically represent the averages of multiple studies.

AGE, GENDER, RACE AND IMPRISONMENT

To be imprisoned, one first must be arrested. As Graph 7 demonstrates, far more young people, men and African-Americans are arrested than would be true if their arrest rates reflected their respective proportions of the Virginia population.

¹⁵ Levitt has written extensively on the subject. A superb rendition of his views can be found in his article in the *Journal of Economic Perspectives*, 18(1), 2004.

¹⁶ Inimai M. Chettiar, “The Many Causes of America's Decline in Crime,” *Atlantic Magazine* (Feb. 11, 2015), www.theatlantic.com.

¹⁷ Chettiar's Feb. 11, 2015, *Atlantic Magazine* article is one of the best nontechnical expositions of the issues and the available evidence, even though it is an advocacy piece.

TABLE 4

ARREST RATES PER 100,000 CITIZENS FOR VARIOUS OFFENSES: VIRGINIA, 2003-2014

Offense	2003	2007	2011	2014
Murder/All Homicide	5.52	5.33	3.77	4.05
Rape/Sexual Assault	72.09	68.94	60.63	59.44
Robbery	89.03	100.37	67.32	51.80
Simple Assault	1175.22	1278.19	1229.47	1061.67
Aggravated Assault	150.86	144.25	109.19	113.66
Burglary	420.53	408.85	375.94	271.82
Larceny	2236.26	1921.63	1784.59	1578.30
Drug/Narcotics Offenses	495.82	619.66	625.57	673.57

Source: Crime in Virginia, 2014 and various other years

TABLE 5

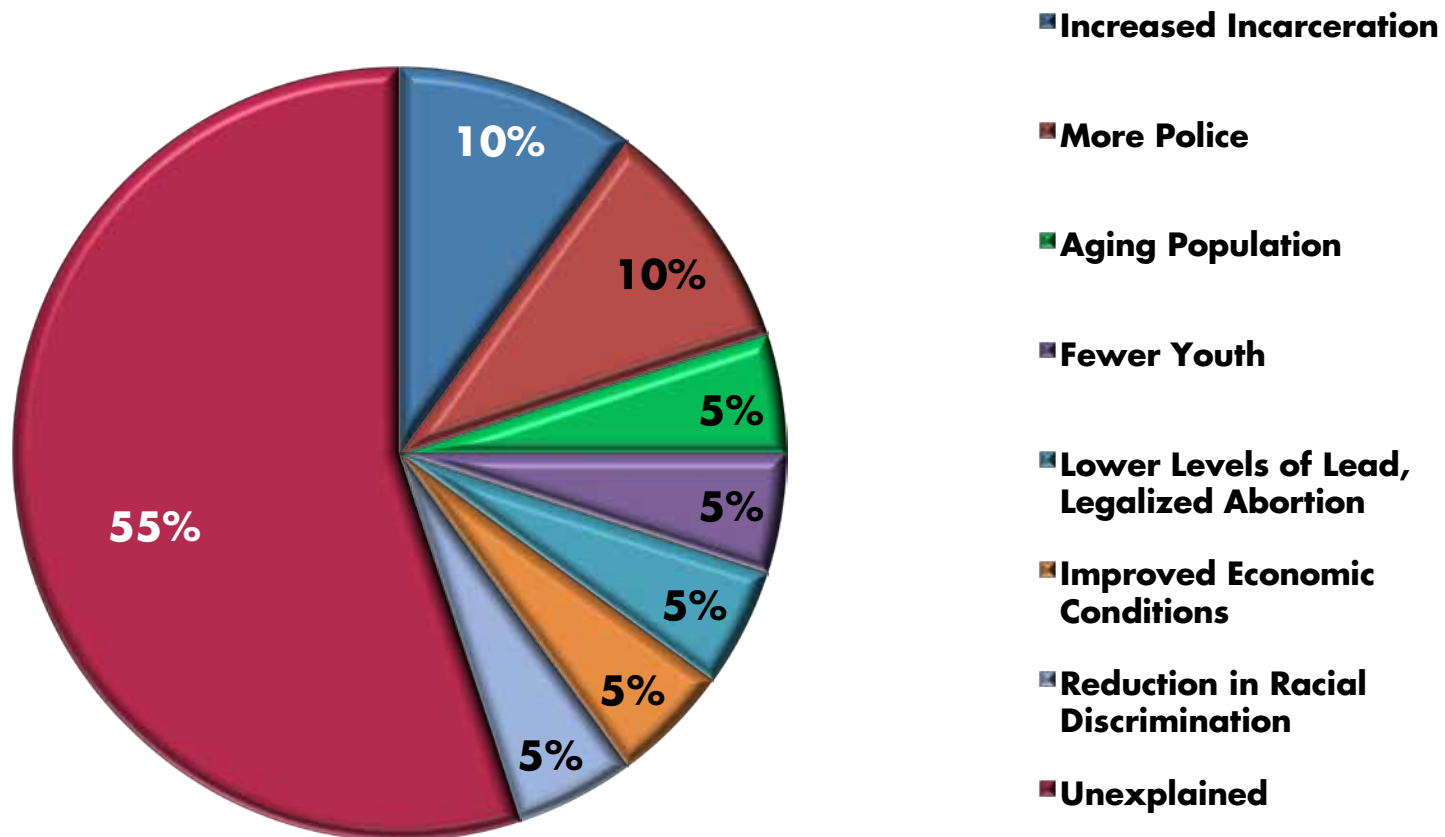
CHANGES IN CRIME RATES PER 100,000 CITIZENS AND IMPRISONMENT RATES: VIRGINIA, OTHER STATES AND THE UNITED STATES

	Virginia	North Carolina	Maryland	West Virginia	Kentucky	Pennsylvania	U.S. Average
Imprisonment Rate Per 100,000, 2013	446	356	353	367	464	391	478
Change in Imprisonment Rate, 2008-2013	-9%	-4%	-12%	-11%	-6%	0%	-6%
Crime Rate Per 100,000, 2013	2,262	3,470	3,137	2,404	2,573	2,396	3,099
Change in Crime Rate, 2008-2013	-19%	-23%	-24%	-14%	-14%	-15%	-16%

Source: "Most States Cut Imprisonment and Crime," Pew Charitable Trusts, Nov. 10, 2014

Note: The simple correlation between changes in the imprisonment rate and changes in the crime rate in this table between 2008 and 2013 is +.614 – not the result predicted by those who favor increased incarceration as a solution to crime. Because the incarceration/crime relationship is so complex, however, it would be wise not to overemphasize the importance of this limited result.

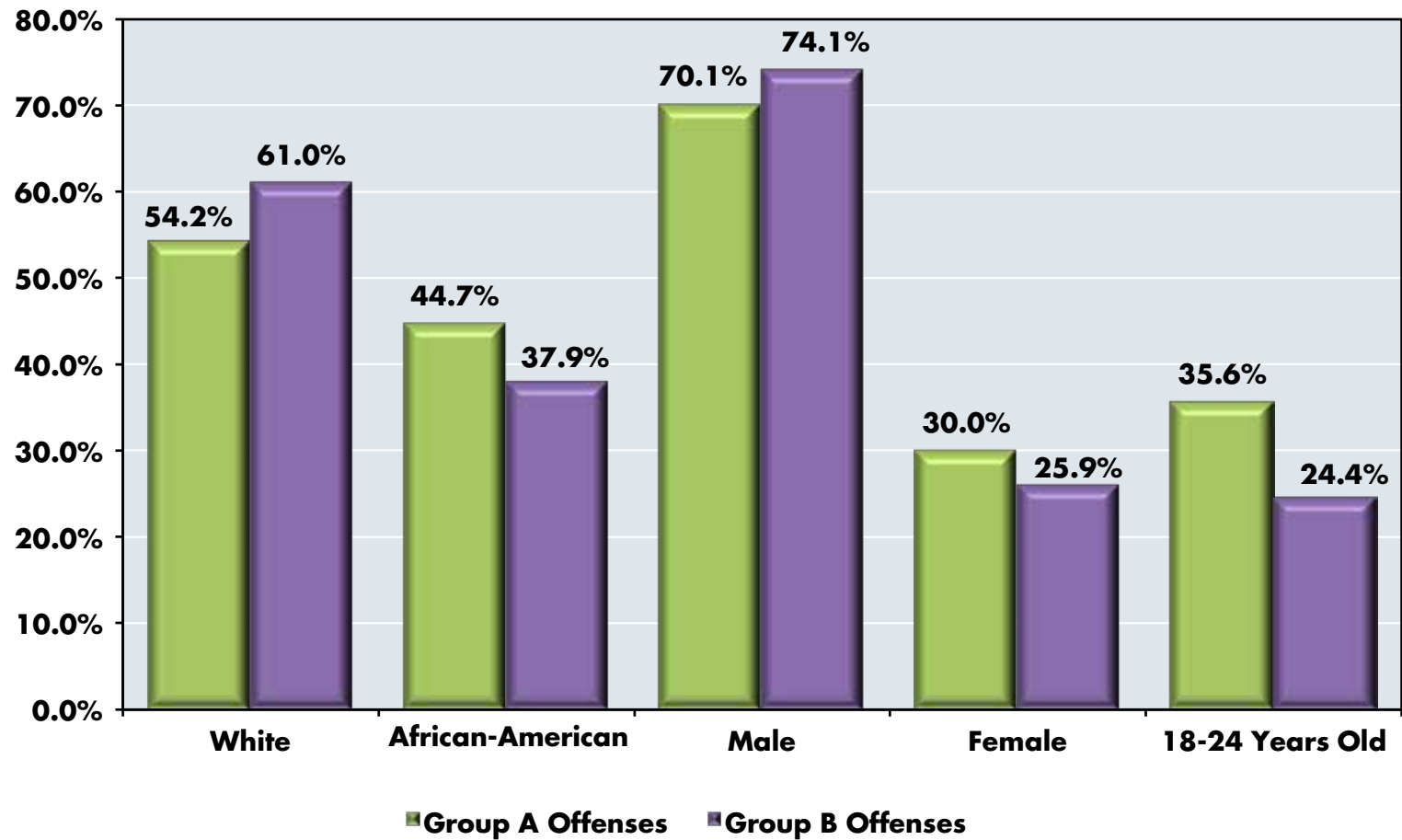
GRAPH 6
WHY CRIME RATES HAVE FALLEN



Source: "Crime in Virginia 2014"

GRAPH 7

PROPORTION OF ARRESTS: THE IMPACT OF AGE, RACE AND GENDER ON GROUP A AND B OFFENSES IN VIRGINIA, 2014



Source: "Crime in Virginia 2014"

When Inmates Finish Their Sentences Or Are Paroled

For better or worse, rehabilitated or not, 700,000 inmates annually either finish their sentences or are paroled back into society. Mountains of evidence nationally (and in Virginia) establish that this is a very difficult transition. Prison society and our open society are so different that one better educated than usual parolee told us, “It’s like moving from a gulag in remotest Siberia to the White House.”

Those released from prison often feel that the biblical mark of Cain is stamped on their foreheads and often are highly self-conscious and lack confidence. Especially if they are convicted felons, it is very difficult for them to find employment. Roughly one-half of those leaving prison do not find a job in the first year after their release. **One study found that 40 percent of employers in large urban areas would not hire a former inmate if they were aware of his or her history.**¹⁸ Nevertheless, post-release work is critical. The Missouri Department of Corrections found that 54 percent of released inmates who did not find full-time work after release returned to prison, while only 14 percent of those who found full-time work did so.¹⁹

Both the United States and Virginia suffer from falling labor force participation rates (LFPRs) – the proportion of the adult population that either is employed or actively seeking a job. While not the most important reason, one reason that LFPRs have been falling is that former prisoners, especially those who are convicted felons, drop out of the labor force because they cannot find employment. Thus, even though increased incarceration rates may reduce crime, the higher incarceration rates also generate some increased costs.

Nationally, an estimated 5.5 million felons who have returned to society from prison are not eligible to vote.²⁰ Nationally, one of every 13 African-

American adults is ineligible to vote because of a previous felony conviction, but in Virginia it has been reported to be an astonishing one in every five.²¹ During their terms, Virginia governors Mark Warner and Bob McDonnell took action to restore the voting rights of many felons. However, it was Gov. Terry McAuliffe who moved most boldly in this arena by restoring the voting and jury service rights of more than 200,000 Virginia felons by means of a sweeping executive order on April 22, 2016. His executive order was overturned by the Virginia Supreme Court on July 22, 2016, but The Washington Post (Laura Vozella, Aug. 22, 2016) reported that the governor subsequently utilized his autopen to sign individual orders to pardon more than 13,000 among the 200,000 felons.

McAuliffe asserted that Virginia was one of only 10 states that did not automatically restore voting rights when a felon completes his or her sentence, parole and probation. His executive order applied to all felons who have completed their sentences as well as their parole or probationary periods, regardless of the nature of their felony (Virginia has six classes of felonies that more or less reflect the seriousness of the offense). While applauded by many, the executive order had its critics because it did not differentiate between violent and nonviolent felons and did not take into account whether the felons in question had made restitution to their victims.

Beyond the right to vote, convicted felons cannot originate a mortgage loan for seven years after their conviction. In some cases (for example, those involving sex offenders), there are limitations in terms of the places where they can live or travel.

Table 6 summarizes the number of regulations constraining the employment of former prisoners in Virginia and several surrounding states that one recent study reported. Virginia’s most common employment restrictions with respect to former inmates are found in education, child care, transportation and law enforcement. McAuliffe changed this dynamic somewhat when his executive order removed the requirement that former inmates reveal their previous imprisonment when they apply for certain state positions.

18 H.J. Holzer, *What Employers Want: Job Prospects for Less-Educated Workers*, New York, Russell Sage Foundation, 1996, p. 237.

19 www.stlreentry.org/news/26-out-of-prison-now-what-reentry-programs-help-those-returning-to-community-life.html.

20 Arian Campo-Flores, “Virginia Restores Voting Rights to Thousands of Felons,” *The Wall Street Journal* (April 22, 2016), www.wsj.com.

21 Alan Suderman of The Associated Press in *The Virginian-Pilot*, www.pilotonline.com (April 23, 2016).

Every state must make sometimes-controversial trade-offs when it considers the post-release rights of former inmates. On the one hand, there is the understandable desire of many to be protected from individuals who have served prison terms. On the other hand, there are the substantial costs that society and families must bear when released inmates return to society and cannot find employment or fill certain jobs. It will suffice to note that Virginia, like several other states, has begun to change the balance between the two positions by restoring more rights to released inmates and by providing them with greater help when they return to society. There is some empirical support for this approach, as we will see below.

Job training and retraining programs often are advocated as a means to improve the employment situation of former inmates. Unfortunately, rates of success in such programs often are not high because many former inmates are poorly educated individuals who have acquired bad habits and lack social skills. Greater success often attaches to educational and training programs that occur inside prisons and prepare inmates before they leave prison.²²

The relevant point, however, is straightforward – once we put people in prison, it changes virtually every aspect of their future lives and seriously harms their subsequent employment prospects. Once again, even though there are visible benefits attached to higher incarceration rates, there also are costs that cannot be ignored.

Virginia is not a national leader in this regard, but has developed several interesting programs. The Department of Corrections has invested in new equipment for the agribusiness operations at the Deerfield, Greenville, James River and Pamunkey correctional facilities. These activities generated \$3.4 million of revenue in 2015. The department also has had success in training inmates for a variety of vocationally related post-release jobs. An interesting example involves a partnership with Johnson Controls to provide heating and air conditioning (HVAC) training.

TABLE 6

NUMBER OF REGULATIONS THAT RESTRICT EMPLOYMENT OPPORTUNITIES FOR FORMER INMATES

	Virginia	North Carolina	Maryland	West Virginia	Kentucky	Pennsylvania
Employment Restrictions	80	102	87	133	135	72
Occupational and Professional Licensing Restrictions	40	71	40	90	72	34
Business License and Property Rights Restrictions	55	40	36	42	22	43
Totals	127	120	70	143	141	119

Source: "Jobs After Jail, Ending the Prison to Poverty Pipeline," Alliance for a Just Society, February 2016, www.google.com/search?client=aff-maxthon-maxthon4&channel=t26&q=Jobs%20After%20Jail%2C%20Ending%20the%20Prison%20to%20Poverty%20Pipeline%2C%20Alliance%20for%202. (Note that totals are not the sum of the categories because restrictions may apply to more than one category.)

²² Lois M. Davis et al., *Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education to Incarcerated Adults*. Washington, D.C.: U.S. Department of Justice, 2013.

Public Policy Options: OK, Now What Should We Do?

Benefit-cost analysis is the tool most often used by economists when they want to estimate the effects of specific policy changes on the well-being of citizens. This usually involves comparing the incremental cost ("marginal cost") of a policy change to its incremental benefit ("marginal benefit"). If the incremental benefit is greater than the incremental cost, then the policy change is desirable from an economic standpoint because it results in a net improvement in the welfare of the public. Of course, there might be other policy changes that are even more desirable that society would prefer, and so one must rank alternatives.

We have simulated a variety of public policy changes with respect to law enforcement and imprisonment: (1) lengthening sentences to keep convicted offenders off the street; (2) reclassifying crimes so that fewer crimes are considered to be felonies; and (3) granting early release of already imprisoned nonviolent offenders. Our results indicate that the cost of lengthening sentences nearly always exceed the benefits. Reclassifying crimes to reduce the frequency of felony charges is a winner – benefits easily exceed costs. The same is true for early release of nonviolent offenders. Benefits clearly exceed costs.

Readers interested in obtaining details concerning these simulation results should contact James V. Koch at jkoch@odu.edu or 757-683-3458.

Final Thoughts

Criminals destroy lives and impose huge costs on victimized citizens. Similarly, however, imprisonment also can impair the lives of those incarcerated and impose additional costs on society when inmates eventually are released. Further, it is expensive to imprison people.

Already in the 1980s, the Commonwealth of Virginia embarked on a "lock more people up and don't let them out as soon" approach to criminal justice. Clearly, there are benefits generated by this approach (primarily from keeping criminals off the streets), but also costs that accrue and must be borne both by taxpayers and those incarcerated, as well as their families.

Our simulations suggest that the Commonwealth may well have tipped the scales excessively in recent years as it has increased the range of crimes that result in imprisonment, lengthened the sentences of those convicted and reduced their opportunities for parole. The well-known law of diminishing returns applies to most governmental activities and there is evidence that it has been in operation in recent years with respect to Virginia's approach to law enforcement, sentencing, imprisonment and parole. Evidence suggests that, political poison or not, there may be more productive paths for Virginia to travel in the area of crime and punishment.

As Douglas Holtz-Eakin, who served on President George W. Bush's Council of Economic Advisors, recently observed, we are in the midst of a "rare public-policy moment" in which both political parties agree that different policies concerning imprisonment could save taxpayers money, strengthen families, reduce unemployment and diminish poverty (The Economist magazine, April 30, 2016, p. 31). Virginia would be well advised to give due consideration to these opportunities.

