

VIRGINIA STATE CRIME COMMISSION



Parole in Virginia

Information contained in this report is current as of July 31, 2022

2022 ANNUAL REPORT

PAROLE IN VIRGINIA

SUMMARY OF PAROLE IN VIRGINIA

During the 2020 Regular Session and Special Session I of the General Assembly, numerous parole bills were referred to the Crime Commission.¹ An additional parole bill was referred during the 2021 Regular Session of the General Assembly.² In July 2020, the Executive Committee of the Crime Commission directed staff to conduct a comprehensive review of parole in Virginia and other states.³ Staff focused on the following types of parole, which staff defined as follows:⁴

- Discretionary: release from incarceration prior to the completion of a sentence based upon a discretionary determination by a parole board or similar entity.
- Geriatric: release from incarceration prior to the completion of a sentence based upon a person's age.
- Medical: release from incarceration prior to the completion of a sentence based upon the existence of a medical condition which may or may not be terminal.
- Terminally ill: release from incarceration prior to the completion of a sentence based upon the existence of a terminal medical condition.
- Juvenile: release from incarceration prior to the completion of a sentence based upon the person being a minor (under the age of 18) at the time the criminal offense was committed.
- Youthful offender: release from incarceration prior to the completion of a sentence based upon the person's age (over the age of 18 but under a specified age) at the time the criminal offense was committed.

The landscape of parole in Virginia has changed dramatically over the last two years, with the following events occurring between January 2020 and July 2022:

- the COVID-19 pandemic affected criminal justice systems across the entire country;
- the General Assembly enacted legislation to create juvenile parole,⁵ discretionary parole based on the *Fishback v. Commonwealth* decision,⁶ and terminally ill parole;⁷

- the General Assembly enacted legislation to amend the Virginia Parole Board’s notice and monthly public reporting duties and make individual Board member votes subject to the Virginia Freedom of Information Act;⁸
- the Virginia Office of the Inspector General (OSIG) conducted investigations into at least nine decisions made by the Virginia Parole Board to grant parole;⁹
- the General Assembly authorized funding for an outside law firm to perform a review of the actions taken by OSIG when investigating the Virginia Parole Board;¹⁰
- the composition of the Virginia Parole Board changed multiple times; and,
- Governor Youngkin signed an Executive Order (i) directing the Secretary of Public Safety and Homeland Security to perform a programmatic review on the Parole Board’s duties, procedures, and administration and provide recommendations by September 1, 2022, and (ii) requesting the Attorney General to coordinate prosecutorial and investigative efforts into the violation of any existing laws related to parole or victim’s rights.¹¹

Table 1 details how parole is currently structured in Virginia, including the types of parole, eligibility requirements, and exclusions.¹² Detailed data, if available, is included on the overview sheets for each type of parole in Virginia, as well as in the Appendices of this report.¹³

Table 1: Virginia Parole Types, Eligibility, and Exclusions

PAROLE TYPE	ELIGIBILITY	EXCLUSIONS ¹⁴
DISCRETIONARY § 53.1-151 § 53.1-152 § 53.1-153 § 53.1-165.1(A) § 53.1-165.1(B)	<i>Generally:</i> Persons convicted of an offense committed prior to January 1, 1995.	<ul style="list-style-type: none"> – Various exclusions set forth in Va. Code § 53.1-151 – Three strikes law convictions¹⁵
	<i>Fishback:</i> Persons sentenced by a jury prior to June 9, 2000, for a felony offense committed on or after January 1, 1995.	<ul style="list-style-type: none"> – Any Class 1 felony – Convictions for various sex offenses where the victim was a minor
	<i>Misdemeanor:</i> Persons convicted of multiple misdemeanors and sentenced to an active term of more than 12 months in jail for offenses committed prior to July 1, 2008.	<ul style="list-style-type: none"> – Various exclusions set forth in Va. Code § 53.1-151
GERIATRIC § 53.1-40.01	Persons who have reached 65 years old and have served at least 5 years; or, Persons who have reached 60 years old and have served at least 10 years.	<ul style="list-style-type: none"> – Any Class 1 felony
MEDICAL	<i>Virginia does not have medical parole</i>	
TERMINALLY ILL § 53.1-40.02	Persons with a chronic or progressive medical condition whose medical prognosis is death within 12 months.	<ul style="list-style-type: none"> – Convictions for numerous felonies set forth in Va. Code § 53.1-40.02
JUVENILE § 53.1-165.1(E)	Persons sentenced to serve life or more than 20 years for a crime committed as a juvenile are eligible after serving 20 years.	<ul style="list-style-type: none"> – None
YOUTHFUL OFFENDER § 19.2-311 § 19.2-313	Persons convicted of a first felony offense that was committed before they turned 21 years of age who were sentenced to an indeterminate commitment of four years followed by at least one and a half years of supervised parole.	<ul style="list-style-type: none"> – Convictions for murder and various sex offenses

Table prepared by Crime Commission staff based on legal analysis as of July 2022.

Staff found that parole varies significantly across the United States in terms of (i) which types of parole are available, (ii) eligibility requirements, (iii) how much of a sentence must be served prior to being eligible for parole, and (iv) which offenses are excluded from parole eligibility.

Therefore, parole in the Commonwealth could be restructured in a variety of manners, such as by modifying existing types of parole, reinstating discretionary parole, or enacting medical parole. Staff's research findings on parole as of July 2022 are detailed below.

DISCRETIONARY PAROLE

- Every state has some form of discretionary parole available for certain offenses.
 - 34 states have discretionary parole for present-day offenses.
 - 16 states, including Virginia, abolished discretionary parole for offenses committed after a specific past date.
- The majority of states that abolished discretionary parole did so between the late 1970's and the mid-1990's.
- While Virginia abolished discretionary parole for felony offenses committed after January 1, 1995, persons who committed offenses prior to that date and persons who fall under the new *Fishback* legislation enacted in 2020 remain eligible for discretionary parole.
- As of July 31, 2022, there were 1,536 persons eligible for discretionary parole in Virginia, and an additional 195 persons eligible under the new *Fishback* legislation.¹⁶

GERIATRIC PAROLE

- Virginia enacted geriatric parole in 1994 as part of the abolition of discretionary parole.
- 12 states, including Virginia, have laws specific to geriatric parole.
- Virginia has some of the broadest eligibility requirements for geriatric parole in the nation. A person is eligible for geriatric parole at age 65 after serving five years of their sentence, or at age 60 after serving ten years of their sentence, with the exception of persons serving a sentence for a Class 1 felony.
- As of July 31, 2022, there were 820 persons eligible for geriatric parole in Virginia.¹⁷

MEDICAL PAROLE

- 36 states, excluding Virginia, have medical parole.

TERMINALLY ILL PAROLE

- The General Assembly enacted terminally ill parole in 2020.

- Virginia excludes numerous felony convictions from eligibility for terminally ill parole.
- 4 states, including Virginia, have laws which provide that a terminal illness is the *only* medical condition that makes a person eligible for parole for a health-related reason.

JUVENILE PAROLE

- The General Assembly enacted juvenile parole in 2020.
- Out of the 16 states that abolished discretionary parole, 6 states have enacted a specific juvenile parole statute, including Virginia.¹⁸
- The amount of time that a person must serve prior to being eligible for parole for an offense that was committed as a juvenile varies across these 6 states, with persons in Virginia being eligible for parole after 20 years.
 - Virginia does not exclude any convictions from eligibility for juvenile parole.
- As of July 31, 2022, there were approximately 144 persons eligible for juvenile parole in Virginia.¹⁹

YOUTHFUL OFFENDER PAROLE

- Virginia has a youthful offender parole program that pre-dates the abolition of parole in the Commonwealth.
- Out of the 16 states that abolished discretionary parole, 3 states have enacted a parole program for youthful offenders, including Virginia.²⁰
- In Virginia, the court determines whether to sentence a person to the youthful offender program, which includes an indeterminate sentence and parole supervision upon release. Only a person receiving their first conviction can qualify, and that conviction must be for a felony offense (with exclusions for murder and various sex offenses), and the person must have been under the age of 21 at the time the offense was committed. Once in the program, the Virginia Parole Board determines when that person will be released from incarceration.
- There are typically between 70 and 100 persons in Virginia’s youthful offender program at any given time.²¹

Staff also found that parole processes vary significantly across the country. For example, differences exist in terms of whether (i) parole hearings are conducted in-person versus a review of the person's case file, (ii) the person being considered for parole is interviewed by the parole board versus an agent of the board, such as a parole examiner, (iii) a parole hearing is conducted on a particular date versus within a particular time period, (iv) parole hearing dates are made available to the public in advance of the hearing, (v) the victim and/or other interested parties can participate in the parole hearing, (vi) the public is permitted to attend or remotely view parole hearings, and (vii) the parole board provides detailed reasons for its decisions.

As such, the following measures could be implemented to improve various notice, participation, and transparency concerns with Virginia's current parole process:

- review and update the Parole Board's policy manual and procedures manual, which have not been updated since 2006 and 1996, respectively;
- conduct parole hearings in the presence of the person being considered for parole;
- allow the victim, Commonwealth's Attorney, family of the person being considered for parole, and other individuals to attend and/or participate in the parole hearing;
- schedule specific dates for parole hearings and provide advance notice of such dates to interested parties and the public;
- allow the public to attend or remotely view parole hearings;
- provide greater clarity as to why the Parole Board voted to grant or deny parole;
- require the Parole Board to publish an annual report of its activities, including data related to parole decisions and any other actions at an aggregate level;
- examine the Parole Board's role in overseeing and revoking postrelease supervision; and,
- review the existing resource and staffing needs of the Parole Board in light of any changes to the parole process and/or Virginia's parole system.

Staff completed this comprehensive review of parole in August 2022. The Crime Commission took no further action on the study. The information contained in this report was current as of July 31, 2022. This report does not include any information related to parole in Virginia or any other state since that time. Similarly, this report does not reflect any changes made to the parole process in Virginia during the 2023 Regular Session of the General Assembly.

COMMON QUESTIONS ABOUT PAROLE BOARDS AND PROCESSES

What are the statutory powers and duties of the Virginia Parole Board?

Virginia Code [§ 53.1-136](#) requires the Board to:

- adopt general rules governing the granting of parole and eligibility requirements;²²
- adopt rules for granting parole to persons who are eligible for juvenile parole and for discretionary parole as enacted in 2020 in response to the *Fishback v. Commonwealth* decision of the Supreme Court of Virginia;²³
- release persons who are found to be suitable for parole and establish the time period and the terms and conditions of such parole;²⁴
- establish the conditions of postrelease supervision authorized by certain provisions of the Virginia Code;²⁵
- notify the Virginia Department of Corrections of any decision to grant discretionary parole or conditional release;²⁶
- notify the Commonwealth's Attorney, in the jurisdiction where a person was sentenced, prior to that person's release if that person was sentenced to serve 10 years or more on a felony and has been granted parole, or if the person was granted conditional release;²⁷
- require that any person on parole who has been committed as a sexually violent predator have parole terms that include complying with all conditions given by the Virginia Department of Health and Developmental Services and adhering to any treatment plan;²⁸
- hold revocation hearings and revoke a person's parole or postrelease supervision when the person has violated the conditions of parole or postrelease supervision, or when the person is otherwise unfit to be on parole or postrelease supervision;²⁹
- issue final discharges from parole;³⁰
- investigate and report on any commutation of sentence, pardon, reprieve or remission of fine, or penalty when requested by the Governor;³¹
- publish a report of the actions taken by the Board within 30 days of such actions;³² and,
- ensure that each person eligible for parole receives a timely and thorough review of their suitability for release, and provide a basis and the specific reasons for denial in writing to any person who was denied parole.³³

Does the Virginia Parole Board operate under any specific policies or procedures?

Yes. The Board has adopted various policies and procedures to govern its activities. As of August 2022, the Board's policy manual was last updated in 2006,³⁴ while its procedures manual was last updated in 1996.³⁵

How many members are on the Virginia Parole Board and how long are their terms (as of July 31, 2022)?

The Board currently has two full-time and three part-time members.³⁶ The Board may have up to five members who are appointed by the Governor and confirmed by the General Assembly.³⁷ Members do not have set term lengths, as all members serve at the pleasure of the Governor.³⁸

How do the membership and terms of the Virginia Parole Board compare to other states?

The composition, appointment process, and term lengths of parole boards vary across the country. The number of parole board members varies widely across states, ranging from 3 to 21 members, regardless of whether or not a state has abolished parole. In at least 42 states, all parole board members are appointed by the Governor. See Table 6 ("State Comparison: Composition of Parole Boards") for a state-by-state overview of the number of parole board members, how those members are appointed, and the lengths of their terms of service.

Are members of the Virginia Parole Board full-time state employees?

The Chair of the Board is a full-time state employee.³⁹ The Governor may designate up to two additional Board members as full-time state employees.⁴⁰ Any Board member who is not designated a full-time state employee is considered a part-time state employee.⁴¹

How are investigations conducted in Virginia for persons who are eligible for parole?

The Virginia Code requires that an investigation be conducted into a person's history, physical and mental condition, character, conduct, employment, and attitude while in prison before such person can be released on parole.⁴² The investigation, which includes an interview, is conducted by a parole examiner (an employee of the Virginia Parole Board) who prepares a

summary and a parole recommendation “based on [the] facts of the case, institutional adjustment, and impressions gained from the interview.”⁴³

How are cases reviewed in Virginia for persons who are eligible for parole?

The Virginia Parole Board reviews the person’s case file either (i) individually by each Board member or (ii) through discussions by the entire Board.⁴⁴ Several factors are considered by the Board, including but not limited to:

- compatibility with public safety;
- person’s history, conduct, education, training, and institutional experience;
- circumstances of the offense and prior criminal record/parole adjustments;
- person’s attitude toward self and others;
- release plans, employment opportunities, and community resources;
- medical status;
- impressions gained from the parole interview; and,
- input from victims and concerned citizens.⁴⁵

How often is a person’s case reviewed for parole in Virginia?

A person’s case is initially reviewed for parole in the part of the calendar year when that person first becomes eligible for parole, and then annually thereafter until the person is either granted parole or discharged from custody.⁴⁶ However, if the person has 10 or more years remaining on their sentence, the Virginia Parole Board may schedule the next review for up to 3 years later.⁴⁷

What notifications is the Virginia Parole Board statutorily required to provide to victims?

The Virginia Code requires that notification be made to the victim as part of the parole investigation, so that the victim can then choose whether to submit evidence to the Board indicating the impact that a person’s release will have on them.⁴⁸ Upon a written or electronic request by a victim, the Board must provide that victim with notice of (i) the person’s parole eligibility date and mandatory release date, (ii) any parole-related interview dates, and (iii) any decisions the Board makes regarding that person’s parole.⁴⁹ In addition, the victim may request

that they only be notified if the Board is inclined to grant parole, in which case the Board shall allow the victim 45 days to present written or oral testimony.⁵⁰

Can victims receive electronic notifications from the Virginia Parole Board?

Yes. The Board encourages victims to register with the Virginia Department of Corrections Victim Service Unit's NAAVI (Notification and Assistance for Victim Inclusion) system.⁵¹ The NAAVI system is a "notification service that provides victims of crime with information and notification about inmates who are in the custody of the Virginia Department of Corrections using text, phone, email, letter, and/or TTY. Notifications will provide eligible crime victims with status updates of their perpetrator's release, transfer, death, name change, escape, and parole interviews or decisions, if applicable. All information is confidential."⁵²

Prior to the implementation of the NAAVI system in October 2021, the Board encouraged victims to register with the VINE (Victim Information and Notification Everyday) system to receive such notifications.⁵³ Table 2 illustrates data related to parole interview and decision notifications to victims through the VINE system as follows.

Table 2: VINE Parole Interview Notifications, CY2018-CY2020⁵⁴

Calendar Year	Parole Interviews	Parole Decisions
2018	1,627	1,674
2019	1,661	1,486
2020	3,036	1,583

Source: Virginia Parole Board. Table prepared by Crime Commission staff.

Can victims submit information for the Virginia Parole Board to consider when reviewing a person's case for parole?

Yes. Victims, as defined in Va. Code § 19.2-11.01, can present oral or written testimony to the Board on the impact that a person's release will have on them.⁵⁵ If a victim wishes to provide oral testimony, the victim must schedule an in-person meeting or telephone appointment with the Board.⁵⁶ Any information submitted by the victim will remain in the person's case file and must be considered at any subsequent parole reviews.⁵⁷ Table 3 provides data relating to the total number of victims served by and total individuals providing input to the Victim Input Program between CY2018-CY2021.

Table 3: Victim Input Unit Services, CY2018-CY2021⁵⁸

Calendar Year	Total Victims Served	Total Individuals Providing Input
2018	766	425
2019	622	283
2020	481	389
2021*	365	263

Source: Virginia Parole Board. Table prepared by Crime Commission staff.

*CY2021 includes data up to August 31, 2021.

Can victims meet with the Virginia Parole Board before a parole decision is made?

Yes. Upon the request of a victim, the Board or a representative of the Board will schedule a meeting with that victim in-person or via telephone (referred to as a Board appointment). In addition, the Board may meet with family members, friends, employers, attorneys, and other interested parties. Such appointments give individuals an opportunity to present oral or documentary information pertaining to the parole decision. Due to COVID-19 restrictions, Board appointments were held virtually for the majority of 2020 and 2021.⁵⁹ Table 4 provides data on the total number of parole board appointments between CY2018-CY2021.

Table 4: Parole Board Appointments, CY2018-CY2021⁶⁰

Calendar Year	Total Victim Appointments	Total Appointments
2018	98	384
2019	128	439
2020	104	389
2021*	51	227

Source: Virginia Parole Board. Table prepared by Crime Commission staff.

*CY2021 includes data up to August 31, 2021.

Is the Virginia Parole Board statutorily required to notify the Commonwealth's Attorney when a person is being considered for parole?

No. The Board is not required to provide notice to the Commonwealth's Attorney in the jurisdiction where the person was sentenced until after a person has been granted parole.⁶¹ This notification to the Commonwealth's Attorney is only required if the person was sentenced to serve 10 years or more on a felony, or if the person was granted conditional release.⁶²

Do any states have a statutory requirement to notify the prosecutor's office when a person is being considered for parole?

Yes. Staff determined that several states are required by statute to notify the prosecutor's office when a person is being considered for parole, such as Georgia,⁶³ Illinois,⁶⁴ and New Jersey.⁶⁵

Do any states have a statutory requirement to notify anyone other than the victim or the prosecutor's office when a person is being considered for parole?

Yes. Staff identified some states with statutes that require notice to other individuals, such as the court or law enforcement. For example, in West Virginia, the Parole Board is required to notify not only the victim and the prosecutor of the parole review date, but also the sentencing judge and the investigator or arresting officer.⁶⁶

Is the Virginia Parole Board statutorily required to schedule a specific date for a person's parole hearing?

No. The Virginia Code only requires the Board to divide the calendar year into equal parts and then review cases eligible for parole during those parts of the calendar year.⁶⁷

Is the Virginia Parole Board statutorily required to notify the public in advance when a person is being considered for parole?

No. The Virginia Code does not require the Board to notify the public in advance when a person is being considered for parole.⁶⁸

Do any states notify the public in advance of a person's parole hearing date?

Yes. Staff identified several states that list specific upcoming parole hearing dates on their parole board websites.⁶⁹

Does the Virginia Parole Board conduct parole hearings in the presence of the person being considered for parole?

No. The Board does not conduct a parole hearing. Parole decisions are based on a review of the person's case file either (i) individually by each Board member or (ii) through discussions by the entire Board.⁷⁰

Do any states conduct parole hearings in the presence of the person being considered for parole?

Based on staff's review, many states do not specify in statute whether an in-person hearing is required as opposed to an interview of the person by an agent of the parole board, such as a parole examiner. However, staff was able to identify some states with statutes specifying that the parole hearing must be conducted in the presence of the person being considered for parole. For example, Alaska not only allows the person to be present at the parole hearing, but also permits the person to present evidence at the hearing.⁷¹ Similarly, in Nebraska, a portion of the Parole Board will hold a public hearing if it is reasonably likely that a person will be granted parole, and the person is entitled to present evidence, call witnesses, and be represented by counsel.⁷²

Do states that conduct parole hearings in the presence of the person being considered for parole allow any other individuals to present information at the hearing?

Yes. Staff identified various states which specify in statute that the victim is allowed to provide testimony at the parole hearing, such as Connecticut⁷³ and New Hampshire.⁷⁴ In addition, some states, such as Hawaii⁷⁵ and Missouri,⁷⁶ also allow prosecutors to present information at parole hearings.

Are parole hearings in Virginia open to the public?

No. As previously noted, the Virginia Parole Board does not conduct parole hearings in the presence of the person being considered for parole, and thus there is no hearing for the public to observe.⁷⁷

Are parole hearings in any state open to the public?

In 2015, the University of Minnesota's Robina Institute of Criminal Law and Criminal Justice sent a survey to each state's paroling authority as part of its work on the *Parole Release and Revocation Project*.⁷⁸ In response to this survey, 24 of 40 respondents advised that parole hearings in their state are open to the public.⁷⁹ Staff also identified several states, including Connecticut, Idaho, Iowa, Louisiana, Michigan, New Hampshire, and Vermont, that allowed the

public to view parole hearings virtually during the COVID-19 pandemic.⁸⁰ In addition, some states, such as Oregon, allow the public to attend parole hearings.⁸¹

How many Virginia Parole Board member votes are required to grant parole?

Generally, three votes are required from Board members to grant parole; however, four votes are required when a person has received a life sentence for first degree murder.⁸²

Are the votes of Virginia Parole Board members publicly available?

The individual votes of Board members are publicly available through the Virginia Freedom of Information Act;⁸³ however, these votes are not required to be published in the 30-day report of activities published by the Board.⁸⁴

Who is statutorily required to be notified if a person is granted parole in Virginia?

If a person is granted parole, the Virginia Parole Board must notify the Virginia Department of Corrections and the victim of the crime, if such victim has requested to be notified.⁸⁵ In addition, if the person granted parole was sentenced to serve 10 years or more on a felony, or if the person was granted conditional release, then the Board must also notify the Commonwealth's Attorney in the jurisdiction where the person was sentenced.⁸⁶ Furthermore, the Board publishes a 30-day report of its activities, including decisions to grant or deny parole, on its agency website.⁸⁷

Are reasons provided when a person is granted parole in Virginia?

Yes. The Virginia Code was amended in 2021 to require the Virginia Parole Board to include the basis for granting parole in its 30-day report.⁸⁸

Are reasons provided when a person is denied parole in Virginia?

Yes. The Virginia Parole Board is required to provide the basis and specific reasons for denial in writing to the person who was denied parole.⁸⁹ The Board's reasons for denial may include: more time to serve, conviction of a new crime while incarcerated, crimes committed, extensive criminal record, history of substance abuse, history of violence, further participation in institutional work and/or educational programs, poor institutional adjustment, prior failure under community supervision, record of major institutional infractions – not ready to conform

to society, risk to the community, serious disregard for property rights of others, serious nature and circumstances of the crime, or longer period of stable adjustment.⁹⁰

Can a person request reconsideration of the Virginia Parole Board's decision to deny parole in their case?

Yes. The person who was denied parole may request reconsideration of the decision.⁹¹ In order to qualify for reconsideration, there must be significant new information not previously reviewed by the Board or significant errors in information considered or in the application of policies and procedures. A person is allowed one reconsideration per parole denial. There were 601 reconsideration requests in CY2018,⁹² 372 reconsideration requests in CY2019,⁹³ and 566 reconsideration requests in CY2020.⁹⁴

Does the Virginia Parole Board make the decision whether to revoke a person's parole?

Yes. The Board may revoke the parole of persons found to be in violation of the terms of their release.⁹⁵ Parole violations are characterized based on whether they were the result of a new crime being committed, or if the violation was technical in nature. When collecting data, only state responsible parole revocations are tracked for new crime versus technical violations.⁹⁶

Table 5 provides information on the status of parole violation cases between CY2018-CY2021.

Table 5: Parole Violation Cases, CY2018-CY2021⁹⁷

Calendar Year	Cases Revoked	Cases Continued on Parole	Cases Discharged	Total Cases Reviewed
2018	170	75	20	265
2019	103	59	36	198
2020	59	22	11	92
2021*	79	37	14	130

Source: Virginia Parole Board. Table prepared by Crime Commission staff.

*CY2021 includes data up to August 31, 2021.

Does the Virginia Department of Corrections (VADOC) have any duties related to parole?

Yes. The Virginia Code specifically requires the Director of the VADOC to:

- direct and supervise the work of all probation and parole officers;⁹⁸
- carry out or cause to be carried out all orders, rules, and regulations of the Virginia Parole Board;⁹⁹ and,
- coordinate all VADOC activities that relate to parole with the Virginia Parole Board.¹⁰⁰

In addition, the Virginia Code also requires the VADOC to:

- grant Virginia Parole Board members and their representatives access to prisoners who are eligible for parole;¹⁰¹
- furnish reports to Virginia Parole Board members on a prisoner's character and conduct;¹⁰²
- ensure that educational, vocational, counseling, substance abuse, rehabilitative, and reentry services are available at all probation and parole offices;¹⁰³ and,
- supervise persons released on parole or postrelease supervision and perform various duties related to that supervision.¹⁰⁴

Table 6: State Comparison: Composition of Parole Boards

STATE ¹⁰⁵	Number of Board Members	Who Appoints Members? ¹⁰⁶	Term Limits
ALABAMA	3	Governor^	6 years
ALASKA	5	Governor^	6 years
ARIZONA*	5	Governor	5 years
ARKANSAS	7	Governor^	7 years
CALIFORNIA*	21	Governor^	3 years
COLORADO	9	Governor^	3 years
CONNECTICUT	10 full-time <u>and</u> up to 5 part-time	Governor^	Concurrent w/ Governor
DELAWARE*	5	Governor^	4 years
FLORIDA*	3	Governor	6 years
GEORGIA	5	Governor^	7 years
HAWAII	5	Governor^	4 years
IDAHO	7	Governor^	3 years
ILLINOIS*	15	Governor^	6 years
INDIANA*	5	Governor^	4 years
IOWA	5 members <u>and</u> 3 alternates	Governor	4 years
KANSAS*	3	Secretary of Corrections	At the pleasure of the Secretary of Corrections
KENTUCKY	9	Governor	4 years
LOUISIANA	5 members <u>and</u> 2 at-large <u>and</u> 1 ex officio	Governor	Concurrent w/ Governor
MAINE*	5	Governor	4 years
MARYLAND	10	Secretary of Public Safety ¹⁰⁷	6 years
MASSACHUSETTS	7	Governor ¹⁰⁸	5 years
MICHIGAN	10	Director of the Dept. of Corrections	4 years
MINNESOTA*	<i>Parole Board abolished; the Corrections Commissioner makes parole determinations.</i>		
MISSISSIPPI	5	Governor	None
MISSOURI	7	Governor^	6 years
MONTANA	5	Governor	6 years
NEBRASKA	5	Governor	6 years
NEVADA	7	Governor	4 years

STATE ¹⁰⁵	Number of Board Members	Who Appoints Members? ¹⁰⁶	Term Limits
NEW HAMPSHIRE	5	Governor	5 years
NEW JERSEY	15 members <u>and</u> 3 alternates	Governor	6 years
NEW MEXICO*	15	Governor^	6 years
NEW YORK	Not more than 19	Governor	6 years
NORTH CAROLINA*	4	Governor	4 years
NORTH DAKOTA	6	Governor	3 years
OHIO*	Up to 12	Director of the Dept. of Corrections (upon consult with Governor)	6 years
OKLAHOMA	5	3 by Governor 1 by Chief Justice of Supreme Court 1 by presiding judge of Court of Appeals	Coterminous w/ Governor
OREGON*	At least 3, but not more than 5	Governor	4 years
PENNSYLVANIA	9	Governor^	6 years
RHODE ISLAND	7	Governor	3 years
SOUTH CAROLINA	7	Governor^	6 years
SOUTH DAKOTA	9	3 by Governor^ 3 by Attorney General^ 3 by Supreme Court^	4 years
TENNESSEE	7	Governor	6 years
TEXAS	7	Governor^	6 years
UTAH	5 full-time members, <u>and</u> not more than 5 pro tempore	Governor^	5 years
VERMONT	5 members <u>and</u> 2 alternates	Governor^	3 years
VIRGINIA*	Up to 5 (chair and 2 members may be full-time)	Governor^	At the pleasure of the Governor
WASHINGTON*	5	Governor^	5 years
WEST VIRGINIA	9	Governor^	6 years
WISCONSIN*	4	Governor appoints chair; members hired under the civil service system ¹⁰⁹	Chair only: 2 years
WYOMING	7	Governor^	6 years

Table prepared by Crime Commission staff based on legal analysis as of July 2022. Note: a (*) denotes the 16 states that abolished discretionary parole for present-day offenses. A (^) denotes states where parole board appointments are subject to confirmation by the legislature.

COMMON QUESTIONS ABOUT PAROLE

What types of parole exist across the United States?

Various types of parole exist across the country. Staff focused its review on the following six types of parole: discretionary, geriatric, medical, terminally ill, juvenile, and youthful offender. See Table 7 (“Availability of Parole Across the United States”) for a breakdown of the types of parole in each state.

How many states have discretionary parole?

Every state has some form of discretionary parole available for certain offenses. A total of 34 states have discretionary parole for present-day offenses; however, 16 states, including Virginia, abolished discretionary parole for offenses committed after a specific past date. See the overview sheet titled “Research Findings: Discretionary Parole” for more detailed information.

Have any states abolished and subsequently reinstated discretionary parole?

Staff identified at least three states that abolished and then reinstated discretionary parole; however, staff was unable to determine the impacts of such abolition or reinstatement due to a lack of available research on this topic. These three states include:¹¹⁰

- Colorado: abolished discretionary parole in 1979 with the establishment of determinate sentencing; reinstated discretionary parole in 1985.¹¹¹
- Connecticut: abolished discretionary parole in 1981 with the establishment of determinate sentencing; reinstated discretionary parole in 1990.¹¹²
- Mississippi: abolished discretionary parole in 1995 with the establishment of truth-in-sentencing; began reinstating discretionary parole in a limited fashion in 2001 to address prison overcrowding.¹¹³

How many states have geriatric parole?

At least 12 states, including Virginia, have geriatric parole. In addition, another 9 states have laws which treat a person’s age as a qualifying condition, in conjunction with a disease or illness, for purposes of medical parole. See the overview sheet titled “Research Findings: Geriatric Parole” for more detailed information.

How many states have medical parole?

At least 36 states, excluding Virginia, have medical parole for persons who may or may not have a terminal medical condition. See the overview sheet titled “Research Findings: Medical and Terminally Ill Parole” for more detailed information.

How many states have terminally ill parole?

At least four states, including Virginia, have laws which provide that a terminal illness is the *only* medical condition that makes a person eligible for parole for a health-related reason. See the overview sheet titled “Research Findings: Medical and Terminally Ill Parole” for more detailed information.

How many of the states that abolished discretionary parole have enacted statutes for juvenile parole?

Staff examined the 16 states that abolished discretionary parole and found that at least 6 states, including Virginia, have enacted laws that make persons who committed a criminal offense as a juvenile eligible for parole. See the overview sheet titled “Research Findings: Juvenile and Youthful Offender Parole in the 16 States that Abolished Discretionary Parole” for more detailed information.

How many of the states that abolished discretionary parole have enacted statutes for youthful offender parole?

Staff examined the 16 states that abolished discretionary parole and found that at least 3 states, including Virginia, have enacted laws that make youthful offenders eligible for parole. See the overview sheet titled “Research Findings: Juvenile and Youthful Offender Parole in the 16 States that Abolished Discretionary Parole” for more detailed information.

Does Virginia have any other mechanisms aside from parole that allow a person to be released from incarceration prior to the completion of their sentence?

Yes. Virginia law includes a variety of mechanisms aside from parole that allow for a person’s release from incarceration prior to the completion of their sentence, such as earned sentence credits,¹¹⁴ conditional pardons,¹¹⁵ COVID-19 release (expired 7-1-2021),¹¹⁶ sentence modification for persons sentenced to jail,¹¹⁷ and substantial assistance to the prosecution.¹¹⁸

See the overview sheets titled “Earned Sentence Credits in Virginia,” “Conditional Pardons in Virginia,” and “COVID-19 Releases in Virginia (Expired 7-1-2021)” for more detailed information.

In Virginia, are the convictions that will exclude a person from being eligible for early release from incarceration consistent across the different types of parole and early release mechanisms?

No. The convictions that will exclude a person from being eligible for early release from incarceration vary significantly across the different types of parole and early release mechanisms. See *Appendix F* titled “Statutory Exclusions Across Early Release Mechanisms in Virginia.”

Has Virginia made any recent changes that may impact criminal sentencing?

Yes. In 2020, the General Assembly passed legislation to repeal mandatory jury sentencing.¹¹⁹ In addition, the General Assembly enacted legislation in 2021 to limit sentence lengths on technical probation violations.¹²⁰ Furthermore, while not statutory in nature, the Virginia Criminal Sentencing Commission modified the low end of the sentencing guidelines in 2020 if the court finds substantial assistance, acceptance of responsibility, or expression of genuine remorse on the part of the defendant.¹²¹ See *Appendix G* titled “Recent Changes to Sentencing in Virginia” for more detailed information.

Table 7: Availability of Parole Across the United States

State ¹²²	Discretionary Parole?	Geriatric Parole?	Medical or Terminally Ill Parole? ¹²³	Juvenile Parole ¹²⁴	Youthful Offender Parole ¹²⁵
Alabama	Yes	No	Yes	-	-
Alaska	Yes	Yes	Yes	-	-
Arizona*	No	No	No	Yes	No
Arkansas	Yes	No	Yes	-	-
California*	No	Yes	Yes	Yes	Yes
Colorado	Yes	Yes	Yes	-	-
Connecticut	Yes	No	Yes	-	-
Delaware*	No	No	No	No	No
Florida*	No	No	Yes	No	No
Georgia	Yes	Yes	Yes^	-	-
Hawaii	Yes	No	Yes	-	-
Idaho	Yes	No	Yes	-	-
Illinois*	No	No	Yes	No	Yes
Indiana*	No	No	No	No	No
Iowa	Yes	No	No	-	-
Kansas*	No	No	Yes	No	No
Kentucky	Yes	No	Yes	-	-
Louisiana	Yes	Yes	Yes	-	-
Maine*	No	No	Yes	No	No
Maryland	Yes	Yes	Yes	-	-
Massachusetts	Yes	No	Yes	-	-
Michigan	Yes	No	Yes	-	-
Minnesota*	No	No	Yes^	No	No
Mississippi	Yes	Yes	Yes	-	-
Missouri	Yes	No	Yes	-	-
Montana	Yes	No	Yes	-	-
Nebraska	Yes	No	Yes	-	-
Nevada	Yes	Yes	Yes	-	-
New Hampshire	Yes	No	Yes	-	-
New Jersey	Yes	No	Yes	-	-
New Mexico*	No	No	Yes	No	No

State ¹²²	Discretionary Parole?	Geriatric Parole?	Medical or Terminally Ill Parole? ¹²³	Juvenile Parole ¹²⁴	Youthful Offender Parole ¹²⁵
New York	Yes	No	Yes^	-	-
North Carolina*	No	No	Yes	No	No
North Dakota	Yes	No	Yes	-	-
Ohio*	No	No	No	Yes	No
Oklahoma	Yes	Yes	Yes	-	-
Oregon*	No	No	Yes	Yes	No
Pennsylvania	Yes	No	No	-	-
Rhode Island	Yes	No	Yes	No	No
South Carolina	Yes	No	Yes	-	-
South Dakota	Yes	Yes	Yes	-	-
Tennessee	Yes	No	No	-	-
Texas	Yes	Yes	Yes	-	-
Utah	Yes	No	Yes	-	-
Vermont	Yes	No	Yes	-	-
Virginia*	No	Yes	Yes^	Yes	Yes
Washington*	No	No	No	Yes	No
West Virginia	Yes	No	No	-	-
Wisconsin*	No	No	No	No	No
Wyoming	Yes	No	Yes	-	-

Table prepared by Crime Commission staff based on legal analysis as of July 2022. Note: a (*) denotes the 16 states that abolished discretionary parole for present-day offenses.

DISCRETIONARY PAROLE IN VIRGINIA – GENERALLY

Authority: [Va. Code § 53.1-151](#) *et. seq.*

Exclusions:

- Any person incarcerated for a felony offense committed on or after January 1, 1995;¹²⁶
- Various exclusions set forth in Va. Code § 53.1-151;¹²⁷ and,
- Any person convicted under the Three Strikes Law.¹²⁸

Parole Determination:

- Persons eligible for discretionary parole do not have to petition for consideration. These individuals' cases are automatically reviewed by the Parole Board, and a determination is made whether to grant or deny parole.¹²⁹

Table 8: Time Served Requirements Prior to Parole Eligibility¹³⁰

Number of Commitments to VADOC	Eligible After Serving:
First commitment	¼ of term (maximum of 12 years)
First commitment for first degree murder or specific sex crimes	⅔ of term (maximum of 14 years)
Second commitment	⅓ of term (maximum of 13 years)
Second or subsequent commitment for first degree murder or specific sex crimes	¾ of term (maximum of 15 years)
Third commitment	½ of term (maximum of 14 years)
Fourth or subsequent commitment	¾ of term (maximum of 15 years)
First life sentence	15 years
First life sentence for a Class I Felony or first degree murder of a child under the age of 8	25 years
Second or subsequent life sentence	20 years
Second or subsequent life sentence for a Class I felony	30 years

Table prepared by Crime Commission staff based on legal analysis as of July 2022.

Frequency of Review:

- The Parole Board must conduct an initial review in the part of the calendar year when a person first becomes eligible for parole.¹³¹
- If parole is not granted, a review must be conducted annually; however, the Parole Board may schedule the next review for up to three years later if the person has 10 years or more remaining on their sentence.¹³²

Discretionary Parole in Virginia – Generally (cont.)

Applicability of Sentence Reduction Credits:

- The conviction date or offense date determines whether sentence reduction credits can be applied to reduce a person’s parole eligibility date:¹³³
 - *Good conduct time* (convicted before 7/1/81): All of the credits can be applied to reduce the parole eligibility date.¹³⁴
 - *Good conduct allowance* (convicted 7/1/81 – 12/31/94): One-half of the credits can be applied to reduce the parole eligibility date.¹³⁵
 - *Earned sentence credits* (offense committed 12/31/94 or later): None of the credits can be applied to reduce the parole eligibility date.¹³⁶

Data:

- There were 1,536 persons eligible for discretionary parole as of July 31, 2022.¹³⁷

Table 9: Discretionary Parole - Cases Considered, Granted, and Grant Rate CY2018-CY2021¹³⁸

Calendar Year	Total Cases Considered	Total Granted	Grant Rate
2018	2,371	257	11%
2019	2,109	159	8%
2020	2,071	252	12%
2021*	1,477	113	8%

Source: Virginia Parole Board. Table prepared by Crime Commission staff. *CY2021 includes data up to September 30, 2021.

DISCRETIONARY PAROLE IN VIRGINIA – *FISHBACK V. COMMONWEALTH*¹³⁹

Authority: [Va. Code § 53.1-165.1\(B\)](#) (effective April 22, 2020)

Eligibility:

- Any person sentenced by a jury prior to June 9, 2000, for any felony offense committed on or after January 1, 1995, who remained incarcerated for such offense on July 1, 2020, where the jury was not instructed that parole had been abolished in Virginia.¹⁴⁰

Exclusions:

- Any conviction for a Class 1 felony; and,
- Any conviction for one of the following sex offenses where the victim was a minor: rape; forcible sodomy; object sexual penetration; aggravated sexual battery; an attempt to commit one of the four previously listed sex offenses; or, carnal knowledge.¹⁴¹

Decision Process:

- Persons eligible for discretionary parole under *Fishback v. Commonwealth* do not have to petition for consideration. These individuals' cases are automatically reviewed by the Parole Board, and a determination is made whether to grant or deny parole.¹⁴²

Data:

- There were approximately 195 persons eligible for discretionary parole under the *Fishback* legislation as of July 31, 2022.¹⁴³
- Between January 1, 2021, and September 30, 2021, the Virginia Parole Board made 194 decisions on persons eligible for *Fishback* discretionary parole. The Board granted discretionary parole to 30 of these persons, which was a 15% grant rate.¹⁴⁴

DISCRETIONARY PAROLE IN VIRGINIA – MISDEMEANORS

Authority: [Va. Code § 53.1-153](#)

Eligibility:

- Any person convicted of multiple misdemeanors and sentenced to serve an active jail term of 12 or more months for offenses committed prior to July 1, 2008.¹⁴⁵

Exclusions:

- Various exclusions set forth in Va. Code § 53.1-151.¹⁴⁶

Decision Process:

- Persons eligible for discretionary parole do not have to petition for consideration. These individuals' cases are automatically reviewed by the Parole Board, and a determination is made whether to grant or deny parole.¹⁴⁷

Data:

- Staff does not have any data on the number of persons eligible for discretionary parole solely for misdemeanor offenses.

Research Findings: Discretionary Parole (*as of July 2022*):

Sixteen (16) states abolished discretionary parole, but maintain its use for past offenses committed prior to the date that parole was abolished.

- Arizona, California,¹⁴⁸ Delaware, Florida, Illinois, Indiana, Kansas, Maine, Minnesota, New Mexico, North Carolina, Ohio, Oregon, Virginia, Washington, and Wisconsin.

Thirty-four (34) states have discretionary parole for present-day offenses.

- Alabama, Alaska, Arkansas, Colorado, Connecticut, Georgia, Hawaii, Idaho, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, West Virginia, and Wyoming.

Of the thirty-four (34) states with discretionary parole for present-day offenses, fourteen (14) states do not exclude any specific offenses or sentence types from parole eligibility in their parole statutes.¹⁴⁹

- Colorado, Hawaii, Idaho, Iowa, Kentucky, Maryland, Montana, Nebraska, Nevada, North Dakota, Oklahoma, Rhode Island, Utah, and Vermont.

Three (3) of the thirty-four (34) states that have discretionary parole for present-day offenses previously abolished parole for a period of time.

- Colorado: abolished discretionary parole in 1979 with the establishment of determinate sentencing; reinstated in 1985.¹⁵⁰
- Connecticut: abolished discretionary parole in 1981 with the establishment of determinate sentencing; reinstated in 1990.¹⁵¹
- Mississippi: abolished discretionary parole in 1995 with the establishment of truth-in-sentencing; began reinstating in a limited fashion in 2001 to address prison overcrowding.¹⁵²

Time served requirements before a person is eligible for parole vary widely across the thirty-four (34) states that have discretionary parole for present-day offenses. These time served requirements can vary even further based upon the type of offense, such as violent offenses or violent sex offenses as compared to nonviolent offenses.

Table 10: State Comparison: Discretionary Parole

State ¹⁵³	Time Served Requirements Prior to Parole Eligibility ¹⁵⁴	Statutory Exclusions ¹⁵⁵
Alabama	<p>Persons eligible for Good Conduct Time: varies based on sentence length</p> <ul style="list-style-type: none"> – <u>Less than 5 years:</u> parole hearing scheduled immediately – <u>Sentence of 5-10 years:</u> parole hearing scheduled 18 months before the minimum release date – <u>Sentence of 10-15 years:</u> parole hearing scheduled 30 months before the minimum release date <p>Persons not eligible for Good Conduct Time: one-third of sentence or 10 years, whichever is less</p> <p>Class A felonies: 85% of sentence or 15 years, whichever is less</p>	<p>Offense exclusions:</p> <ul style="list-style-type: none"> – Murder, rape, robbery, or assault with a deadly weapon resulting in serious injury to another if convicted of another felony (serious injury) within last 5 yrs. – Sex offense involving a child (class A or B felony) <p>Sentence exclusions:</p> <ul style="list-style-type: none"> – Life sentence for a second conviction of a class A felony
Alaska	<p>General eligibility: one-fourth of active term, mandatory minimum, or term set by judge, whichever is greater</p> <p>First or second degree murder: two-thirds of active term or mandatory minimum, whichever is greater</p> <p>Class A felonies, certain class B felonies, certain class C felonies, and specified sex offenses: entire active term of imprisonment required by three-judge panel</p> <ul style="list-style-type: none"> – The parole board must determine that the prisoner has completed all court-ordered rehabilitation programs and would no longer constitute a danger to the public <p>Other violent felonies: one-half of active sentence or term set by judge, whichever is greater</p> <p>Enhanced sentence (aggravation and mitigation): must serve the un-aggravated portion of the sentence, minus good time earned, <u>plus</u> one-fourth of the aggravated portion of the term</p>	<p>Offense exclusions (unless judge allows parole as part of sentence):</p> <ul style="list-style-type: none"> – Class A felonies – Certain class B felonies – Specified sex offenses <p>Sentence exclusions:</p> <ul style="list-style-type: none"> – Mandatory 99-year term – Definite term
Arizona	Abolished in 1994	
Arkansas	<p>General eligibility: one-third to one-half of sentence</p> <ul style="list-style-type: none"> – Determined at sentencing based on seriousness of crime¹⁵⁶ 	<p>Sentence exclusions:</p> <ul style="list-style-type: none"> – Life
California	Abolished in 1977¹⁵⁷	

State ¹⁵³	Time Served Requirements Prior to Parole Eligibility ¹⁵⁴	Statutory Exclusions ¹⁵⁵
Colorado	<p>Class 2-6 felony, Level 1-4 drug felony, or unclassified felony: 50% of sentence</p> <p>Second degree murder; first degree assault; first degree kidnapping (unless Class 1 felony); first degree arson; first degree burglary; and/or aggravated burglary: 75% of sentence</p> <p>Felony sex offense(s): parole eligibility date varies</p> <ul style="list-style-type: none"> – Based on offense and criminal history <p>Life sentence: must serve a minimum of 40 years</p>	<i>No exclusions set forth in state parole statutes</i>
Connecticut	<p>Indeterminate sentence: minimum term imposed by the court</p> <p>Definitive sentence (nonviolent): 50% of sentence</p> <p>Definitive sentence for manslaughter; aggravated assault; strangulation; sexual assault; stalking; kidnapping; breaking and entering; robbery; arson; assault on law enforcement; and/or riot in correctional facility: 85% of definitive sentence</p> <p>Life sentence: minimum term imposed by the court</p>	<p>Offense exclusions:</p> <ul style="list-style-type: none"> – Capital felony – Murder with special circumstances – Felony murder – Arson murder – First degree aggravated sexual assault – Specific sex offenses
Delaware	Abolished in 1990	
Florida	Abolished in 1983	
Georgia	<p>General eligibility for misdemeanor offenses: after 6 months or one-third of sentence, whichever is greater</p> <p>General eligibility for felony offenses: after 9 months or one-third of sentences, whichever is greater</p> <p>Purchase, possession, manufacture, distribution, or sale of controlled substances or marijuana: after 6 years</p> <p>Aggregating 21 years or more sentence: after 7 years</p> <p>Sentence of 12 years up to life: after 12 years</p> <p>Life sentence: after 30 years</p> <p>Consecutive life sentences: after 60 years</p>	<p>Offense exclusions:</p> <ul style="list-style-type: none"> – First convictions for serious violent felonies with a variety of exceptions¹⁵⁸ <p>Other exclusions:</p> <ul style="list-style-type: none"> – Persons convicted of fourth felony offense
Hawaii	<p>General eligibility: after serving the minimum term</p> <p>Minimum term set by parole board: the parole board determines the minimum term of an indeterminate or extended term of imprisonment.</p> <p>Life without parole: 20 years</p> <ul style="list-style-type: none"> – The governor makes the final decision to deny or grant parole 	<i>No exclusions set forth in state parole statutes</i>
Idaho	General Eligibility: minimum term set by judge	<i>No exclusions set forth in state parole statutes</i>
Illinois	Abolished in 1978	

State ¹⁵³	Time Served Requirements Prior to Parole Eligibility ¹⁵⁴	Statutory Exclusions ¹⁵⁵
Indiana	Abolished in 1977	
Iowa	<p>General eligibility: minimum term set by judge</p> <p>First degree arson; first degree robbery; second degree robbery: between one-half and seven-tenths of maximum term</p> <p>Child endangerment: between three-tenths and seven-tenths of maximum term</p> <p>Attempted murder; DUI vehicular homicide; second degree murder; second degree sex abuse; and second degree kidnapping: court determines eligibility date</p>	<i>No exclusions set forth in state parole statutes</i>
Kansas	Abolished in 1993	
Kentucky	<p>The initial eligibility review is based on sentence length:</p> <ul style="list-style-type: none"> – <u>Up to a 23 month sentence:</u> review after serving 4 months – <u>2 years - 39 years sentence:</u> review after serving 20% – <u>Sentence of more than 39 years:</u> review after 8 years <p>Non-violent offender convicted of a class D felony with an aggregate sentence of 1-5 years: 15% or 2 months, whichever is longer</p> <p>Persistent felony offender in conjunction with a Class A, B, or C felony: 10 years</p> <p>Violent offenses listed in 501 Ky. Admin. Regs. 1:030: 85% of term or 20 years, whichever is less</p> <p>Life sentence: minimum term or 20 years (if no minimum term)</p> <p>Aggravated trafficking of a controlled substance: 50% of term¹⁵⁹</p>	<i>No exclusions set forth in state parole statutes</i>

State ¹⁵³	Time Served Requirements Prior to Parole Eligibility ¹⁵⁴	Statutory Exclusions ¹⁵⁵
Louisiana	<p>General eligibility: after serving 25% of sentence</p> <p>Violent offense and no prior convictions for a crime of violence or sex offense: after serving 65% of sentence</p> <p>Sex offense (first or second conviction); second conviction for crime of violence: after serving 75% of sentence</p> <p>Life sentences:</p> <ul style="list-style-type: none"> – If under 18 at the time of the offense and sentenced to life: after serving 30 years, <u>except</u> those who were: <ul style="list-style-type: none"> ▪ Convicted of first or second degree murder and indicted prior to 8/1/17: after serving 25 years ▪ Convicted of second degree murder and indicted on or after 8/1/17: after serving 25 years – Life sentence, with or without parole, and has not been convicted of a crime of violence as defined by La. Rev. Stat. Ann. 14:2(B) or a sex offense as defined by La. Rev. Stat. Ann. 15:541: <ul style="list-style-type: none"> ▪ If 18 - 24 years old at sentencing: after serving 25 years ▪ If 25 - 34 years old at sentencing: after serving 20 years ▪ If 35 - 49 years old at sentencing: after serving 15 years ▪ If 50+ years old at sentencing: after serving 10 years – Production, manufacturing, distribution, or dispensing or possessing with intent to produce, manufacture, or distribute heroin: after 15 years 	<p>Sentence exclusions:</p> <ul style="list-style-type: none"> – Sentenced as a serial sexual offender – Third or subsequent conviction for a crime of violence or sex offense. – Third or subsequent felony conviction when the third felony and any two of the prior felonies are for violence, sex offense, violation of dangerous substance law, or any offense punishable by imprisonment for 12 years
Maine	Abolished in 1976	
Maryland	<p>General eligibility: one-fourth of aggregate term</p> <p>Violent offenses: after serving one-half of sentence for the violent crimes, <u>or</u> after serving one-fourth of total aggregate sentence</p> <p>Life sentence for:</p> <ul style="list-style-type: none"> – Offenses committed before 10/1/21: after serving 15 years – Offenses committed after 10/1/21: after serving 25 years – First degree murder under Md. Code Ann., Crim. Law §§ 2-303 or 2-304: after serving 25 years 	<p><i>No exclusions set forth in state parole statutes</i></p>

State ¹⁵³	Time Served Requirements Prior to Parole Eligibility ¹⁵⁴	Statutory Exclusions ¹⁵⁵
Massachusetts	<p>General Eligibility: minimum term imposed by court</p> <p>Previously twice convicted of a felony for a term not less than 3 years (except for crimes listed under Mass. Gen. Laws ch. 279, § 25(b)): two-thirds of maximum sentence</p> <p>Life Sentence for second degree murder or life sentence for first degree murder committed when 14-18 years of age: minimum term fixed by the court¹⁶⁰</p>	<p>Sentence exclusions:</p> <ul style="list-style-type: none"> – Life sentence for first degree murder (committed after age 18) – Convicted two times previously of violent offenses listed under Mass. Gen. Laws ch. 279, § 25(b)) – Serving multiple life sentences for separate & distinct incidents
Michigan	<p>General Eligibility: minimum term imposed by court</p> <p>Life Sentence: dependent on crime type and crime date (ranging from 10-20 years)</p> <ul style="list-style-type: none"> – Sentencing judge can object to release 	<p>Sentence exclusions:</p> <ul style="list-style-type: none"> – Life sentence for first degree murder
Minnesota	Abolished in 1982	
Mississippi	<p>Nonviolent crimes and non-habitual drug offenses: 25% or 10 years, whichever is less</p> <p>Violent crimes without a weapon: 50% or 20 years, whichever is less</p> <p>Robbery with a deadly weapon; drive by shooting; carjacking: 60% or 25 years, whichever is less</p> <p>Life Sentence: 10 years</p>	<p>Offense exclusions</p> <ul style="list-style-type: none"> – Capital murder – Sex offender as defined in Miss. Code Ann. § 45-33-23 – First degree murder – Second degree murder – Human trafficking – Drug trafficking (aggravated trafficking) <p>Sentence exclusions:</p> <ul style="list-style-type: none"> – Habitual offender
Missouri	<p>General eligibility: statutory minimums</p> <ul style="list-style-type: none"> – If no statutory minimums, the minimum eligibility requirements may be established by Parole Board policy. <p>Offense(s) committed prior to the age of 18:</p> <ul style="list-style-type: none"> – Sentenced to 15 or more years for an offense other than first degree or capital murder: after serving 15 years <p>Life without parole before 8/28/16: after serving 25 years</p> <p>Life or a term of 30 to 40 years for first degree murder after 8/28/16: after serving 25 years</p>	<p>Offense exclusions:</p> <ul style="list-style-type: none"> – First degree murder¹⁶¹ – Persistent sexual offender¹⁶² – Tampering with a victim or witness¹⁶³
Montana	<p>General eligibility: one-fourth of full term</p> <p>Life sentence: 30 years</p>	<i>No exclusions set forth in state parole statutes</i>

State ¹⁵³	Time Served Requirements Prior to Parole Eligibility ¹⁵⁴	Statutory Exclusions ¹⁵⁵
Nebraska	General eligibility: one-half of minimum term, unless mandatory minimum	<i>No exclusions set forth in state parole statutes</i>
Nevada	General eligibility: after serving minimum term imposed Under 18 years old at the time of the offense: <ul style="list-style-type: none"> – If offense resulted in the death of the victim: after serving 15 years – If offense <u>did not</u> result in the death of the victim: after serving 20 years 	<i>No exclusions set forth in state parole statutes</i>
New Hampshire	General eligibility: minimum portion of sentence plus any “disciplinary period” of incarceration a judge has imposed ¹⁶⁴ Life sentence (for crimes other than first degree murder): may be given a life permit at any time after having served 18 years plus any disciplinary period added by the judge <ul style="list-style-type: none"> – <u>Exception:</u> murder which was psycho-sexual in nature and committed prior to April 15, 1974 must serve 40 years 	Offense exclusions: <ul style="list-style-type: none"> – 1st degree murder Sentence exclusions: <ul style="list-style-type: none"> – Life sentence for persons previously convicted of 2 or more felonious sexual assaults
New Jersey	General eligibility: judicial or statutory mandatory minimum term <ul style="list-style-type: none"> – If no mandatory minimum: one-third of the sentence Second offense: one-third of maximum sentence Third offense: one-half of maximum sentence Fourth offense: two-thirds of maximum sentence Controlled Dangerous Substance: one-third of sentence Life sentence: minimum term or 25 years if no minimum term Offense where aggravating factors substantially outweigh the mitigating factors: the court may fix a term up to one-half of maximum	Offense exclusions: <ul style="list-style-type: none"> – Homicide of a peace officer – Homicide of a child under 14 – Aggravated homicide – Numerous crimes listed under “No Early Release Act”¹⁶⁵
New Mexico	Abolished in 1979	
New York	Indeterminate sentence: after the expiration of the minimum or aggregate minimum period of the sentence(s)	Sentence exclusions: <ul style="list-style-type: none"> – Definite sentence
North Carolina	Abolished in 1994	
North Dakota	General eligibility: determined by the Parole Board Violent offenses: minimum term ¹⁶⁶ Life for a class AA felony: 30 years ¹⁶⁷	<i>No exclusions set forth in state parole statutes</i>
Ohio	Abolished in 1996	
Oklahoma	Offenses committed after 11/01/18: one-fourth of sentence Offenses committed between 7/1/98 and 11/01/18: one-third of sentence Felony offenses listed under Okla. Stat. tit. 21, § 13.1: 85% of imposed sentence <ul style="list-style-type: none"> – Not eligible for other sentence credits 	<i>No exclusions set forth in state parole statutes</i>
Oregon	Abolished in 1989	

State ¹⁵³	Time Served Requirements Prior to Parole Eligibility ¹⁵⁴	Statutory Exclusions ¹⁵⁵
Pennsylvania	General Eligibility: minimum term of imprisonment	Sentence exclusions: – Life sentence
Rhode Island	General eligibility: one-third of sentence Habitual criminal: minimum term of imposed sentence First degree or second degree murder after 7/1/15: 50% of sentence Life sentence: varies from 10 - 25 years	<i>No exclusions set forth in state parole statutes</i>
South Carolina	General eligibility for non-violent offenses: one-fourth of sentence General eligibility for violent offenses: one-third of sentence Second degree sexual exploitation of a minor; participating in prostitution of a minor: after 2 years Convicted of offense against household member, but can be identified as a victim of prior domestic abuse suffered at the hands of household member: after one-fourth of sentence ¹⁶⁸ Life sentence or 40+ year sentence: 10 years	Offense exclusions: – A, B, or C felony – Offense exempt from classification (S.C. Code Ann. § 16-1-10 (D)) Sentence exclusions: – Second or subsequent conviction for a violent crime
South Dakota	General Eligibility: based on felony class, number of prior felony convictions, and whether the offense was violent or non-violent	Sentence exclusions: – Life sentence
Tennessee	Especially mitigated offender: eligible after serving 20% or 30% (specified in court order; if not specified then after 20%) Range I standard offender: eligible after 30% Range II standard offender: eligible after 35% Range III persistent offender: eligible after serving 45% Career offender: eligible after serving 60%: Aggravated vehicular homicide: eligible after 60% Aggravated assault resulting in death; carjacking: eligible after 75% Attempted first degree murder; aggravated burglary; aggravated child neglect or endangerment; aggravated robbery; manufacture, delivery, or sale of a controlled substance (classified as class A, B, or C felony) and has two or more prior convictions for same offense; unlawful possession of a firearm by a person convicted of a crime of violence or felony drug offense; unlawfully providing a handgun to juvenile: eligible after 85%	Offense exclusions: – Felony offenses listed in Tenn. Code Ann. § 40-35-501(aa)

State ¹⁵³	Time Served Requirements Prior to Parole Eligibility ¹⁵⁴	Statutory Exclusions ¹⁵⁵
Texas	<p>General Eligibility: one-fourth of sentence imposed or 15 years, whichever is less</p> <p>Continuous trafficking of persons, engaging in organized criminal activity, 1st degree felony (any), murder, agg. kidnapping, indecency with a child, sexual assault, agg sexual assault, 1st degree injury to child/elderly/disabled, agg robbery, burglary with intent to commit felony, agg promotion of prostitution, compelling prostitution, sexual performance of a child, and specified drug offenses: one-half of sentence or 30 years, whichever is less</p> <p>Life sentence for capital felony: 40 years</p> <p>Life sentence and habitual offender: 35 years</p> <p>Increased punishment under the Health and Safety Code (drug free zone): 5 years or sentenced term, whichever is less</p>	<p>Offense exclusions:</p> <ul style="list-style-type: none"> – Continuous sexual abuse of young children – Aggravated sexual assault involving children – Trafficking a child
Utah	<p>Eligibility is based on the offense class, unless there is a mandatory minimum:</p> <ul style="list-style-type: none"> – Third degree felony (non-sex offense) or class A misdemeanor: 3 months – Third degree felony (sex offense): 6 months – Second degree felony (non-sex offense): 6 months – Second degree Felony (sex offense): 1 year – First degree felony: based on length of sentence <ul style="list-style-type: none"> ▪ <u>Minimum sentence is 3 years or less:</u> 1 year ▪ <u>Minimum sentence 3-10 years or less:</u> 3 years ▪ <u>Minimum sentence 10-15 years:</u> 7 years ▪ <u>Minimum sentence of 15+ years:</u> 12 years – Life without parole: the Board may parole a person sentenced to life in prison without parole if the Board finds by clear and convincing evidence that the person is permanently incapable of being a threat to the safety of society 	<p><i>No exclusions set forth in state parole statutes</i></p>
Vermont	<p>General Eligibility: Minimum term or aggregate minimum</p> <ul style="list-style-type: none"> – If no minimum term, then eligible after 12 months 	<p><i>No exclusions set forth in state parole statutes</i></p>
Virginia	Abolished in 1995	
Washington	Abolished in 1984	

State ¹⁵³	Time Served Requirements Prior to Parole Eligibility ¹⁵⁴	Statutory Exclusions ¹⁵⁵
West Virginia	<p>Indeterminate sentence: minimum term imposed by the court</p> <p>Definitive Sentence: one-fourth of sentence</p> <p>Use, presentment or brandishing firearm during a felony: 3 years or maximum sentence, whichever is less</p> <p>Use, presentment or brandishing firearm during a robbery (or attempted robbery): 5 years or one-third of definite term, whichever is greater</p> <p>Life sentence: after 10 years; If previously convicted twice for a felony, then eligible after 15 years</p>	<p>Offense exclusions:</p> <ul style="list-style-type: none"> – Two separate convictions for first degree murder, second degree murder, or first degree sexual assault
Wisconsin	Abolished in 1999	
Wyoming	<p>General eligibility: minimum term imposed by the court</p> <p>Juveniles sentenced to life:</p> <ul style="list-style-type: none"> – after serving 25 years, <u>or</u> – term of years of commuted sentenced 	<p>Offense exclusions:</p> <ul style="list-style-type: none"> – Attempted, committed, or assisted with an escape – Assault with a deadly weapon upon any officer, employee, or inmate of any institution <p>Sentence exclusions:</p> <ul style="list-style-type: none"> – Life sentence for offense committed after the age of 18

Table prepared by Crime Commission staff based on legal analysis as of July 2022.

GERIATRIC PAROLE IN VIRGINIA

Authority: [Va. Code § 53.1-40.01](#)

Eligibility:

- Any person age 65 or older who has served at least 5 years of their sentence; or,
- Any person age 60 or older who has served at least 10 years of their sentence.¹⁶⁹

Exclusions:

- Any conviction for a Class 1 felony.¹⁷⁰

Decision Process:

- Pursuant to the Virginia Code, a person must file a petition for conditional release;¹⁷¹ however, as of 2014, the Parole Board has considered persons who are eligible for geriatric parole automatically without requiring a petition to be filed.¹⁷²

Data:

- There were 820 persons eligible for geriatric parole as of July 31, 2022.¹⁷³

**Table 11: Geriatric Parole Decisions, Grants, and Grant Rate,
CY2018-CY2021**

Calendar Year	Total Decisions	Total Grants	Grant Rate
2018	725 ¹⁷⁴	55 ¹⁷⁵	8%
2019	759 ¹⁷⁶	24 ¹⁷⁷	3%
2020	901 ¹⁷⁸	77 ¹⁷⁹	9%
2021*	566 ¹⁸⁰	21 ¹⁸¹	4%

Source: Virginia Parole Board. Table prepared by Crime Commission staff.

*CY2021 includes data up to September 30, 2021.

Research Findings: Geriatric Parole (*as of July 2022*)

Twelve (12) states have geriatric parole.

- Alaska, California, Colorado Georgia, Louisiana, Maryland, Mississippi, Nevada, Oklahoma, South Dakota, Texas, and Virginia.

The minimum age and time served requirements before a person becomes eligible for geriatric parole vary across the twelve (12) states with geriatric parole.

Of the twelve (12) states that have geriatric parole, two (2) states do not exclude any specific offenses or sentence types from parole eligibility in their parole statutes.¹⁸²

- Georgia and South Dakota.

In addition to the twelve (12) states with geriatric parole, nine (9) other states have laws which treat a person's age as a qualifying condition, in conjunction with a disease or illness, for purposes of medical parole.¹⁸³

- Alabama, Connecticut, Missouri, New Mexico, North Carolina, Oregon, South Carolina, Utah, and Wyoming.

Table 12: State Comparison: Geriatric Parole

State ¹⁸⁴	Minimum Age	Minimum Sentence Served	Statutory Exclusions ¹⁸⁵
Alaska	60	10 years	<ul style="list-style-type: none"> – Unclassified felony – Felony sex offense
California	50	20 years	<ul style="list-style-type: none"> – First degree murder of a peace officer – Persons convicted of a prior serious or violent felony as defined in Cal. Penal Code § 1170.12 – Habitual criminals as described in Cal. Penal Code § 667
Colorado	64	20 years	<ul style="list-style-type: none"> – Class 1 or 2 felony for a crime defined in Col. Rev. Stat. § 24-4.1-302(1) – Unlawful sexual behavior – Crimes involving domestic violence – Stalking
Georgia	62	None	<i>No exclusions set forth in state parole statutes</i>
Louisiana	45	20 years ¹⁸⁶	<ul style="list-style-type: none"> – Crime of violence – Felony sex offense
	60	10 years	
Maryland	60	15 years	<ul style="list-style-type: none"> – Crime requiring sex offender registration
Mississippi	60	10 years <u>and</u> a minimum of one-fourth of the total sentence imposed	<ul style="list-style-type: none"> – Habitual offender – Crime of violence – Trafficking in controlled substance – Felony sex offense
Nevada	65	Majority of the maximum term of the sentence	<ul style="list-style-type: none"> – Crime of violence – Crime against a child as defined in Nev. Rev. Stat. Ann. § 179D.0357 – Sex offense as defined in Nev. Rev. Stat. Ann. § 179D.097 – Causing bodily harm or death while driving under the influence (on highway or off highway) – Habitual offender
Oklahoma	60	10 years <u>or</u> one-third of sentence, whichever is less	<ul style="list-style-type: none"> – Violent offenses as defined in Okla. Stat. tit. 21, § 13.1 – Persons required to register as a sex offender
South Dakota ¹⁸⁷	70	30 years	<i>No exclusions set forth in state parole statutes</i> Note: persons become ineligible for compassionate parole (geriatric or medical parole) once reaching their parole eligibility date or initial parole eligibility date.

State ¹⁸⁴	Minimum Age	Minimum Sentence Served	Statutory Exclusions ¹⁸⁵
Texas	65	None	<ul style="list-style-type: none"> – Persons serving a sentence for an aggravated offense of a violent or sexual nature will be considered <u>only</u> if they are terminally ill or in need of long-term care. – Persons with convictions requiring them to register under the Sex Inmate Registration Program are eligible for medically recommended intensive supervision consideration <u>only</u> if they are in a “persistent vegetative state” or have an “organic brain syndrome with significant total mobility impairment
Virginia	60	10 years	<ul style="list-style-type: none"> – Class 1 felony
	65	5 years	

Table prepared by Crime Commission staff based on legal analysis as of July 2022.

TERMINALLY ILL PAROLE IN VIRGINIA

Authority: [Va. Code § 53.1-40.02](#) (effective 3/1/21)

Eligibility requirements:

- The person must be “terminally ill,” meaning that they have:
 - A chronic or progressive medical condition caused by injury, disease, or illness;
and,
 - A medical prognosis of death within 12 months.

Exclusions:

- Various exclusions set forth in Va. Code § 53.1-40.02(C).¹⁸⁸

Decision Process:

- The decision whether to grant or deny parole is made by the Parole Board following a petition for conditional release.¹⁸⁹

Data:

- Staff does not have any data on the number of persons who are eligible for or who have been granted terminally ill parole.

Research Findings: Medical and Terminally Ill Parole (*as of July 2022*)

Thirty-six (36) states have medical parole for persons regardless of whether they are terminally ill.

- Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, and Wyoming.

Four (4) states provide that a terminal illness is the only medical condition that makes a person eligible for parole for a health-related reason.

- Georgia, Minnesota, New York, and Virginia.

Of the forty (40) states with either medical or terminally ill parole, at least twenty-three (23) states do not exclude any specific offenses or sentence types from parole eligibility in their parole statutes.¹⁹⁰

- Florida, Georgia, Hawaii, Idaho, Illinois, Kentucky, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Utah, Vermont, and Wyoming.

Table 13: State Comparison: Medical and Terminally Ill Parole

State ¹⁹¹	Conditions to qualify ¹⁹²	Time served requirements	Statutory Exclusions ¹⁹³
Alabama	<ul style="list-style-type: none"> • Permanently incapacitated • Terminally ill • Age 60 or older <u>and</u> meets <u>all</u> of the following requirements: <ul style="list-style-type: none"> – Has a chronic life threatening illness, or chronic debilitating disease relating to aging. – Requires assistance with a necessary daily life function. – Poses a low risk to the community. – Not a danger to self or society. 	<ul style="list-style-type: none"> • Violent offenders must serve one-third of sentence or 10 years, whichever is less. 	<ul style="list-style-type: none"> • Capital offenses • Sex offenses
Alaska	<ul style="list-style-type: none"> • Severely medically or cognitively disabled 	<i>No time served requirements set forth in state parole statutes</i>	<ul style="list-style-type: none"> • First, second, and third degree sexual assault • First, second, and third degree sexual abuse of a minor
Arkansas	<ul style="list-style-type: none"> • Terminally ill • Permanently incapacitated 	<i>No time served requirements set forth in state parole statutes</i>	<ul style="list-style-type: none"> • Sex offenses requiring registration <u>and</u> was assessed a Level 3 or higher or the victim was under the age of 14
California	<ul style="list-style-type: none"> • Permanently medically incapacitated 	<i>No time served requirements set forth in state parole statutes</i>	<ul style="list-style-type: none"> • First degree murder of a peace officer
Colorado	<ul style="list-style-type: none"> • Chronic, permanent, terminal, or irreversible physical illness, condition, disease, or a behavioral or mental health disorder • Age 55 or older <u>and</u> meets <u>all</u> of the following requirements: <ul style="list-style-type: none"> • suffering from a chronic infirmity, illness, condition, disease, or behavioral or mental health disorder • Incapacitated to the extent to be unlikely to pose a risk to public safety. 	<ul style="list-style-type: none"> • Sentenced to life with the possibility of parole for a class 1 felony: must serve least 20 years. <ul style="list-style-type: none"> – Class 2 felony crime of violence: must serve 10 years <p><u>Exception:</u> Time served requirements do not apply to those terminally ill with a life expectancy of 12 months or less.</p>	<i>No exclusions set forth in state parole statutes</i>

State ¹⁹¹	Conditions to qualify ¹⁹²	Time served requirements	Statutory Exclusions ¹⁹³
Connecticut	<ul style="list-style-type: none"> Suffering from a terminal condition, disease or syndrome and is so debilitated or incapacitated to be physically incapable of presenting a danger to society. So physically or mentally debilitated, incapacitated or infirm as a result of advanced age or as a result of a condition, disease, or syndrome that is not terminal, as to be physically incapable of presenting a danger to society. 	<i>No time served requirements set forth in state parole statutes</i>	<ul style="list-style-type: none"> Murder with special circumstances on or after 4/25/2012 Capital felony before 4/25/2012
Florida	<ul style="list-style-type: none"> Permanently incapacitated Terminally ill 	<i>No time served requirements set forth in state parole statutes</i>	<i>No exclusions set forth in state parole statutes</i>
Georgia	<ul style="list-style-type: none"> Entirely incapacitated due to debilitating terminal illness 	<i>No time served requirements set forth in state parole statutes</i>	<i>No exclusions set forth in state parole statutes</i>
Hawaii	<ul style="list-style-type: none"> Seriously debilitating medical condition for which treatment is not available in prison Terminal disease 	<i>No time served requirements set forth in state parole statutes</i>	<i>No exclusions set forth in state parole statutes</i>
Idaho	<ul style="list-style-type: none"> Permanently incapacitated Terminally ill 	<i>No time served requirements set forth in state parole statutes</i>	<i>No exclusions set forth in state parole statutes</i>
Illinois	<ul style="list-style-type: none"> Terminal illness Medical incapacity within the next 6 months Medically incapacitated subsequent to sentencing due to illness or injury. 	<i>No time served requirements set forth in state parole statutes</i>	<i>No exclusions set forth in state parole statutes</i>
Kansas	<ul style="list-style-type: none"> Incapacitation Release <ul style="list-style-type: none"> A person deemed functionally incapacitated by the Prisoner Review Board Terminal Medical Release <ul style="list-style-type: none"> Terminal condition likely to cause death within 30 days 	<i>No time served requirements set forth in state parole statutes</i>	Terminal Medical Release: <ul style="list-style-type: none"> Capital murder First degree murder Terrorism Illegal use of weapons of mass destruction Treason

State ¹⁹¹	Conditions to qualify ¹⁹²	Time served requirements	Statutory Exclusions ¹⁹³
Kentucky	<ul style="list-style-type: none"> Terminal medical condition Severe chronic lung disease End-stage heart disease Severe neuro-muscular disease such as multiple sclerosis; Severely limited mobility as a result of stroke, disease, or trauma Dependent on external life support systems and would not pose a threat to society if paroled. 	<i>No time served requirements set forth in state parole statutes</i>	<i>No exclusions set forth in state parole statutes</i>
Louisiana	<ul style="list-style-type: none"> Permanently disabled Terminally ill 	<i>No time served requirements set forth in state parole statutes</i>	<ul style="list-style-type: none"> First degree murder Second degree murder
Maine	<ul style="list-style-type: none"> Severely incapacitating medical condition Terminal medical condition 	<i>No time served requirements set forth in state parole statutes</i>	<ul style="list-style-type: none"> Persons likely to have contact with their previous victim of domestic violence, sex offense, or child abuse, unless granted a waiver.
Maryland	<ul style="list-style-type: none"> Debilitated or incapacitated by a medical or mental health condition, disease, or syndrome 	<i>No time served requirements set forth in state parole statutes</i>	<i>No exclusions set forth in state parole statutes</i>
Massachusetts	<ul style="list-style-type: none"> Permanently incapacitated Terminally ill 	<i>No time served requirements set forth in state parole statutes</i>	<i>No exclusions set forth in state parole statutes</i>
Michigan	<ul style="list-style-type: none"> Medically frail 	<i>No time served requirements set forth in state parole statutes</i>	<ul style="list-style-type: none"> First degree criminal sexual conduct
Minnesota	<ul style="list-style-type: none"> Grave illness or medical condition 	<i>No time served requirements set forth in state parole statutes</i>	<i>No exclusions set forth in state parole statutes</i>
Mississippi	<ul style="list-style-type: none"> Significant and permanent physical medical condition 	<i>No time served requirements set forth in state parole statutes</i>	<ul style="list-style-type: none"> Sex offenders An offender who has served not less than one year <ul style="list-style-type: none"> <u>Exception:</u> Non-violent offender who is bedridden may qualify regardless of the time served on sentence.

State ¹⁹¹	Conditions to qualify ¹⁹²	Time served requirements	Statutory Exclusions ¹⁹³
Missouri	<ul style="list-style-type: none"> Terminal illness Confinement greatly endangers or shortens life Advanced age to the extent that the offender is in need of long-term nursing home care. 	<i>No time served requirements set forth in state parole statutes</i>	<i>No exclusions set forth in state parole statutes</i>
Montana	<ul style="list-style-type: none"> Medical condition requiring extensive medical attention Terminal illness 	<i>No time served requirements set forth in state parole statutes</i>	<i>No exclusions set forth in state parole statutes</i>
Nebraska	<ul style="list-style-type: none"> Permanently incapacitated Terminal illness 	<i>No time served requirements set forth in state parole statutes</i>	<i>No exclusions set forth in state parole statutes</i>
Nevada	<ul style="list-style-type: none"> Physically incapacitated Terminal illness 	<i>No time served requirements set forth in state parole statutes</i>	<i>No exclusions set forth in state parole statutes</i>
New Hampshire	<ul style="list-style-type: none"> Terminal medical condition Debilitating medical condition Incapacitating medical condition incurable medical condition 	<i>No time served requirements set forth in state parole statutes</i>	<i>No exclusions set forth in state parole statutes</i>
New Jersey	<ul style="list-style-type: none"> Medical conditions rendering person permanently unable to perform activities of basic daily living and requires 24-hour care Terminal condition, disease, or syndrome Permanent physical incapacity 	<i>No time served requirements set forth in state parole statutes</i>	Attempted or completed: <ul style="list-style-type: none"> Murder Manslaughter Kidnapping Aggravated sexual assault Robbery where there was an attempt to kill or inflict serious bodily injury or was armed with or threatened immediate use of a deadly weapon Aggravated arson Endangering the welfare of a child

State ¹⁹¹	Conditions to qualify ¹⁹²	Time served requirements	Statutory Exclusions ¹⁹³
New Mexico	<ul style="list-style-type: none"> • Permanently incapacitated • Terminally ill • Age 65 or older <u>and</u> meets <u>all</u> of the following requirements: <ul style="list-style-type: none"> – Suffers from a chronic infirmity, illness or disease related to aging – Does not constitute a danger to self or others 	<p><i>No time served requirements set forth in state parole statutes</i></p> <p>Note: Persons who have not served minimum sentence <u>may</u> be considered for medical parole</p>	<ul style="list-style-type: none"> • First degree murder
New York	<ul style="list-style-type: none"> • Terminal condition, disease or syndrome 	<ul style="list-style-type: none"> • Persons convicted of the following offenses must serve 50% of minimum term: <ul style="list-style-type: none"> – Second degree murder – First degree manslaughter – Sex offenses specified in N.Y. Penal Law Art. 130 	<ul style="list-style-type: none"> • First degree murder • Attempt or conspiracy to commit murder in the first degree
North Carolina	<ul style="list-style-type: none"> • Permanently and totally disabled • Terminally ill • Age 65 or older <u>and</u> suffers from chronic infirmity, illness, or disease related to aging that has progressed such that the person is incapacitated to the extent that they do not pose a public safety risk. 	<p><i>No time served requirements set forth in state parole statutes</i></p>	<ul style="list-style-type: none"> • Capital felony • Class A, B1, or B2 felony • Persons convicted of an offense that requires registration
North Dakota	<ul style="list-style-type: none"> • Serious medical condition • Terminal medical condition 	<p><i>No time served requirements set forth in state parole statutes</i></p>	<p><i>No exclusions set forth in state parole statutes</i></p>
Oklahoma	<ul style="list-style-type: none"> • Medically frail • Medically vulnerable • Dying or is near death • Medical condition has rendered the person no longer an unreasonable threat to public safety 	<p><i>No time served requirements set forth in state parole statutes</i></p>	<p><i>No exclusions set forth in state parole statutes</i></p>
Oregon	<ul style="list-style-type: none"> • Severe medical condition (including terminal illness) • Elderly and permanently incapacitated where prisoner cannot move from place to place without the assistance of another person. 	<p><i>No time served requirements set forth in state parole statutes</i></p>	<p><i>No exclusions set forth in state parole statutes</i></p>

State ¹⁹¹	Conditions to qualify ¹⁹²	Time served requirements	Statutory Exclusions ¹⁹³
Rhode Island	<ul style="list-style-type: none"> • Terminally ill • Severely ill • Permanently physically incapacitated 	<i>No time served requirements set forth in state parole statutes</i>	<i>No exclusions set forth in state parole statutes</i>
South Carolina	<ul style="list-style-type: none"> • Permanently incapacitated • Terminally ill • Age 70 or older <u>and</u> suffers from chronic infirmity, illness, or disease related to aging, which has progressed so the person is incapacitated as determined by a licensed physician to the extent that they do not pose a public safety risk. 	<i>No time served requirements set forth in state parole statutes</i>	<i>No exclusions set forth in state parole statutes</i>
South Dakota	<ul style="list-style-type: none"> • Seriously ill and not likely to recover • Terminal illness • Requiring extensive medical care or significant chronic medical care 	<i>No time served requirements set forth in state parole statutes</i>	<i>No exclusions set forth in state parole statutes</i> Note: After reaching parole eligibility date persons become ineligible for medical parole.
Texas	<ul style="list-style-type: none"> • Terminal illness • Persistent vegetative state • Disability or age requiring long term care 	<i>No time served requirements set forth in state parole statutes</i>	<ul style="list-style-type: none"> • Violent felony • Felony sex offenses
Utah	<ul style="list-style-type: none"> • A person's public safety and recidivism risk is significantly reduced due to the effects or symptoms of advancing age, medical infirmity, disease, or disability, or mental health disease or disability • Person suffers from a serious and persistent medical condition which requires extensive medical attention, nursing home care, or palliative care. 	<i>No time served requirements set forth in state parole statutes</i>	<i>No exclusions set forth in state parole statutes</i>
Vermont	<ul style="list-style-type: none"> • Terminal illness • Serious medical condition 	<i>No time served requirements set forth in state parole statutes</i>	<i>No exclusions set forth in state parole statutes</i>
Virginia	<ul style="list-style-type: none"> • Terminal illness 	<i>No time served requirements set forth in state parole statutes</i>	<ul style="list-style-type: none"> • Class I felony • Offenses listed in Va. Code § 53.1-40.2(c)

State ¹⁹¹	Conditions to qualify ¹⁹²	Time served requirements	Statutory Exclusions ¹⁹³
Wyoming	<ul style="list-style-type: none"> • Serious incapacitating medical need • Permanently physically incapacitated • Terminal illness • Incapacitated by age to the extent that deteriorating physical or mental health substantially diminishes the ability to provide self-care within a correctional facility 	<i>No time served requirements set forth in state parole statutes</i>	<i>No exclusions set forth in state parole statutes</i>

Table prepared by Crime Commission staff based on legal analysis as of July 2022.

JUVENILE PAROLE IN VIRGINIA

Statute: [Va. Code § 53.1-165.1\(E\)](#) (effective July 1, 2020)

Eligibility:

- Any person sentenced to life in prison for an offense committed while they were under the age of 18 who has served at least 20 years their sentence; and,
- Any person who received an active sentence of 20 or more years for an offense committed while they were under the age of 18 who has served at least 20 years of such sentence.¹⁹⁴

Exclusions:

- None.¹⁹⁵

Decision Process:

- Persons eligible for juvenile parole do not have to petition for consideration. These individuals' cases are automatically reviewed by the Parole Board, and a determination is made whether to grant or deny parole.¹⁹⁶

Data:

- There were approximately 144 persons eligible for juvenile parole as of July 31, 2022.¹⁹⁷
- Between January 1, 2021, and September 30, 2021, the Virginia Parole Board made 97 decisions on persons eligible for juvenile parole. The Board granted parole to 8 of these persons, which was an 8% grant rate.¹⁹⁸

YOUTHFUL OFFENDER PAROLE IN VIRGINIA

Authority: [Va. Code § 19.2-311](#)

Eligibility

- The conviction must be the person's first conviction;¹⁹⁹
- The conviction must be for a felony offense, except for the excluded offenses below, which was committed before the person became 21 years of age;²⁰⁰ and,
- The court must consider the person to be capable of returning to society as a productive citizen following a reasonable amount of rehabilitation.²⁰¹

Exclusions:

- Felony convictions for aggravated murder (§ 18.2-31), murder in the first or second degree (§ 18.2-32), rape (§ 18.2-61), forcible sodomy (18.2-67.1), object sexual penetration (§ 18.2-67.2), or aggravated sexual battery (subdivision A1 of § 18.2-67.3).²⁰²

Parole Eligibility Date:

- A person shall be eligible for release at the discretion of the Parole Board after the Director of the Virginia Department of Corrections certifies that the person has completed a specified rehabilitation program.²⁰³

Decision Process:

- The sentencing court determines whether a person can enter the program, and if the court sentences a person to the program, it must impose an indeterminate sentence of four years followed by at least one and a half years of supervisory parole.²⁰⁴
- The decision whether to grant release is made by the Parole Board.²⁰⁵

Data:

- Per the Virginia Parole Board, there are typically between 70 and 100 persons in the youthful offender program at any given time.²⁰⁶

Research Findings: Juvenile and Youthful Offender Parole in the 16 States that Abolished Discretionary Parole (*as of July 2022*)²⁰⁷

Juvenile Parole

Of the sixteen (16) states that abolished discretionary parole, six (6) states have enacted laws that make persons who committed a criminal offense as a juvenile eligible for parole.

- Arizona, California, Ohio, Oregon, Virginia, and Washington.

Two (2) of these six (6) states require the person to have been sentenced to life or life without parole in order to be eligible for parole for an offense that was committed as a juvenile.

- Arizona and California.

The amount of time that a person must serve before being eligible for parole for an offense that was committed as a juvenile varies across these six (6) states.

Youthful Offender Parole

Of the sixteen (16) states that abolished discretionary parole, three (3) states have enacted laws that make youthful offenders eligible for parole.

- California, Illinois, and Virginia.

The age limit for persons to qualify as youthful offenders varies in these three (3) states, with Illinois and Virginia having an age limit of 21 years old and California having an age limit of 25 years old.

Table 14: State Comparison: Juvenile and Youthful Offender Parole in the 16 States that Abolished Discretionary Parole²⁰⁸

State ²⁰⁹	Juvenile Parole Eligibility Crime Committed by Person under 18 years old ²¹⁰	Youthful Offender Parole Eligibility Crime committed as a youthful offender (maximum age varies) ²¹¹
Arizona	Juveniles sentenced to life are eligible after serving the minimum sentence - If parole is granted, the person is on parole for the remainder of their life unless parole is revoked pursuant to statute. <i>No exclusions set forth in state parole statutes</i>	None
California	Juveniles sentenced to life without parole are eligible after serving 25 years. <i>No exclusions set forth in state parole statutes</i>	Persons 25 years old or younger are eligible after serving 15, 20, or 25 years (based on type of sentence). Exclusions: - Sentenced to death - Sentenced under three-strike laws
Delaware	None	None
Florida	None	None
Illinois	None	Persons under 21 years old are eligible after serving 10 years for most offenses, <u>except</u> : - 1st degree murder and aggravated sexual assault (eligible after 20 years) Exclusions: - Predatory criminal sexual assault of a child
Indiana	None	None
Kansas	None	None
Maine	None	None
Minnesota	None	None
New Mexico	None	None
North Carolina	None	None

State ²⁰⁹	Juvenile Parole Eligibility Crime Committed by Person under 18 years old ²¹⁰	Youthful Offender Parole Eligibility Crime committed as a youthful offender (maximum age varies) ²¹¹
Ohio	Eligible after serving 18, 25, or 30 years depending on the offense, or after time specified in the sentence regardless of mandatory time and cannot be limited by sentencing court. Exclusions: – Aggravated homicide	None
Oregon	Juveniles are eligible after serving 15 years, regardless of whether they were sentenced to a mandatory minimum, determinate sentence, or two or more consecutive sentences. <i>No exclusions set forth in state parole statutes</i>	None
Virginia	Eligible after serving 20 years <i>No exclusions set forth in state parole statutes</i>	Persons under 21 years old must be sentenced to the youthful offender program by the court. Exclusions: – Aggravated murder – First or second degree murder – Rape – Forcible sodomy – Object sexual penetration – Aggravated sexual battery
Washington	Eligible after serving 20 years <i>No exclusions set forth in state parole statutes</i>	None
Wisconsin	None	None

Table prepared by Crime Commission staff based on legal analysis as of July 2022.

EARNED SENTENCE CREDITS IN VIRGINIA

Authority:

- [Va. Code § 53.1-202.3](#)
- 2022 Special Session I Budget Bill (Item 404(R)(2)), available at <https://budget.lis.virginia.gov/item/2022/2/HB30/Chapter/1/404/>.

Eligibility:

- Offenders in the earned sentence credit system fall into one of two categories, those under the original earned sentence credit rates and those under the new enhanced earned sentence credit rates. The new enhanced rates took effect July 1, 2022, and are as follows:
 - Original Earned Sentence Credit Rate: the statute and budget language for the new enhanced rates specifically set forth that persons serving a state responsible sentence for specific convictions are excluded from the enhanced rates. These persons are ineligible to receive the enhanced rates on the sentence for the excluded conviction, as well as on any sentence that is concurrent with or consecutive to the sentence for the excluded conviction. These offenders can only continue to earn the original rate of a maximum of 4.5 sentence credits for each 30 days served.²¹²
 - Enhanced Earned Sentence Credit Rate: any person serving a state responsible sentence for a conviction that is not specifically excluded from the enhanced rates can earn a maximum of 15 sentence credits for each 30 days served.²¹³

Credit Accrual Rates:

Table 15: Original versus Enhanced Earned Sentence Credit Rates by Class Level

Class Level	Original Earned Sentence Credit Rate	Enhanced Earned Sentence Credit Rate (eff. 7/1/22)
Level I	4.5 days	15 days
Level II	3.0 days	7.5 days
Level III	1.5 days	3.5 days
Level IV	0 days	0 days

Source: Virginia Department of Corrections. *Operating Procedure 830.3, Good Time Awards*; Va. Code § 53.1 202.3 (July 1, 2022). Table prepared by Crime Commission staff.

Decision Process:

- Sentence reduction credits for both the original earned sentence credit rates and the enhanced earned sentence credit rates are awarded based on the offender's classification level as assigned by the Virginia Department of Corrections:²¹⁴
 - **Level I:** inmates who participate in and cooperate with all assigned programs AND have no more than one minor correctional infraction and no serious correctional infractions.
 - **Level II:** inmates who participate in and cooperate with all assigned programs, job assignments, and educational curriculums, BUT who require improvement in not more than one area as established by the Department's policies or procedures.
 - **Level III:** inmates who participate in and cooperate with all assigned programs, job assignments, and educational curriculums, BUT require significant improvement in two or more areas as established by the Department's policies or procedures.
 - **Level IV:** inmate willfully fails to participate or cooperate with all assigned programs, job assignments, and educational curriculums, OR causes substantial security or operational problems as established by the Department's policies or procedures.

Data:

- See *Appendix E* for detailed data on the "Impact of Enhanced Earned Sentence Credits (ESC) on FY2023 Virginia State Responsible (SR) Releases."

CONDITIONAL PARDONS IN VIRGINIA

Authority: [Constitution of Virginia, Art. V, § 12](#)

Types of Conditional Pardons:

- Conditional pardon: an act to modify or end a sentence imposed by a court that is only available to persons who are currently incarcerated.²¹⁵
- Medical pardon: a conditional pardon that can be granted to incarcerated persons who are terminally ill (life expectancy of three months or less).²¹⁶

Eligibility:

- The person must provide substantial evidence of exceptional circumstances.²¹⁷

Decision Process:

- Members of the Virginia Parole Board investigate and report on pardon petitions at the request of the Governor;²¹⁸ however, the Governor decides whether to grant a pardon.²¹⁹

Data:

Table 16: Total Number of Medical and Conditional Pardons, 2012-2021²²⁰

Year	Number of Medical Pardons	Number of Conditional Pardons
2012	0	3
2013	4	5
2014	4	0
2015	2	5
2016	1	3
2017	4	6
2018	1	0
2019	3	2
2020	1	19
2021	3	73

Source: Office of the Governor of Virginia. Table prepared by Crime Commission staff.

COVID-19 RELEASES IN VIRGINIA (*EXPIRED 7-1-2021*)

Authority:

- 2020 Special Session I Budget Bill (Item 402(W)), available at <https://budget.lis.virginia.gov/item/2020/2/HB5005/Chapter/1/402/>.
- This budget language was adopted November 18, 2020, and expired on July 1, 2021.

Description:

- The Inmate Early Release Plan was developed and implemented by the Virginia Department of Corrections (VADOC), under the authority of VADOC, and in response to the Governor's state of emergency declaration related to the COVID-19 pandemic.²²¹
- The Plan allowed the Director of VADOC to discharge incarcerated persons who had been committed to VADOC, or to place such persons into a lower level of supervision, such as probation or home electronic incarceration, if such persons had less than 1 year remaining on their sentence.²²²

Eligibility Requirements:

- The Governor must have declared a state of emergency in response to a communicable disease that is a public health threat;
- The person must have been in VADOC custody and had less than 1 year remaining on their sentence; and,
- The Director of VADOC must have determined that early discharge or placement would assist in maintaining the health, safety, and welfare of the person, or of other persons in state correctional facilities, and that such discharge was compatible with the interests of society and public safety.²²³

Exclusions:

- The budget language excluded persons convicted of a Class 1 felony or a sexually violent offense as defined in Va. Code § 37.2-900.²²⁴
- Various criteria set forth in the VADOC Inmate Early Release Plan.²²⁵

Decision Process:

- The Director of VADOC made the decision to discharge a person or lower their supervision level.

Data:

- 2,185 persons were released by VADOC per this authority between November 18, 2020, and June 30, 2021.²²⁶

¹ The House Committee on the Courts of Justice referred the following bills to the Crime Commission during the 2020 Regular Session: [HB250](#), [HB430](#), [HB915](#), [HB996](#), [HB1224](#), [SB493](#), and [SB624](#). In addition, the House Committee on Rules referred [HJ30](#) and [SJ9](#) to the Crime Commission. The House Committee on the Courts of Justice referred the following bills to the Crime Commission during the 2020 Special Session: [HB5015](#), [HB5097](#), [HB5100](#), [HB5101](#), and [SB5050](#). The Senate Committee on the Judiciary also referred [SB5016](#) and [SB5103](#) to the Crime Commission.

² The Senate Committee on Rehabilitation and Social Services referred [SB1370](#) to the Crime Commission.

³ Staff performed numerous activities as part of the study, including (i) examination of relevant literature and reports relating to parole; (ii) review of the parole provisions of the Virginia Code in conjunction with the operating procedures of the Virginia Parole Board and the Virginia Department of Corrections; (iii) identification of other provisions within the Virginia Code that allow a person to be released from incarceration prior to serving the full term of their criminal sentence; (iv) consideration of recent changes to Virginia law that may also impact criminal sentencing practices across the Commonwealth; (v) collection of relevant data related to parole and incarceration rates in Virginia; (vi) examination of past and present funding for the Virginia Parole Board; (vii) completion of an extensive review of the parole laws of other states; (viii) observations of the publicly broadcasted parole hearings of other states; and, (ix) consultations with key stakeholders and advocates.

⁴ Staff did not examine mandatory parole, which requires a person to be released when that person has a specific amount of time remaining on their sentence. See, e.g., VA. CODE ANN. § 53.1-159 (2022). Mandatory parole was not reviewed because the bills referred to the Crime Commission focused primarily on discretionary release.

⁵ 2020 Va. Acts ch. 2 and 529. See VA. CODE ANN. § 53.1-165.1(E) (2022).

⁶ 2020 Va. Acts ch. 1200 and 1272. See VA. CODE ANN. § 53.1-165.1(B), (C), and (D) (2022). See also *Fishback v. Commonwealth*, 532 S.E.2d 629, 260 Va. 104 (June 9, 2000).

⁷ 2020 Va. Acts, Sp. Sess. I, ch. 33 and 52. See VA. CODE ANN. § 53.1-40.01 (2022).

⁸ 2021 Va. Acts, Sp. Sess. I, ch. 287 and 545. See VA. CODE ANN. §§ 53.1-136(3)(c), 53.1-136(7), and 53.1-155(B) (2021). 2022 Va. Acts ch. 25 and 26. See VA. CODE ANN. § 2.2-3703(A)(1) (2022). 2022 Va. Acts ch. 141. See VA. CODE ANN. § 53.1-136(7) (2022).

⁹ See, e.g., Bowes, M., & Wilson, P. (2021, March 14). Va. Parole Board scandal: 'It appears that neither the rules nor the laws were followed' in votes to release convicted killers, prosecutor says. *Richmond Times-Dispatch*. Retrieved from https://richmond.com/news/local/crime-and-courts/va-parole-board-scandal-it-appears-that-neither-the-rules-nor-the-laws-were-followed/article_bff17105-202a-520b-9983-5c77976c34bd.html#tracking-source=home-trending.

¹⁰ 2021 Va. Acts, Sp. Sess. I, ch. 552, Item 57(I). Retrieved from <https://budget.lis.virginia.gov/item/2021/2/HB1800/Reenrolled/1/57/>. See, e.g., Bowles, M. (2021, June 14). Law firm's report says inspector general's lead investigator was "likely biased" in parole board probe, but Republicans cry foul. *Richmond Times-Dispatch*. Retrieved from https://richmond.com/news/local/govt-and-politics/law-firms-report-says-inspector-generals-lead-investigator-was-likely-biased-in-parole-board-probe/article_5ba1aa6f-52eb-5a6b-8075-00b7fa0e8c53.html#tracking-source=home-top-story.

¹¹ Governor of Virginia. (2022). Executive Order 3. Retrieved from <https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/eo/EO-3-Parole-Board.pdf>.

¹² See VA. CODE ANN. § 53.1-159 (2022). Virginia also has mandatory parole; however, per the Virginia Parole Board, releases on mandatory parole are uncommon due to the amount of time that has passed since discretionary parole was abolished.

¹³ As of the date of this report, staff has received data from the Virginia Department of Corrections that is current as of July 31, 2022. Staff last received data from the Virginia Parole Board in October 2021 and is awaiting updated data.

¹⁴ See Appendix F for a table of "Statutory Exclusions Across Early Release Mechanisms in Virginia" which provides a detailed list of offenses that will exclude a person from being eligible for parole or other forms of early release.

¹⁵ VA. CODE ANN. § 19.2-297.1(C) (2022).

¹⁶ Virginia Department of Corrections, personal communication, August 10, 2022.

¹⁷ *Id.*

¹⁸ Crime Commission staff only reviewed juvenile parole statutes in the 16 states that abolished discretionary parole for present-day offenses.

¹⁹ Virginia Department of Corrections, personal communication, August 10, 2022.

²⁰ Crime Commission staff only reviewed youthful offender parole statutes in the 16 states that abolished discretionary parole for present-day offenses.

²¹ Virginia Parole Board, personal communication, October 19, 2021.

²² VA. CODE ANN. § 53.1-136(1) (2022).

²³ VA. CODE ANN. §§ 53.1-136(2) and 53.1-165.1 (2022). See also *Fishback v. Commonwealth*, 532 S.E.2d 629, 260 Va. 104 (June 9, 2000).

²⁴ VA. CODE ANN. § 53.1-136(3)(a) (2022).

²⁵ VA. CODE ANN. § 53.1-136(3)(b) (2022).

²⁶ VA. CODE ANN. § 53.1-136(3)(c) (2022).

²⁷ *Id.*

²⁸ VA. CODE ANN. § 53.1-136(3)(d) (2022).

²⁹ VA. CODE ANN. §§ 53.1-136(4) and 53.1-137 (2022).

³⁰ VA. CODE ANN. § 53.1-136(5) (2022).

³¹ VA. CODE ANN. § 53.1-136(6) (2022).

³² VA. CODE ANN. § 53.1-136(7) (2022).

³³ VA. CODE ANN. § 53.1-136(8) (2022).

³⁴ Virginia Parole Board. (2006, October 1). *Policy manual*. Retrieved from <https://vpb.virginia.gov/files/1107/vpb-policy-manual.pdf>.

³⁵ Virginia Parole Board. (1996). *Administrative procedures manual*. Retrieved from <https://vpb.virginia.gov/files/1108/vpb-procedure-manual.pdf>.

³⁶ Virginia Parole Board, personal communication, August 9, 2022.

³⁷ VA. CODE ANN. § 53.1-134 (2022). At least one of the members of the Virginia Parole Board must be a representative of a crime victims' organization or a victim of crime.

³⁸ *Id.* See also VA. CONST. art. V, § 12. The Governor serves a four-year term and is not eligible to be re-elected to a consecutive four-year term.

³⁹ VA. CODE ANN. § 53.1-135 (2022). See also VA. CODE ANN. § 53.1-139 (2022). The Virginia Code directs the Chair of the Virginia Parole Board to perform several specific duties.

⁴⁰ VA. CODE ANN. § 53.1-135 (2022).

⁴¹ *Id.*

⁴² VA. CODE ANN. § 53.1-155(A) (2022).

⁴³ Virginia Parole Board. *About the Parole Board. The parole process in the Commonwealth of Virginia*. (Viewed July 8, 2022). Retrieved from <https://vpb.virginia.gov/about-the-parole-board/>.

⁴⁴ *Id.* See also Virginia Capital Case Clearinghouse. Washington & Lee University School of Law. (2021). *Parole in Virginia, 2021: The final report of the Washington and Lee Law parole representation project*. Retrieved from <https://bloximages.newyork1.vip.townnews.com/dailyprogress.com/content/tncms/assets/v3/editorial/f/92/f92aee94-6951-5491-ba0c-f35bea4801d4/60cd02488d790.pdf.pdf>.

⁴⁵ Virginia Parole Board. *About the Parole Board. The parole process in the Commonwealth of Virginia*. (Viewed July 8, 2022). Retrieved from <https://vpb.virginia.gov/about-the-parole-board/>.

⁴⁶ VA. CODE ANN. § 53.1-154 (2022).

⁴⁷ *Id.*

⁴⁸ VA. CODE ANN. § 53.1-155(B) (2022).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Virginia Parole Board. *Victim services: Victim notification*. (Viewed August 5, 2022). Retrieved from <https://vpb.virginia.gov/victim-services/>. See also Virginia Department of Corrections. (Viewed July 26, 2022). *VADOC victim notification program*. Retrieved from <https://vadoc.virginia.gov/media/1712/naavi-brochure.pdf>.

⁵² *Id.*

⁵³ Virginia VINE. (Viewed July 26, 2022). Retrieved from <https://vinelink.vineapps.com/state/VA>.

⁵⁴ Virginia Parole Board, personal communication, October 19, 2021.

⁵⁵ VA. CODE ANN. § 53.1-155(B) (2022).

⁵⁶ Virginia Parole Board. *Victim services*. (Viewed July 20, 2022). Retrieved <https://vpb.virginia.gov/victim-services/>.

⁵⁷ *Id.*

⁵⁸ Virginia Parole Board, personal communication, October 19, 2021.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ VA. CODE ANN. § 53.1-136(3)(c) (2022).

⁶² *Id.*

⁶³ GA. CODE ANN. § 42-9-43(c)(1) (2022).

⁶⁴ 730 ILL. COMP. STAT. 5/3-3-4(e) (2022).

⁶⁵ N.J. STAT. ANN. § 30:4-123.45(b)(5) (2022).

⁶⁶ W. VA. CODE ANN. § 62-12-23(c) (2022).

⁶⁷ VA. CODE ANN. § 53.1-154 (2022).

⁶⁸ See VA. CODE ANN. § 53.1-154 (2022). See also Virginia Capital Case Clearinghouse. Washington & Lee University School of Law. (2021). *Parole in Virginia, 2021: The final report of the Washington and Lee Law parole representation project*. Retrieved from <https://bloximages.newyork1.vip.townnews.com/dailyprogress.com/content/tncms/assets/v3/editorial/f/92/f92aee94-6951-5491-ba0c-f35bea4801d4/60cd02488d790.pdf.pdf>.

⁶⁹ The states that provide upcoming parole hearing dates on their parole board websites include Alabama, Arizona, California, Colorado, Connecticut, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Montana, Nebraska, Nevada, New Hampshire, New York, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, and Washington.

⁷⁰ Virginia Parole Board. *About the Parole Board. The parole process in the Commonwealth of Virginia*. (Viewed July 8, 2022). Retrieved from <https://vpb.virginia.gov/about-the-parole-board/>. See also Virginia Capital Case Clearinghouse. Washington &

Lee University School of Law. (2021). *Parole in Virginia, 2021: The final report of the Washington and Lee Law parole representation project*. Retrieved from <https://bloximages.newyork1.vip.townnews.com/dailyprogress.com/content/tncms/assets/v3/editorial/f/92/f92aee94-6951-5491-ba0c-f35bea4801d4/60cd02488d790.pdf.pdf>.

⁷¹ ALASKA STAT. § 33.16.130(b) (2022).

⁷² NEB. REV. STAT. § 83-1,111(1) (2022). In Nebraska, a hearing is not required if parole is likely to be denied, unless a hearing is requested by the person being considered for parole.

⁷³ CONN. GEN. STAT. § 54-126a(b)(2) (2022).

⁷⁴ N.H. REV. STAT. ANN. § 651-A:11-a (2022).

⁷⁵ HAW. REV. STAT. § 706-670(1) (2022).

⁷⁶ MO. REV. STAT. § 217.690(10)(5) (2022).

⁷⁷ Virginia Parole Board. *About the Parole Board. The parole process in the Commonwealth of Virginia*. (Viewed July 8, 2022). Retrieved from <https://vpb.virginia.gov/about-the-parole-board/>. See also Virginia Capital Case Clearinghouse. Washington & Lee University School of Law. (2021). *Parole in Virginia, 2021: The final report of the Washington and Lee Law parole representation project*. Retrieved from <https://bloximages.newyork1.vip.townnews.com/dailyprogress.com/content/tncms/assets/v3/editorial/f/92/f92aee94-6951-5491-ba0c-f35bea4801d4/60cd02488d790.pdf.pdf>.

⁷⁸ University of Minnesota. Robina Institute of Criminal Law and Criminal Justice. (2016, August 22). *The continuing leverage of releasing authorities: Findings from a national survey*. Retrieved from https://robinainstitute.umn.edu/sites/robinainstitute.umn.edu/files/2022-02/final_national_parole_survey_2017.pdf.

⁷⁹ *Id.* at p. 29. Per the report, all 50 states were sent surveys; however, response rates varied by question.

⁸⁰ Instructions for accessing the parole hearing using the virtual option were available on each state's parole board website. Louisiana used YouTube; Iowa and Michigan used Google Hangouts (call to register); Connecticut and Vermont used Microsoft Teams; Idaho used Webex; and, New Hampshire used Zoom. Because states generally did not make recordings of past parole hearings publicly available, staff is uncertain whether these states utilized virtual options which allowed the public to view parole hearings prior to the COVID-19 pandemic.

⁸¹ See Oregon Board of Parole. *Board Hearings*. (Viewed August 10, 2022). Retrieved from <https://www.oregon.gov/bopp/Board-Hearings.aspx>. "Due to COVID-19, if you are interested in attending a board event you must contact us two weeks in advance. In addition, physical access to all events and hearings may be limited. Thank you for your understanding during this time."

⁸² Virginia Parole Board. *About the Parole Board. The parole process in the Commonwealth of Virginia*. (Viewed July 8, 2022). Retrieved from <https://vpb.virginia.gov/about-the-parole-board/>.

⁸³ VA. CODE ANN. § 2.2-3703(A)(1) (2022).

⁸⁴ VA. CODE ANN. § 53.1-136(7) (2022).

⁸⁵ VA. CODE ANN. §§ 53.1-136(3)(c) and 53.1-155(B) (2022).

⁸⁶ VA. CODE ANN. § 53.1-136(3)(c) (2022).

⁸⁷ Virginia Parole Board. *Parole decisions*. (Viewed July 20, 2022). Retrieved from <https://vpb.virginia.gov/parole-decisions/>. See VA. CODE ANN. § 53.1-136(7) (2022).

⁸⁸ 2021 Va. Acts, Sp. Sess. I, ch. 545. See VA. CODE ANN. § 53.1-136(7) (2022). See, e.g., Virginia Parole Board. (2022, May). *Parole decisions monthly with reasons*. (Viewed July 8, 2022). Retrieved from <https://vpb.virginia.gov/files/1215/vpb-decisions-may22.pdf>.

⁸⁹ VA. CODE ANN. § 53.1-136(8) (2022).

⁹⁰ Virginia Parole Board. *About the Parole Board. Parole denial reasons*. (Viewed July 8, 2022). Retrieved from <https://vpb.virginia.gov/about-the-parole-board/>.

⁹¹ Virginia Parole Board. (1996, May 21). *Administrative procedures manual. Parole process 1.215. Appeals/requests for reconsideration*. Retrieved from <https://vpb.virginia.gov/files/1108/vpb-procedure-manual.pdf>.

⁹² Virginia Parole Board, personal communication, October 19, 2021.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ VA. CODE ANN. § 53.1-136(4) (2022). In addition to parole revocations, the Virginia Parole Board also has the authority to review and revoke a person's postrelease supervision.

⁹⁶ Virginia Parole Board, personal communication, October 19, 2021.

⁹⁷ *Id.*

⁹⁸ VA. CODE ANN. § 53.1-140(1) (2022).

⁹⁹ VA. CODE ANN. § 53.1-140(2) (2022).

¹⁰⁰ VA. CODE ANN. § 53.1-140(4) (2022).

¹⁰¹ VA. CODE ANN. § 53.1-138 (2022).

¹⁰² *Id.*

¹⁰³ VA. CODE ANN. § 53.1-140.1 (2022).

¹⁰⁴ VA. CODE ANN. § 53.1-145 (2022). Subsection (3) of this Virginia Code section specifically provides for the supervision of persons on parole and postrelease supervision, while numerous other subsections address duties which are ancillary to that supervision.

¹⁰⁵ See Appendix A for a comprehensive list of statutes and other laws governing parole. A (*) denotes the 16 states that abolished discretionary parole for present-day offenses.

¹⁰⁶ A (^) denotes states where parole board appointments are subject to confirmation by the legislature.

¹⁰⁷ Appointed by the Secretary of Public Safety and Correctional Services with the approval of the Governor and the advice and consent of the Senate.

¹⁰⁸ Appointed with the advice and consent of the Governor's Council. See Commonwealth of Massachusetts Governor's Council. *Who we serve*. (Viewed July 28, 2022). Retrieved from <https://www.mass.gov/orgs/governors-council#:~:text=The%20Massachusetts%20Governor's%20Council%2C%20also,respective%20districts%20every%20two%20years.>

¹⁰⁹ See Wisconsin Parole Commission. *Duties of the Parole Commission*. (Viewed July 27, 2022). Retrieved from <https://doc.wi.gov/Pages/AboutDOC/ParoleCommission.aspx>. "The Parole Commission is an independent commission attached to the DOC for administrative purposes but implements its statutory responsibilities independently. The Governor appoints the commission's chairperson with the advice and consent of the senate for a two-year term. Other commission members are hired in accordance with the civil service system and report to the chairperson."

¹¹⁰ While not included in this list, California abolished discretionary parole in 1977; however, it now authorizes discretionary parole for persons sentenced to an indeterminate life sentence and persons convicted of nonviolent felony offenses. Discretionary parole was reinstated for persons convicted of nonviolent felony offenses as a result of California voters approving Proposition 57 in 2016. See The Attorney General of California. *Proposition 57. Criminal sentences. Parole. Juvenile criminal proceedings and sentencing. Initiative constitutional amendment and statute*. Retrieved from <https://www.courts.ca.gov/documents/BTB24-5H-1.pdf>.

¹¹¹ Parole was abolished in Colorado as part of H.B. 1589. See Colorado Legislative Drafting Office. (1979, July). *Digest of bills enacted by the fifty-second General Assembly 1979 first regular session*, at p. 38. Retrieved from <https://leg.colorado.gov/sites/default/files/digest1979.pdf>. Parole was reinstated in Colorado as part of H.B. 1320. See Colorado Legislative Drafting Office. (1985, July). *Digest of bills enacted by the fifty-fifth General Assembly 1985 first regular session* at pp. 39-40. Retrieved from <https://leg.colorado.gov/sites/default/files/digest1985.pdf>.

¹¹² See Coppola, G. (2008, February 14). *OLR research report: Parole during the 1980s*. Retrieved from <https://www.cga.ct.gov/2008/rpt/2008-R-0126.htm>.

¹¹³ See Mississippi Joint Legislative Committee on Performance and Expenditure Review. (2021, July 6). *Report to the Mississippi Legislature: A review of the Mississippi State Parole Board*, at p. 6. Retrieved from <https://www.pear.ms.gov/Reports/reports/rpt656.pdf>.

¹¹⁴ VA. CODE ANN. § 53.1-202.3 (2022). 2022 Va. Acts, Sp. Sess. I, ch. 2, Item 404(R)(2). Retrieved from <https://budget.lis.virginia.gov/item/2022/2/HB30/Chapter/1/404/>.

¹¹⁵ VA. CONST. art. V, § 12.

¹¹⁶ 2020 Va. Acts, Sp. Sess. I, ch. 56, Item 402(W). Retrieved from <https://budget.lis.virginia.gov/item/2020/2/HB5005/Chapter/1/402/>. This authority expired July 1, 2021.

¹¹⁷ VA. CODE ANN. § 19.2-303 (2022).

¹¹⁸ VA. CODE ANN. § 19.2-303.01 (2022).

¹¹⁹ 2020 Va. Acts, Sp. Sess. I, ch. 43.

¹²⁰ 2021 Va. Acts, Sp. Sess. I, ch. 538.

¹²¹ Virginia Criminal Sentencing Commission. (2020, December 1). *Annual report, 2020*. Retrieved from <http://www.vcsc.virginia.gov/2020VCSCAnnualReport.pdf>.

¹²² See Appendix A for a comprehensive list of laws governing parole in all 50 states. A (*) denotes the 16 states that abolished discretionary parole for present-day offenses.

¹²³ A (^) denotes the 4 states that only have terminally ill parole. The states marked "Yes" without a (^) have medical parole, which may or may not be available to persons who are terminally ill.

¹²⁴ Crime Commission staff only reviewed juvenile and youthful offender parole statutes in the 16 states that abolished discretionary parole for present-day offenses.

¹²⁵ *Id.*

¹²⁶ VA. CODE ANN. § 53.1-165.1(A) (2022).

¹²⁷ See Appendix F for a table of "Statutory Exclusions Across Early Release Mechanisms in Virginia."

¹²⁸ VA. CODE ANN. § 19.2-297.1(C) (2022).

¹²⁹ VA. CODE ANN. § 53.1-136(3)(a) (2022).

¹³⁰ See VA. CODE ANN. § 53.1-151 (2022).

¹³¹ VA. CODE ANN. § 53.1-154 (2022).

¹³² *Id.*

¹³³ A parole eligibility date is the earliest date that a person may be released on parole. While a person may be eligible for parole on a specific date, release is dependent upon a decision by the Parole Board to grant parole.

¹³⁴ VA. CODE ANN. § 53.1-196 (2022).

¹³⁵ VA. CODE ANN. § 53.1-199 (2022).

¹³⁶ VA. CODE ANN. § 53.1-202.3(G) (2022).

¹³⁷ Virginia Department of Corrections, personal communication, August 10, 2022.

¹³⁸ Virginia Parole Board, personal communication, October 19, 2021.

¹³⁹ *Fishback v. Commonwealth*, 532 S.E.2d 629, 260 Va. 104 (June 9, 2000).

¹⁴⁰ VA. CODE ANN. § 53.1-165.1(B) (2022).

¹⁴¹ *Id.* The sex offenses that are excluded if the victim was a minor include VA. CODE ANN. § 18.2-61 (rape), VA. CODE ANN. § 18.2-67.1 (forcible sodomy), VA. CODE ANN. § 18.2-67.2 (object sexual penetration), VA. CODE ANN. § 18.2-67.3 (aggravated sexual battery), VA. CODE ANN. § 18.2-63(a)(b)(c) & (d) (carnal knowledge of a child between thirteen and fifteen years of age), and the following attempt crimes: VA. CODE ANN. § 18.2-63 (carnal knowledge of a child between thirteen and fifteen years of age); VA. CODE ANN. § 18.2-64.1 (carnal knowledge of certain minors); and VA. CODE ANN. § 18.2-64.2 (carnal knowledge of a person detained or arrested).

¹⁴² VA. CODE ANN. § 53.1-165.1(C) (2022).

¹⁴³ Virginia Department of Corrections, personal communication, August 10, 2022.

¹⁴⁴ Virginia Parole Board, personal communication, October 19, 2021.

¹⁴⁵ VA. CODE ANN. § 53.1-153 (2022).

¹⁴⁶ See Appendix F for a table of “Statutory Exclusions Across Early Release Mechanisms in Virginia.”

¹⁴⁷ VA. CODE ANN. § 53.1-153 (2022).

¹⁴⁸ California abolished discretionary parole in 1977; however, it now authorizes discretionary parole for persons sentenced to an indeterminate life sentence and persons convicted of nonviolent felony offenses. Discretionary parole was reinstated for persons convicted of nonviolent felony offenses as a result of California voters approving Proposition 57 in 2016. See The Attorney General of California. *Proposition 57. Criminal sentences. Parole. Juvenile criminal proceedings and sentencing. Initiative constitutional amendment and statute*. Retrieved from <https://www.courts.ca.gov/documents/BTB24-5H-1.pdf>.

¹⁴⁹ These states may still exclude sentences that are generally not eligible for early release, such as death sentences, life without parole, mandatory minimum sentences, or any sentence that prohibits parole per a court order.

¹⁵⁰ Parole was abolished in Colorado as part of H.B. 1589. See Colorado Legislative Drafting Office. (1979, July). *Digest of bills enacted by the fifty-second General Assembly 1979 first regular session*, at p. 38. Retrieved from <https://leg.colorado.gov/sites/default/files/digest1979.pdf>. Parole was reinstated in Colorado as part of H.B. 1320. See Colorado Legislative Drafting Office. (1985, July). *Digest of bills enacted by the fifty-fifth General Assembly 1985 first regular session*, at pp. 39-40. Retrieved from <https://leg.colorado.gov/sites/default/files/digest1985.pdf>.

¹⁵¹ See Coppola, G. (2008, February 14). *OLR research report: Parole during the 1980s*. Retrieved from <https://www.cga.ct.gov/2008/rpt/2008-R-0126.htm>.

¹⁵² See Mississippi Joint Legislative Committee on Performance and Expenditure Review. (2021, July 6). *Report to the Mississippi Legislature: A review of the Mississippi State Parole Board*, at p. 6. Retrieved from <https://www.peer.ms.gov/Reports/reports/rpt656.pdf>.

¹⁵³ See Appendix A for a comprehensive list of laws governing parole in all 50 states.

¹⁵⁴ A mandatory minimum sentence will generally override any minimum sentence that a person is required to serve prior to being eligible for parole.

¹⁵⁵ This list of exclusions does not include sentences such as death, life without parole, mandatory minimum sentences, or any sentence that prohibits parole per a court order, as it is assumed that these sentences are ineligible for any type of early release. In addition, states may have additional exclusions specified in sentencing statutes or parole board policies that are not captured in this table.

¹⁵⁶ See ARK. CODE ANN. § 16-93-615 (2022). Arkansas has both automatic parole and discretionary parole, with eligibility for both parole types beginning at one-third to one-half of sentence based on seriousness of the offense. Violent felonies, Class Y felonies, sex offenses requiring sex offender registration (unless specifically excluded), first degree battery, first degree domestic battery, and engaging in criminal enterprise and simultaneous possession of drugs and firearms are not eligible for automatic parole.

¹⁵⁷ California abolished discretionary parole in 1977; however, it now authorizes discretionary parole for persons sentenced to an indeterminate life sentence and persons convicted of nonviolent felony offenses. Discretionary parole was reinstated for persons convicted of nonviolent felony offenses as a result of California voters approving Proposition 57 in 2016. See The Attorney General of California. *Proposition 57. Criminal sentences. Parole. Juvenile criminal proceedings and sentencing. Initiative constitutional amendment and statute*. Retrieved from <https://www.courts.ca.gov/documents/BTB24-5H-1.pdf>.

¹⁵⁸ See GA. CODE ANN. § 17-10-6.1 (2022). This exclusion is set forth in the penalty provision for this specific offense.

¹⁵⁹ See KY. REV. STAT. ANN. § 218A.142 (2022). This exclusion is set forth in the penalty provision for this specific offense.

¹⁶⁰ See MASS. GEN. LAWS ch. 265, § 2 (2022). This exclusion is set forth in the penalty provision for this specific offense.

¹⁶¹ See MO. REV. STAT. § 565.020 (2022). This exclusion is set forth in the penalty provision for this specific offense.

¹⁶² See MO. REV. STAT. § 558.018 (2022). This exclusion is set forth in the penalty provision for this specific offense.

¹⁶³ See MO. REV. STAT. § 558.270 (2022). This exclusion is set forth in the penalty provision for this specific offense.

¹⁶⁴ See N.H. REV. STAT. ANN. §§ 651:2(II-e) (2022). If a sentence has a maximum of over one year, the sentencing judge must also impose a “disciplinary period” of incarceration of 150 days for each year of the minimum term of the sentence, which can then be reduced for good conduct and earned time.

¹⁶⁵ N.J. STAT. ANN. § 2C:43-7.2 (2022).

¹⁶⁶ See N.D. CENT. CODE § 12.1-32-09.1 (2022). This exclusion is set forth in the penalty provision for this specific offense.

¹⁶⁷ See N.D. CENT. CODE § 12.1-32-01 (2022). This exclusion is set forth in the penalty provision for this specific offense.

¹⁶⁸ See S.C. CODE ANN. §16-25-90 (2022). This exclusion is set forth in the penalty provision for this specific offense.

¹⁶⁹ VA. CODE ANN. § 53.1-40.01 (2022).

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² Virginia Parole Board, personal communication, October 19, 2021.

¹⁷³ Virginia Department of Corrections, personal communication, August 10, 2022.

¹⁷⁴ Virginia Parole Board, personal communication, October 19, 2021. Of the 725 total decisions, 25% (178) were parole eligible offenders considered for geriatric conditional release and 75% (547) were truth-in-sentencing offenders considered for geriatric conditional release.

¹⁷⁵ *Id.* Of the 55 total grants, 20% (11) were parole eligible offenders considered for geriatric conditional release and 80% (44) were truth-in-sentencing offenders considered for geriatric conditional release.

¹⁷⁶ *Id.* Of the 759 total decisions, 24% (184) were parole eligible offenders considered for geriatric conditional release and 76% (575) were truth-in-sentencing offenders considered for geriatric conditional release.

¹⁷⁷ *Id.* Of the 24 total grants, 42% (10) were parole eligible offenders considered for geriatric conditional release and 58% (14) were truth-in-sentencing offenders considered for geriatric conditional release.

¹⁷⁸ *Id.* Of the 901 total decisions, 21% (193) were parole eligible offenders considered for geriatric conditional release and 79% (708) were truth-in-sentencing offenders considered for geriatric conditional release.

¹⁷⁹ *Id.* Of the 77 total grants, 27% (21) were parole eligible offenders considered for geriatric conditional release and 73% (56) were truth-in-sentencing offenders considered for geriatric conditional release.

¹⁸⁰ *Id.* Of the 566 total decisions, 13% (71) were parole eligible offenders considered for geriatric conditional release and 87% (495) were truth-in-sentencing offenders considered for geriatric conditional release.

¹⁸¹ *Id.* Of the 21 total grants, 10% (2) were parole eligible offenders considered for geriatric conditional release and 90% (19) were truth-in-sentencing offenders considered for geriatric conditional release.

¹⁸² These states may still exclude sentences that are generally not eligible for early release, such as death sentences, life without parole, mandatory minimum sentences, or any sentence that prohibits parole per a court order.

¹⁸³ A person must meet the age requirement and have a qualifying medical condition in order to be eligible for medical parole in these nine states.

¹⁸⁴ See Appendix A for a comprehensive list of laws governing parole in all 50 states.

¹⁸⁵ This list of exclusions does not include sentences such as death, life without parole, mandatory minimum sentences, or any sentence that prohibits parole per a court order, as it is assumed that these sentences are ineligible for any type of early release. In addition, states may have additional exclusions specified in sentencing statutes or parole board policies that are not captured in this table.

¹⁸⁶ See LA. STAT. ANN. § 15:574.4(A)(4) (2022). Persons are eligible for geriatric parole at age 45 after serving 20 years on a sentence of 30 years or more. Offenses that carry a sentence of 30 years or more include armed robbery, crimes of violence, and sex offenses.

¹⁸⁷ See S.D. CODIFIED LAWS § 24-15A-55 (2022). If a person was convicted of a Class 3 felony or below and their medical care needs are at least double the average annual medical cost of the inmate population, then the minimum age for geriatric parole is 65 years old after serving 10 consecutive years of a sentence.

¹⁸⁸ See Appendix F for a table of “Statutory Exclusions Across Early Release Mechanisms in Virginia.”

¹⁸⁹ VA. CODE ANN. § 53.1-40.02(B) (2022).

¹⁹⁰ These states may still exclude sentences that are generally not eligible for early release, such as death sentences, life without parole, mandatory minimum sentences, or any sentence that prohibits parole per a court order.

¹⁹¹ See Appendix A for a comprehensive list of laws governing parole in all 50 states.

¹⁹² States may have other release mechanisms for medical reasons in addition to or in lieu of medical parole, such as clemency, sentence modification, and medical furlough. Furthermore, states may have additional qualifying conditions and requirements set forth in regulations or parole board policies.

¹⁹³ This list of exclusions does not include sentences such as death, life without parole, mandatory minimum sentences, or any sentence that prohibits parole per a court order, as it is assumed that these sentences are ineligible for any type of early release. In addition, states may have additional exclusions specified in sentencing statutes or parole board policies that are not captured in this table.

¹⁹⁴ VA. CODE ANN. § 53.1-165.1(E) (2022).

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ Virginia Department of Corrections, personal communication, August 10, 2022.

¹⁹⁸ Virginia Parole Board, personal communication, October 19, 2021.

¹⁹⁹ VA. CODE ANN. § 19.2-311(B) (2022).

²⁰⁰ VA. CODE ANN. § 19.2-311(B)(1) and (B)(2) (2022).

²⁰¹ VA. CODE ANN. § 19.2-311(B)(3) (2022).

²⁰² VA. CODE ANN. § 19.2-311(B)(2) (2022).

²⁰³ VA. CODE ANN. § 19.2-313 (2022). *See also* VA. CODE ANN. § 53.1-63 (2022).

²⁰⁴ VA. CODE ANN. § 19.2-311 (2022).

²⁰⁵ VA. CODE ANN. § 19.2-313 (2022).

²⁰⁶ Virginia Parole Board, personal communication, October 19, 2021.

²⁰⁷ Crime Commission staff only reviewed juvenile and youthful offender parole statutes in the 16 states that abolished discretionary parole for present-day offenses.

²⁰⁸ Crime Commission staff only reviewed juvenile and youthful offender parole statutes in the 16 states that abolished discretionary parole for present-day offenses.

²⁰⁹ *See* Appendix A for a comprehensive list of laws governing parole in all 50 states.

²¹⁰ The exclusions in this table do not include sentences such as death, life without parole, mandatory minimum sentences, or any sentence that prohibits parole per a court order, as it is assumed that these sentences are ineligible for any type of early release. In addition, states may have additional exclusions specified in sentencing statutes or parole board policies that are not captured in this table.

²¹¹ *Id.*

²¹² VA. CODE ANN. § 53.1-202.3(A) (2022). 2022 Va. Acts, Sp. Sess. I, ch. 2, Item 404(R)(2). Retrieved from <https://budget.lis.virginia.gov/item/2022/2/HB30/Chapter/1/404/>. *See also* Appendix F for a table of “Statutory Exclusions Across Early Release Mechanisms in Virginia.”

²¹³ VA. CODE ANN. § 53.1-202.3(B) (2022).

²¹⁴ *Id.* *See also* Virginia Department of Corrections. (2022, July 1). *Operating Procedure 830.3, Good Time Awards*. Retrieved from <https://vadoc.virginia.gov/files/operating-procedures/800/vadoc-op-830-3.pdf>.

²¹⁵ Virginia Secretary of the Commonwealth. Frequently asked questions about pardons: Conditional pardons. (Viewed August 2, 2022). Retrieved from <https://www.commonwealth.virginia.gov/judicial-system/pardons/>. Conditional pardons also include medical pardons, as defined above, and immigration pardons. An immigration pardon is defined as a partial pardon that can be granted to persons who are experiencing immigration issues (facing deportation in 30 days or less). Only one immigration pardon has been granted (2014).

²¹⁶ *Id.*

²¹⁷ Virginia Secretary of the Commonwealth. Frequently asked questions: What is a pardon? (Viewed August 2, 2022). Retrieved from <https://www.commonwealth.virginia.gov/judicial-system/pardons/>.

²¹⁸ VA. CODE ANN. § 53.1-136(6) (2022).

²¹⁹ VA. CONST. art. V, § 12.

²²⁰ The Governor publishes an annual report detailing executive clemency actions during the previous year. The annual report data begins the second week of January and ends the second week of January the following year. The data included in this table was retrieved from these annual reports. *See* Office of the Governor. *List of Pardons, Commutations, Reprieves, and Other Forms of Clemency*. (2022) <https://rga.lis.virginia.gov/Published/2022/SD2/PDF>; (2021) <https://rga.lis.virginia.gov/Published/2021/SD2/PDF>; (2020) <https://rga.lis.virginia.gov/Published/2020/SD2/PDF>; (2019) <https://rga.lis.virginia.gov/Published/2019/SD2/PDF>; (2018) <https://rga.lis.virginia.gov/Published/2018/SD2/PDF>; (2017) <https://rga.lis.virginia.gov/Published/2017/SD2/PDF>; (2016) <https://rga.lis.virginia.gov/Published/2016/SD2/PDF>; (2015) <https://rga.lis.virginia.gov/Published/2015/SD2/PDF>; (2014) <https://rga.lis.virginia.gov/Published/2014/SD2/PDF>; (2013) <https://rga.lis.virginia.gov/Published/2013/SD2/PDF>.

²²¹ *See* Virginia Department of Corrections. *COVID-19 response: Inmate early release plan*. Retrieved from <https://vadoc.virginia.gov/media/1506/vadoc-covid19-early-release-plan.pdf>. *See also* Virginia Department of Corrections. *COVID-19 response: Inmate early release plan. State responsible inmates held in a local correctional facility*. Retrieved from <https://vadoc.virginia.gov/media/1512/vadoc-covid19-early-release-plan-local.pdf>.

²²² 2020 Va. Acts, Sp. Sess. I, ch. 56, Item 402(W). Retrieved from <https://budget.lis.virginia.gov/item/2020/2/HB5005/Chapter/1/402/>.

²²³ *Id.*

²²⁴ *Id.* *See also* Appendix F for a table of “Statutory Exclusions Across Early Release Mechanisms in Virginia.”

²²⁵ *See* Virginia Department of Corrections. *COVID-19 response: Inmate early release plan*. Retrieved from <https://vadoc.virginia.gov/media/1506/vadoc-covid19-early-release-plan.pdf>. *See also* Virginia Department of Corrections. *COVID-19 response: Inmate early release plan. State responsible inmates held in a local correctional facility*. Retrieved from <https://vadoc.virginia.gov/media/1512/vadoc-covid19-early-release-plan-local.pdf>.

²²⁶ Virginia Department of Corrections. (2022, May 17). *Senate Finance and Appropriations meeting*. Retrieved from http://sfac.virginia.gov/pdf/committee_meeting_presentations/2022/Interim/05172022_No3_DOC%20Clarke.pdf.

APPENDIX A: STATE PAROLE STATUTES

	PAROLE BOARD ¹	DISCRETIONARY PAROLE	GERIATRIC PAROLE	MEDICAL OR TERMINALLY ILL PAROLE ²	JUVENILE OR YOUTHFUL OFFENDER PAROLE ³
ALABAMA	ALA. CODE § 15-22-20 <i>et. seq.</i>	ALA. CODE § 15-22-25 <i>et. seq.</i>	none	ALA. CODE § 15-22-42 <i>et. seq.</i>	--
ALASKA	ALASKA STAT. § 33.16.020 <i>et. seq.</i>	ALASKA STAT. § 33.16.090 <i>et. seq.</i>	ALASKA STAT. § 33.16.090(a)(2)	ALASKA STAT. § 33.16.085	--
ARIZONA*	ARIZ. REV. STAT. ANN. § 31-401 <i>et. seq.</i>	ARIZ. REV. STAT. ANN. § 31-411 <i>et. seq.</i>	none	none	Juvenile: ARIZ. REV. STAT. ANN. § 13-716
ARKANSAS	ARK. CODE ANN. § 16-93-201 <i>et. seq.</i>	ARK. CODE ANN. § 16-93-614 <i>et. seq.</i>	none	ARK. CODE ANN. § 12-29-404	--
CALIFORNIA*	CAL. PENAL CODE § 5075 <i>et. seq.</i>	CAL. PENAL CODE § 3000 <i>et. seq.</i>	CAL. PENAL CODE § 3055	CAL. PENAL CODE § 3550	Juvenile and Youthful Offender: CAL. PEN. CODE § 3051
COLORADO	COLO. REV. STAT. § 17-2-201 <i>et. seq.</i>	COLO. REV. STAT. § 17-22.5-401 <i>et. seq.</i>	COLO. REV. STAT. § 17-1-102	COLO. REV. STAT. § 17-1-102 COLO. REV. STAT. § 17-22.5-403.5	--
CONNECTICUT	CONN. GEN. STAT. § 54-124a <i>et. seq.</i>	CONN. GEN. STAT. § 54-125 <i>et. seq.</i>	none	CONN. GEN. STAT. § 54-131a <i>et. seq.</i>	--
DELAWARE*	DEL. CODE ANN. tit. 11, § 4341 <i>et. seq.</i>	DEL. CODE ANN. tit. 11, § 4346 <i>et. seq.</i>	none	DEL. CODE ANN. tit. 11, § 4346(e)	none
FLORIDA*	FLA. STAT. § 947.01 <i>et. seq.</i>	FLA. STAT. § 947.16 <i>et. seq.</i>	none	FLA. STAT. § 947.149	none
GEORGIA^	GA. CODE ANN. § 42-9-2 <i>et. seq.</i>	GA. CODE ANN. § 42-9-39 <i>et. seq.</i>	GA. CONST. art. IV, § II, para. II	GA. CODE ANN. § 42-9-43 GA. CONST. art. IV, § II, para. II	--
HAWAII	HAW. REV. STAT. § 353-61 <i>et. seq.</i>	HAW. REV. STAT. § 353-64 <i>et. seq.</i> HAW. REV. STAT. § 706-669 <i>et. seq.</i>	none	HAW. CODE R. § 23-700-26(6)(c)	--
IDAHO	IDAHO CODE § 20-1001 <i>et. seq.</i>	IDAHO CODE § 20-1005	none	IDAHO CODE § 20-1006	--
ILLINOIS*	730 ILL. COMP. STAT. 5/3-3-1 <i>et. seq.</i>	730 ILL. COMP. STAT. 5/3-3-3 <i>et. seq.</i>	none	730 ILL. COMP. STAT. 5/3-3-14 <i>et. seq.</i>	Youthful Offender: 730 ILL. COMP. STAT. 5/5-4.5-115
INDIANA*	IND. CODE § 11-9-1-1 <i>et. seq.</i>	IND. CODE. § 11-13-3-2 <i>et. seq.</i>	none	none	none
IOWA	IOWA CODE § 904A.1 <i>et. seq.</i>	IOWA CODE § 906.1 <i>et. seq.</i>	none	none	--

	PAROLE BOARD¹	DISCRETIONARY PAROLE	GERIATRIC PAROLE	MEDICAL OR TERMINALLY ILL PAROLE²	JUVENILE OR YOUTHFUL OFFENDER PAROLE³
KANSAS*	KAN. STAT. ANN. § 75-52,152 <i>et. seq.</i>	KAN. STAT. ANN. § 22-3717	none	KAN. STAT. ANN. § 22-3728 KAN. STAT. ANN. § 22-3729	none
KENTUCKY	KY. REV. STAT. ANN. § 439.320 <i>et. seq.</i>	KY. REV. STAT. ANN. § 439.340 <i>et. seq.</i>	none	KY. REV. STAT. ANN. § 439.3405	--
LOUISIANA	LA. STAT. ANN. § 15:574.2	LA. STAT. ANN. § 15:574.4 <i>et. seq.</i>	LA. STAT. ANN. § 15:574.4(A)(4)	LA. STAT. ANN. § 15:574.20	--
MAINE*	ME. STAT. tit. 34-A, § 5201 <i>et. seq.</i>	ME. STAT. tit. 34-A, § 5801 <i>et. seq.</i>	none	ME. STAT. tit. 34-A, § 3036-A(10)	none
MARYLAND	MD. CODE ANN., CORR. SERVS § 7-202 <i>et. seq.</i>	MD. CODE ANN., CORR. SERVS. § 7-301 <i>et. seq.</i>	MD. CODE ANN., CRIM. LAW § 14-101(f)	MD. CODE ANN., CORR. SERVS. § 7-309A	--
MASSACHUSETTS	MASS. GEN. LAWS ch. 27, § 4 <i>et. seq.</i>	MASS. GEN. LAWS ch. 127, § 133 <i>et. seq.</i>	none	MASS. GEN. LAWS ch. 127, § 119A	--
MICHIGAN	MICH. COMP. LAWS § 791.231a	MICH. COMP. LAWS § 791.233 <i>et. seq.</i>	none	MICH. COMP. LAWS § 791.235(10)	--
MINNESOTA*^	MINN. STAT. § 243.05	MINN. STAT. § 243.05	none	MINN. STAT. § 244.05	none
MISSISSIPPI	MISS. CODE ANN. § 47-7-5	MISS. CODE ANN. § 47-7-3 <i>et. seq.</i> MISS. CODE ANN. § 47-7-17 <i>et. seq.</i>	MISS. CODE ANN. § 47-73(1)(h)(iii)	MISS. CODE ANN. § 47-7-4	--
MISSOURI	MO. REV. STAT. § 217.655 <i>et. seq.</i>	MO. REV. STAT. § 217.690 MO. REV. STAT. § 217.692 MO. REV. STAT. § 558.047	none	MO. REV. STAT. § 217.250	--
MONTANA	MONT. CODE ANN. § 2-15-2305	MONT. CODE ANN. § 46-23-201 <i>et. seq.</i>	none	MONT. CODE ANN. § 46-23-210	--
NEBRASKA	NEB. REV. STAT. § 83-189 <i>et. seq.</i>	NEB. REV. STAT. § 83-1,110 <i>et. seq.</i>	none	NEB. REV. STAT. § 83-1,110.02	--
NEVADA	NEV. REV. STAT. ANN. § 213.108 <i>et seq.</i>	NEV. REV. STAT. ANN. § 213.120 <i>et seq.</i> NEV. REV. STAT. ANN. § 213.12135	NEV. REV. STAT. ANN. § 213.12155	NEV. REV. STAT. ANN. § 209.3925	--
NEW HAMPSHIRE	N.H. REV. STAT. ANN. § 651-A:3 <i>et. seq.</i>	N.H. REV. STAT. ANN. § 651-A:6 <i>et. seq.</i>	none	N.H. REV. STAT. ANN. § 651-A:10-a	--

	PAROLE BOARD¹	DISCRETIONARY PAROLE	GERIATRIC PAROLE	MEDICAL OR TERMINALLY ILL PAROLE²	JUVENILE OR YOUTHFUL OFFENDER PAROLE³
NEW JERSEY	N.J. REV. STAT. § 30:4-123.47 <i>et. seq.</i>	N.J. REV. STAT. § 30:4-123.51 <i>et. seq.</i>	none	N.J. REV. STAT. § 30:4-123.51e N.J. ADMIN. CODE § 10A:71-3.53	--
NEW MEXICO*	N.M. STAT. ANN. § 31-21-24 <i>et. seq.</i>	N.M. STAT. ANN. § 31-21-10 <i>et. seq.</i>	none	N.M. STAT. ANN. § 31-21-25.1(D)	none
NEW YORK^	N.Y. EXEC. LAW § 259 <i>et. seq.</i>	N.Y. PENAL LAW § 70.40	none	N.Y. EXEC. LAW § 259-r N.Y. EXEC. LAW § 259-s	--
NORTH CAROLINA*	N.C. GEN. STAT. § 143B-720 <i>et. seq.</i>	N.C. GEN. STAT. § 15A-1371 <i>et. seq.</i>	none	N.C. GEN. STAT. § 15A-1369.2 <i>et. seq.</i>	none
NORTH DAKOTA	N.D. CENT. CODE § 12-59-01 <i>et. seq.</i>	N.D. CENT. CODE § 12-59-05 <i>et. seq.</i>	none	N.D. CENT. CODE § 12-59-08	--
OHIO*	OHIO REV. CODE ANN. § 5149.10 <i>et. seq.</i>	OHIO REV. CODE ANN. § 2967.13 <i>et. seq.</i>	none	none	Juvenile: OHIO REV. CODE ANN. § 2967.132
OKLAHOMA	OKLA. STAT. tit. 57, § 332 <i>et. seq.</i> OKLA. CONST. art. VI, § 10	OKLA. STAT. tit. 57, § 332.7	OKLA. STAT. tit. 57, § 332.21	OKLA. STAT. tit. 57, § 332.18	--
OREGON*	OR. REV. STAT. § 144.005 <i>et. seq.</i>	OR. REV. STAT. § 144.110 <i>et. seq.</i>	none	OR. REV. STAT. § 144.126	Juvenile: OR. REV. STAT. § 144.397
PENNSYLVANIA	61 PA. CONS. STAT. § 6111 <i>et. seq.</i>	61 PA. CONS. STAT. § 6137	none	none	--
RHODE ISLAND	R.I. GEN. LAWS § 13-8-1 <i>et. seq.</i>	R.I. GEN. LAWS § 13-8-8 <i>et. seq.</i>	none	R.I. GEN. LAWS § 13-8.1-2 <i>et. seq.</i>	--
SOUTH CAROLINA	S.C. CODE ANN. § 24-21-10 <i>et. seq.</i>	S.C. CODE ANN. § 24-21-610 <i>et. seq.</i>	none	S.C. CODE ANN. § 24-21-715	--
SOUTH DAKOTA	S.D. CODIFIED LAWS § 24-13-1 <i>et. seq.</i>	S.D. CODIFIED LAWS § 24-15A-1 <i>et. seq.</i>	S.D. CODIFIED LAWS § 24-15A-55	S.D. CODIFIED LAWS § 24-15A-55	--
TENNESSEE	TENN. CODE ANN. § 40-28-103 <i>et. seq.</i>	TENN. CODE ANN. § 40-35-501 <i>et. seq.</i>	none	none	--
TEXAS	TEX. GOV'T CODE ANN. § 508.031 <i>et. seq.</i>	TEX. GOV'T CODE ANN. § 508.141 <i>et. seq.</i>	TEX. GOV'T CODE ANN. § 508.146	TEX. GOV'T CODE ANN. § 508.146	--
UTAH	UTAH CODE ANN. § 77-27-2 <i>et. seq.</i>	UTAH CODE ANN. § 77-27-7 <i>et. seq.</i>	none	UTAH ADMIN. CODE r. § 671-314-1	--

	PAROLE BOARD¹	DISCRETIONARY PAROLE	GERIATRIC PAROLE	MEDICAL OR TERMINALLY ILL PAROLE²	JUVENILE OR YOUTHFUL OFFENDER PAROLE³
VERMONT	VT. STAT. ANN. tit. 28, § 451 <i>et. seq.</i>	VT. STAT. ANN. tit. 28, § 501 <i>et. seq.</i>	none	VT. STAT. ANN. tit. 28, § 502a	--
VIRGINIA*^	VA. CODE ANN. § 53.1-134 <i>et. seq.</i>	VA. CODE ANN. § 53.1-151 <i>et. seq.</i>	VA. CODE ANN. § 53.1-40.01	VA. CODE ANN. § 53.1-40.02	Juvenile: VA. CODE ANN. § 53.1-165.1(E) Youthful Offender: VA. CODE ANN. § 19.2-311
WASHINGTON*	WASH. REV. CODE § 9.95.003	WASH. REV. CODE § 9.95.110 WASH. ADMIN. CODE § 381-40-030 <i>et. seq.</i>	none	none	Juvenile: WASH. REV. CODE § 9.94A.730
WEST VIRGINIA	W. VA. CODE § 62-12-12 <i>et. seq.</i>	W. VA. CODE § 62-12-13 <i>et. seq.</i>	none	none	--
WISCONSIN*	WIS. STAT. § 304.01 WIS. STAT. § 15.145	WIS. STAT. § 304.06 <i>et. seq.</i>	none	none	none
WYOMING	WYO. STAT. ANN. § 7-13-401	WYO. STAT. ANN. § 7-13-402	none	WYO. STAT. ANN. § 7-13-424	--

Table prepared by Crime Commission staff based on legal analysis as of July 2022.

¹ An (*) denotes the 16 states that have abolished discretionary parole for present-day offenses. Those states include Arizona, California, Delaware, Florida, Illinois, Indiana, Kansas, Maine, Minnesota, New Mexico, North Carolina, Ohio, Oregon, Virginia, Washington, and Wisconsin.

² A (^) denotes the 4 states that only have terminally ill parole statutes. Those states include Georgia, Minnesota, New York, and Virginia.

³ Crime Commission staff only reviewed juvenile and youthful offender parole statutes in the 16 states that abolished discretionary parole for present-day offenses.

APPENDIX B: ADULTS ON PAROLE IN THE UNITED STATES

The Bureau of Justice Statistics (BJS) is the primary statistical agency of the U.S. Department of Justice. The BJS collects, analyzes, publishes, and disseminates information on crime, criminal offenders, crime victims, and criminal justice operations.¹ The BJS first began its *Annual Probation Survey* and *Annual Parole Survey* in 1980. These surveys collect data from the U.S. probation and parole agencies that supervise adults in the community. Both surveys cover the 50 states, the District of Columbia, and the U.S. federal system. The majority of information provided in this memo is based upon BJS' *Probation and Parole in the United States* report bulletins for 2019² and 2020.³

Key Definitions (per BJS):

Community Supervision is the supervision of adults on probation or parole in the resident population, as opposed to the incarceration of adults in a correctional facility.

- An estimated 4,357,700 adults were under community supervision on December 31, 2019.⁴
- An estimated 3,890,400 adults were under community supervision on December 31, 2020.⁵

Probation is a court-ordered period of correctional supervision in the community, generally as an alternative to incarceration. In some cases, it may be a combined sentence involving incarceration followed by a period of community supervision.

- An estimated 3,492,880 adults were on probation as of December 31, 2019.⁶
- An estimated 3,053,742 adults were on probation as of December 31, 2020.⁷

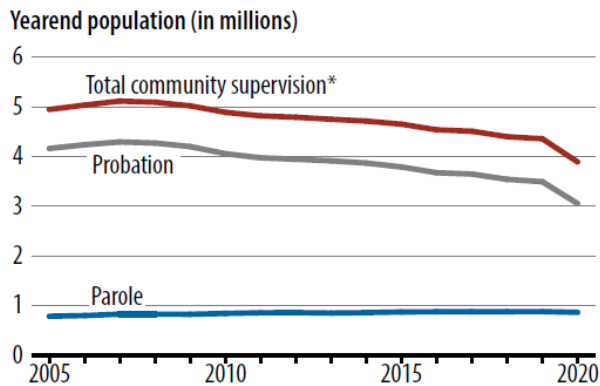
Parole is a period of conditional supervised release in the community following a term in state or federal prison. Parolees include individuals released through discretionary or mandatory supervised release from prison, released through other types of post-custody conditional supervision, or sentenced to a term of supervised release from prison.

- An estimated 878,858 adults were on parole as of December 31, 2019.⁸
- An estimated 862,113 adults were on parole as of December 31, 2020.⁹

Total Adults Under Community Supervision (Probation or Parole), 2005-2020

Figure 1 and Table 1 illustrate the total number of adults under community supervision (probation or parole) from 2005 to 2020 as of December 31 of each year.¹⁰ The community supervision rate decreased 32% between 2005 and 2020 (from 2,215 p/100,000 to 1,511 p/100,000 U.S. adult residents).¹¹

FIGURE 1
Adults on probation or parole, 2005–2020



Note: Counts for 2019 and earlier may differ from previously published statistics. Counts are for December 31 of each year. See table 1 for counts from 2005 to 2020.

*Details may not sum to totals because the community supervision counts were adjusted to exclude 25,400 adults on parole who were also on probation. See table 9 for counts of adults on parole who were also on probation.

Source: Bureau of Justice Statistics, Annual Probation Survey and Annual Parole Survey, 2005–2020.

TABLE 1
Adults under community supervision, 2005–2020

Year	Total*	Probation	Parole
2005	4,946,600	4,162,300	784,400
2006	5,035,000	4,236,800	798,200
2007	5,115,500	4,293,000	826,100
2008	5,093,400	4,271,200	826,100
2009	5,019,900	4,199,800	824,600
2010	4,888,500	4,055,900	840,800
2011	4,818,300	3,973,800	855,500
2012	4,790,700	3,944,900	858,400
2013	4,749,800	3,912,900	849,500
2014	4,713,200	3,868,400	857,700
2015	4,650,900	3,789,800	870,500
2016	4,537,100	3,673,100	874,800
2017	4,508,900	3,647,200	875,000
2018	4,399,000	3,540,000	878,000
2019	4,357,700	3,492,900	878,900
2020			
January 1	4,167,100	3,330,200	851,000
December 31	3,890,400	3,053,700	862,100
Percent change			
2005–2020	-21.4%	-26.6%	9.9%
January 1, 2020– December 31, 2020	-6.6	-8.3	1.3

Note: Counts are rounded to the nearest 100. Detail may not sum to total due to rounding. Estimates are based on most recent data and may differ from previously published statistics. Reporting methods for some probation agencies changed over time. See *Methodology*.

*Details may not sum to totals because community supervision counts were adjusted to exclude adults on parole who were also on probation. See *Methodology*.

Source: Bureau of Justice Statistics, Annual Probation Survey and Annual Parole Survey, 2005–2020.

The total community supervision population counts provided in Figure 1 and Table 1 above exclude adults on parole who were *also* on probation in order to avoid double-counting.¹² Table 9 provides the total number of adults who were excluded from the total community supervision population counts because they were on both parole and probation community supervision.

TABLE 9

**Adults supervised on both parole and probation
excluded from the January 1 and December 31
community supervision population, 2007–2020**

Year	January 1*	December 31
2007	...	3,562
2008	3,562	3,905
2009	3,905	4,959
2010	8,259	8,259
2011	8,259	10,958
2012	10,958	12,672
2013	12,672	12,511
2014	12,511	12,919
2015	12,919	9,375
2016	9,375	10,822
2017	10,822	13,302
2018	13,302	18,878
2019	18,878	14,057
2020	14,057	25,414

Note: Counts for 2019 and earlier may differ from previously published statistics. The community supervision counts were adjusted to exclude adults on parole who were also on probation.

...Not available.

*Data are based on the December 31 count of the prior reporting year for all years except 2010. For 2010, the December 31, 2010 count was used as a proxy because additional states reported these data in 2010.

Source: Bureau of Justice Statistics, Annual Probation Survey and Annual Parole Survey, 2007–2020.

Adults on Parole per 100,000 Adult Residents

- In 2020, the number of adults on parole in the United States was 335 per 100,000 adult residents.¹³
- **Virginia** was among the states with the **lowest** parole populations per 100,000 adult residents in 2020:¹⁴
 1. Maine (2 per 100,000 adult residents)
 2. Massachusetts (24 per 100,000 adult residents)
 2. Florida (24 per 100,000 adult residents)
 4. Virginia (30 per 100,000 adult residents)
- States with the **highest** parole populations per 100,000 adult residents in 2020 included:¹⁵
 1. Arkansas (1,106 per 100,000 adult residents)
 2. Pennsylvania (868 per 100,000 adult residents)
 3. Oregon (702 per 100,000 adult residents)
 4. Louisiana (605 per 100,000 adult residents)
- During 2019, the parole population **increased** from the previous year in 26 states and the U.S. federal system, but **decreased** in 23 states and the District of Columbia.¹⁶
- During 2020, the parole population **increased** from the previous year in 30 states, but **decreased** in 19 states, the District of Columbia, and the U.S. federal system.¹⁷

Adults on Parole in Virginia and the United States, 2009-2020¹⁸

Over the past decade, the number of adults on parole in Virginia comprised a very small fraction of the total number of adults on parole in the United States.

Year	Virginia	United States
2020	2,017	862,113
2019	1,921	878,858
2018	1,860	877,953
2017	1,709	874,956
2016	1,650	874,777
2015	1,576	870,526
2014	1,732	856,872
2013	1,800	853,215
2012	1,983	851,158
2011	2,244	853,852
2010	2,624	840,676
2009 ¹⁹	4,605	819,308

Source: Bureau of Justice Statistics, 2009-2020.

Figures based on count as of December 31 of each year.

¹ See Bureau of Justice Statistics at <https://bjs.ojp.gov/>.

² Oudekerk, B., & Kaebler, D. (2021, July). *Probation and parole in the United States, 2019*. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Retrieved from <https://bjs.ojp.gov/library/publications/probation-and-parole-united-states-2019>.

³ Kaebler, D. (2021, December). *Probation and parole in the United States, 2020*. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Retrieved from <https://bjs.ojp.gov/content/pub/pdf/ppus20.pdf>.

⁴ Oudekerk, B., & Kaebler, D. (2021, July). *Probation and parole in the United States, 2019*. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Retrieved from <https://bjs.ojp.gov/library/publications/probation-and-parole-united-states-2019>. The total number of adults under community supervision excludes the 14,057 adults who were under both probation and parole supervision at the same time (dual community supervision status).

⁵ Kaebler, D. (2021, December). *Probation and parole in the United States, 2020*. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Retrieved from <https://bjs.ojp.gov/content/pub/pdf/ppus20.pdf>. The total number of adults under community supervision excludes the 25,414 adults who were under both probation and parole supervision at the same time (dual community supervision status).

⁶ Oudekerk, B., & Kaebler, D. (2021, July). *Probation and parole in the United States, 2019*. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Retrieved from <https://bjs.ojp.gov/library/publications/probation-and-parole-united-states-2019>.

⁷ Kaebler, D. (2021, December). *Probation and parole in the United States, 2020*. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Retrieved from <https://bjs.ojp.gov/content/pub/pdf/ppus20.pdf>.

⁸ Oudekerk, B., & Kaebler, D. (2021, July). *Probation and parole in the United States, 2019*. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Retrieved from <https://bjs.ojp.gov/library/publications/probation-and-parole-united-states-2019>.

⁹ Kaebler, D. (2021, December). *Probation and parole in the United States, 2020*. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Retrieved from <https://bjs.ojp.gov/content/pub/pdf/ppus20.pdf>.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at pp. 24-25.

¹⁵ *Id.*

¹⁶ Oudekerk, B., & Kaebler, D. (2021, July). *Probation and parole in the United States, 2019*. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Retrieved from <https://bjs.ojp.gov/library/publications/probation-and-parole-united-states-2019>.

¹⁷ Kaebler, D. (2021, December). *Probation and parole in the United States, 2020*. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Retrieved from <https://bjs.ojp.gov/content/pub/pdf/ppus20.pdf>.

¹⁸ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. *Probation and Parole Populations Series* from 2009 to 2020 were retrieved from https://bjs.ojp.gov/library/publications/list?series_filter=Probation%20and%20Parole%20Populations.

¹⁹ See Glaze, L.E., & Bonczar, T.P. (2011, November). *Probation and parole in the United States, 2010*. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Retrieved from <https://bjs.ojp.gov/content/pub/pdf/ppus10.pdf> at p. 27. Data reported by Virginia for 2010 is not comparable to data reported for 2009. Virginia changed its method of reporting parole data, beginning with the January 1, 2010, offender population, as the result of the implementation of the Virginia Corrections Information System (VACORIS) and the rebuilding of the offender population data used for analysis.

APPENDIX C: STATE COMPARISON: THREE-YEAR RE-INCARCERATION RATES

Virginia Department of Corrections (VADOC) – State Recidivism Comparison Reports

The following table illustrates how VADOC State Responsible (SR) release cohorts (FY2013- FY2017) compared to release cohorts in other states.¹

STATE	FY2013 VADOC SR RELEASE COHORT ²	FY2014 VADOC SR RELEASE COHORT ³	FY2015 VADOC SR RELEASE COHORT ⁴	FY2016 VADOC SR RELEASE COHORT ⁵	FY2017 VADOC SR RELEASE COHORT ⁶
ALABAMA	31.9%	31.5%	29.4%	28.0%	28.7%
ALASKA	66.4%	63.2%	60.0%	60.6%	61.6%
ARKANSAS	51.8%	56.5%	57.4%	49.2%	47.5%
ARIZONA	39.8%	39.8%	39.8%	38.6%	36.3%
CALIFORNIA	44.6%	Not included	Not included	Not included	Not included
COLORADO	50.0%	50.0%	48.1%	47.2%	44.9%
CONNECTICUT	55.0%	37.0%	37.0%	34.0%	49.0%
DELAWARE	64.9%	64.5%	63.5%	62.2%	60.2%
FLORIDA	25.2%	24.5%	24.7%	25.4%	25.4%
GEORGIA	Not included	Not included	Not included	Not included	Not included
HAWAII	Not included	Not included	Not included	Not included	Not included
IDAHO	32.0%	31.1%	33.3%	35.7%	36.3%
ILLINOIS	Not included	39.9%	41.3%	41.3%	38.5%
INDIANA	37.0%	33.9%	33.8%	37.0%	38.2%
IOWA	34.2%	34.2%	38.8%	39.8%	38.7%
KANSAS	35.9%	36.0%	34.2%	34.7%	34.7%
KENTUCKY	43.3%	46.4%	46.4%	49.1%	46.4%
LOUISIANA	33.9%	32.0%	33.3%	32.7%	29.6%
MAINE	30.2%	30.5%	30.5%	27.9%	26.3%
MARYLAND	40.5%	40.5%	40.5%	40.5%	40.5%
MASSACHUSETTS	32.0%	32.0%	32.0%	33.0%	33.0%
MICHIGAN	29.8%	28.1%	29.1%	26.7%	26.6%
MINNESOTA	25.0%	25.0%	26.0%	26.0%	25.0%
MISSISSIPPI	31.4%	33.4%	33.4%	37.0%	36.8%

STATE	FY2013 VADOC SR RELEASE COHORT ²	FY2014 VADOC SR RELEASE COHORT ³	FY2015 VADOC SR RELEASE COHORT ⁴	FY2016 VADOC SR RELEASE COHORT ⁵	FY2017 VADOC SR RELEASE COHORT ⁶
MISSOURI	43.9%	42.7%	42.9%	40.1%	37.2%
MONTANA	42.2%	42.2%	36.9%	38.6%	38.6%
NEBRASKA	25.5%	25.5%	30.3%	31.0%	30.2%
NEVADA	29.2%	28.6%	28.6%	27.5%	24.6%
NEW HAMPSHIRE	47.1%	45.0%	45.0%	45.0%	41.5%
NEW JERSEY	32.0%	29.8%	30.5%	30.4%	30.4%
NEW MEXICO	46.2%	49.1%	49.1%	49.1%	49.1%
NEW YORK	42.6%	43.0%	43.0%	43.0%	43.0%
NORTH CAROLINA	35.8%	35.8%	Not included	Not included	Not included
NORTH DAKOTA	39.9%	45.7%	39.4%	40.3%	41.2%
OHIO	29.3%	30.7%	31.5%	31.5%	32.7%
OKLAHOMA	24.2%	24.8%	24.8%	25.1%	22.6%
OREGON	Not included	Not included	Not included	Not included	Not included
PENNSYLVANIA	59.5%	46.4%	46.4%	47.1%	47.1%
RHODE ISLAND	52.0%	50.0%	47.0%	47.0%	47.0%
SOUTH CAROLINA	24.9%	24.5%	23.1%	21.9%	21.0%
SOUTH DAKOTA	43.6%	39.6%	43.1%	44.0%	44.0%
TENNESSEE	47.1%	Not included	Not included	Not included	Not included
TEXAS	Not included	Not included	Not included	Not included	Not included
UTAH	55.0%	Not included	Not included	Not included	Not included
VERMONT	45.0%	45.0%	45.0%	45.0%	43.8%
VIRGINIA	22.4%	23.4%	23.1%	23.9%	22.3%
WASHINGTON	32.2%	32.0%	33.5%	33.5%	30.7%
WEST VIRGINIA	25.0%	24.0%	24.0%	28.0%	29.3%
WISCONSIN	37.5%	37.5%	37.5%	33.3%	38.1%
WYOMING	28.2%	28.2%	32.1%	32.3%	33.8%

Table prepared by Crime Commission staff.

¹ VADOC waits at least four years to calculate the three-year re-incarceration rate of SR releases in order to ensure that all court orders are accounted for and entered into the Virginia CORIS data system. In order to calculate re-incarceration rates, VADOC counts all SR sentences (1 year or more for a felony offense; 2 years or more for a parole violation) after release as recidivism, including technical violations and sentences for offenses that occurred prior to release.

² Virginia Department of Corrections. (2017, November). *State recidivism comparison*. Retrieved from <https://vadoc.virginia.gov/media/1366/vadoc-state-recidivism-comparison-report-2017-11.pdf>. Recidivism rates for each state are the most recent three-year re-incarceration rates produced and made publicly available by each state (as of September 2017). The data for Virginia reflects State Responsible (SR) inmates released from incarceration in Virginia in FY2013. The following states were included in the analysis but reflect a unified state rate, which includes both state and local responsible inmates: Alaska, Connecticut, Delaware, Rhode Island, and Vermont. The following states were excluded from the analysis for the following reasons: Georgia (only reports re-conviction information), Hawaii (only reports re-arrest information), Illinois (only reports re-conviction information), Oregon (data based on 6-month release cohort), and Texas (data includes both felons and misdemeanants).

³ Virginia Department of Corrections. (2018, December). *State recidivism comparison*. Retrieved from <https://vadoc.virginia.gov/media/1363/vadoc-state-recidivism-comparison-report-2018-12.pdf>. Recidivism rates for each state are the most recent three-year re-incarceration rates produced and made publicly available by each state (as of October 2018). The data for Virginia reflects State Responsible (SR) inmates released from incarceration in Virginia in FY2014. The following states were included in the analysis but reflect a unified state rate, which includes both state and local responsible inmates: Alaska, Connecticut, Delaware, Rhode Island, and Vermont. The following states were excluded from the analysis for the following reasons: California (data excludes parole violations), Georgia (only reports re-conviction information), Hawaii (only reports re-arrest information), Oregon (data based on 6-month release cohort), Tennessee (data combines re-arrest, re-conviction, and re-incarceration information), Texas (data includes both felons and misdemeanants), and Utah (data only includes releases to parole).

⁴ Virginia Department of Corrections. (2020, February). *State recidivism comparison*. Retrieved from <https://vadoc.virginia.gov/media/1485/vadoc-state-recidivism-comparison-report-2020-02.pdf>. Recidivism rates for each state are the most recent three-year re-incarceration rates produced and made publicly available by each state (as of November 8, 2019). The data for Virginia reflects State Responsible (SR) inmates released from incarceration in Virginia in FY2015. The following states were included in the analysis but reflect a unified state rate, which includes both state and local responsible inmates: Alaska, Connecticut, Delaware, Rhode Island, and Vermont. The following states were excluded from the analysis for the following reasons: California (data excludes parole violations), Georgia (only reports re-conviction information), Hawaii (only reports re-arrest information), North Carolina (solely produces two-year follow-up rates), Oregon (data based on 6-month release cohort), Tennessee (data combines re-arrest, re-conviction, and re-incarceration information), Texas (rate was calculated separately from seven different populations including both felons and misdemeanants), and Utah (data only includes releases to parole).

⁵ Virginia Department of Corrections. (2021, April). *State recidivism comparison*. Retrieved from <https://vadoc.virginia.gov/media/1684/vadoc-state-recidivism-comparison-report-2021-04.pdf>. Recidivism rates for each state are the most recent three-year re-incarceration rates produced and made publicly available by each state (as of November 30, 2020). The data for Virginia reflects State Responsible (SR) inmates released from incarceration in Virginia in FY2016. The following states were included in the analysis but reflect a unified state rate, which includes both state and local responsible inmates: Alaska, Connecticut, Delaware, Rhode Island, and Vermont. The following states were excluded from the analysis for the following reasons: California (data excludes parole violations), Georgia (only reports re-conviction information), Hawaii (only reports re-arrest information), North Carolina (solely produces two-year follow-up rates), Oregon (data based on 6-month release cohort), Tennessee (data combines re-arrest, re-conviction, and re-incarceration information), Texas (rate was calculated separately from seven different populations including both felons and misdemeanants), and Utah (data only includes releases to parole).

⁶ Virginia Department of Corrections. (2022, January). *State recidivism comparison*. Retrieved from <https://vadoc.virginia.gov/media/1728/vadoc-state-recidivism-report-2022-01.pdf>. Recidivism rates for each state are the most recent three-year re-incarceration rates produced and made publicly available by each state (as of October 29, 2021). The data for Virginia reflects State Responsible (SR) inmates released from incarceration in Virginia in FY2017. The report notes that rates across states may be lower than previous years due to sentencing delays related to COVID-19. The following states were included in the analysis but reflect a unified state rate, which includes both state and local responsible inmates: Alaska, Connecticut, Delaware, Rhode Island, and Vermont. The following states were excluded from the analysis for the following reasons: California (data excludes parole violations), Georgia (only reports re-conviction information), Hawaii (only reports re-arrest information), North Carolina (solely produces two-year follow-up rates), Oregon (data based on 6-month release cohort), Tennessee (data includes those who were arrested and detained in jail without being convicted of a crime, as well as those who were convicted of committing a new crime), Texas (rate was calculated separately from seven different populations including both felons and misdemeanants), and Utah (data only includes releases to parole).

APPENDIX D: VIRGINIA DEPARTMENT OF CORRECTIONS STATE RESPONSIBLE (SR) POPULATION

SR Confined Population, Releases, Community Corrections, and Parole Violators

The Virginia Department of Corrections (VADOC) publishes its *State Responsible Offender Demographic Profile* report on a semi-regular basis. The most recent report contains demographic information for the State Responsible (SR) confined offender population and the community corrections population on June 30, 2019, as well as SR releases during FY2019 and parole violators during FY2018.¹

The purpose of this memo is to provide information from the FY2019 VADOC *State Responsible Offender Demographic Profile* report pertaining to the following:

1. parole eligible offenders in the SR confined population on June 30, 2019;
2. SR offenders released on parole during FY2019;
3. SR offenders under active community parole supervision on June 30, 2019; and,
4. SR parole violators during FY2018.

State Responsible Confined Population on June 30, 2019

The “**State Responsible (SR) Confined Population**” includes offenders incarcerated in a VADOC facility or local/regional jail serving a SR term of incarceration on the date specified.²

- The SR Confined population as of June 30, 2019 (FY19) was 34,719.³
 - 91% (31,742) were serving a truth-in-sentencing (TIS) term of incarceration;⁴ and,
 - **9% (2,977) were serving a parole-eligible term of incarceration.**⁵
 - Average time already served: 263.2 months (~22 years)
 - Average remaining time to serve: 73.3 months (~6 years)

VADOC classifies SR offenders by the crime type of the most serious offense for which they were incarcerated on the date specified. The crime type categories include: violent, property/public order, and drugs. The crime types of the most serious offenses (MSO) for the **2,977 SR offenders serving a parole-eligible term of incarceration** on June 30, 2019, were as follows:⁶

- 92% (2,728) of parole eligible offenders had a violent MSO;
 - Average time already served: 277.0 months (~23 years)
 - Average remaining time to serve: 78.4 months (~7 years)
- 7% (202) of parole eligible offenders had a property/public order MSO; and,
 - Average time already served: 190.0 months (~16 years)
 - Average remaining time to serve: 44.8 months (~4 years)

- 1% (47) of parole eligible offenders had a drug MSO.
 - Average time already served: 173.6 months (~15 years)
 - Average remaining time to serve: 46.5 months (~4 years)

State Responsible Releases During FY2019

“State Responsible (SR) Releases” include offenders released from a SR term of incarceration during the timeframe specified. VADOC classifies its SR Releases by various release types, including: release to supervision, direct discharge, discretionary parole, mandatory parole, death, and “other”. VADOC also captures the average length of time served (in months) by SR releases before being released.

The release types and average length of time served of the 12,819 SR Releases during FY2019 were as follows:

- 87% (11,188) of offenders were released to supervision: 38.1 months (~3 years)
- 8% (1,073) of offenders were directly discharged: 40.2 months (~3 years)
- **2% (253) of offenders were released on discretionary parole: 55.6 months (~5 years)**
 - 223 with violent MSO: 341.1 months (~28 years)
 - 15 with non-violent MSO: 208.1 months (~17 years)
 - 15 with drug MSO: 178.9 months (~15 years)
- **1% (161) of offenders were released on mandatory parole: 50.3 months (~4 years)**
 - 116 with violent MSO: 260.6 months (~22 years)
 - 33 with non-violent MSO: 123.3 months (~10 years)
 - 11 with drug MSO: 91.5 months (~8 years)
- Less than 1% (107) of offenders were released due to death: 56.7 months (~5 years)
- Less than 1% (37) of offenders were released under an “other” release type: 39.0 months (~3 years)

State Responsible Releases Under Active Community Corrections Supervision

The **“Community Corrections Population”** includes offenders convicted of one or more felonies who were sentenced to a term of supervision in the community and were being supervised on the date specified. VADOC classifies offenders receiving supervision into the following supervision types: probation, parole, interstate compact, post-release, and conditional release.

The total active community corrections population was 66,612 on June 30, 2019:

- 89% (59,295) of offenders were on probation supervision;
- **3% (1,842) of offenders were on parole supervision;**

- 1,431 offenders had a violent MSO before being release on parole
 - 303 offenders had a property/public order MSO before being released on parole
 - 105 offenders had a drug MSO before being released on parole
 - 3 offenders did not have a MSO reported
- 3% (2,113) of offenders were on interstate compact supervision;
- <1% (582) of offenders were on post-release supervision;
- <1% (28) of offenders were on conditional release supervision; and,
- 4% (2,752) of offenders did not have a type of supervision listed.

State Responsible Parole Violators During FY2018

“State Responsible Parole Violators” are offenders who had their parole revoked by the Virginia Parole Board during the time frame specified and had an SR term of incarceration imposed.

There were 56 parole violators in FY18.

- 73% (41 of 56) of parole violators had technical violations.
- 27% (15 of 56) of parole violators had a new crime violation.

The **release types** for the 56 parole violators were as follows:

- 43 parole violators had been released on mandatory parole.
 - 22 violators had a violent MSO when released on supervision; 20 violators had a property/public order MSO when released on supervision; and, 1 violator had a drug MSO when released on supervision.
- 12 parole violators had been released on discretionary parole.
 - 6 violators had a violent MSO when released on parole supervision; and, 6 violators had a property/public order MSO when released on supervision.
- 1 parole violator had been released on geriatric parole.
 - This violator had a violent MSO when released on parole supervision.

The crime types of the most serious offenses for each of the 56 parole violators, both before and after they were released on parole supervision, were as follows:

- 29 parole violators had a violent MSO before being released on parole supervision and then committed the following violations after release:
 - 22 committed technical violations
 - 7 committed new crime violations
- 26 parole violators had a property/public order MSO before being released on parole supervision and then committed the following violations after release:
 - 19 committed technical violations

- 7 committed new crime violation
- 1 parole violator had a drug MSO before being released on parole supervision and then committed the following violation after release:
 - 1 committed a new crime violation
- The mean time revoked across all 56 parole violators was 132.3 months (~11 years).
 - 149.4 months (~12 years) revoked for parole violators who had a violent MSO before being released on parole supervision.
 - 117.4 months (~10 years) revoked for parole violators who had a property/public order MSO before being released on parole supervision.
 - 24.7 months (~2 years) revoked for parole violators who had a drug MSO before being released on parole supervision.

¹ Virginia Department of Corrections. (2020, January). *State responsible offender demographic profile, FY2019*. Retrieved from <https://vadoc.virginia.gov/media/1472/vadoc-research-state-responsible-demographic-report-2019.pdf>. See p. ii of report for how the definition of a State Responsible (SR) inmate has changed over time.

² This figure excludes any Out-Of-State Contract offenders incarcerated in a VADOC facility. The SR Confined Population figures are data extracted from VirginiaCORIS and were current as of that time; the SR Confined Population figures differ from the SR End-of-Month (SR EOM) figures because the SR Confined Population includes only information about offenders known to VirginiaCORIS, while the SR EOM figures include information about SR offenders incarcerated in local/regional jail as reported by the State Compensation Board (SCB) because the jails know about an offender's SR status before that information is received and verified by VADOC and entered into VirginiaCORIS.

³ Virginia Department of Corrections. (2020, January). *State responsible offender demographic profile, FY2019*. Retrieved from <https://vadoc.virginia.gov/media/1472/vadoc-research-state-responsible-demographic-report-2019.pdf>.

⁴ *Id.* Offenders with only Truth-In-Sentencing (TIS) convictions for this term of incarceration.

⁵ *Id.* Offenders with Parole Eligible convictions for this term of incarceration. This includes any offenders with a combination of TIS and PE sentences (these offenders must satisfy the TIS portion of their sentence before satisfying the Parole Eligible portion). These offenders may or may not have passed their Discretionary Parole Eligibility Date.

⁶ The crime type of an offender's most serious offense for which they are currently incarcerated does not take into account that offender's criminal history record.

APPENDIX E: IMPACT OF ENHANCED EARNED SENTENCE CREDITS (ESC) ON FY2023 VIRGINIA STATE RESPONSIBLE (SR) RELEASES

Crime Commission staff requested data from the Virginia Department of Corrections (VADOC) relating to the impact of enhanced ESC on FY2023 SR releases.¹ The purpose of this memo is to provide information on the number of offenders scheduled for release in FY2023 (July 1, 2022 - June 30, 2023) who were further classified into two groups:

- Releases who were not eligible for enhanced ESC (“Regular Releases”); and,
- Releases who were eligible for enhanced ESC (“Enhanced ESC Releases”).²

FY2023 Releases

Offenders scheduled for release in FY2023 were classified as follows:

- Regular Releases: offenders scheduled to be released in FY2023 who did not benefit from enhanced ESC.³
- Enhanced ESC Releases: offenders scheduled to be released in FY2023 who benefited from enhanced ESC. These offenders were further classified as follows:
 - No Change in FY of Release: offenders scheduled to be released earlier in FY2023 than their original release date due to the application of enhanced ESC, but who would have been released in FY2023 even without enhanced ESC.⁴
 - Change in FY of Release: offenders scheduled to be released in FY2023 who are being released *at least* one fiscal year earlier than their original release date due to the application of enhanced ESC.⁵

There are 9,324 offenders scheduled to be released in FY2023:⁶

- 21% (1,995 of 9,324) are Regular Releases;⁷
- 53% (4,947 of 9,324) are Enhanced ESC Releases with no change in FY of release;⁸ and,
- 26% (2,382 of 9,324) are Enhanced ESC Releases with a change in FY of release.⁹

Main Findings

1. 74% (6,924 of 9,324) of all offenders scheduled to be released in FY2023 were already scheduled to be released in FY2023 prior to the enactment and application of enhanced ESC.¹⁰
2. The sex and age of the offenders scheduled to be released in FY2023 are similar across all classifications of offenders.¹¹
 - 88% of all scheduled FY2023 releases are male.
 - 63% of all scheduled FY2023 releases will be between the ages of 30-49 at release.¹²

3. The crime type of the most serious offense (MSO) at release varies tremendously between Regular Releases and Enhanced ESC Releases.¹³
 - The vast majority of scheduled Regular Releases have a violent MSO crime type at release; whereas, most of the scheduled Enhanced ESC Releases have a MSO crime type at release relating to property/public order or drug offenses. Specifically:
 - 93% of scheduled Regular Releases have a violent MSO crime type at release as compared to 21% of scheduled Enhanced ESC Releases;
 - 7% of scheduled Regular Releases have a property/public order MSO crime type at release as compared to 43% of scheduled Enhanced ESC Releases; and,
 - none of the scheduled Regular Releases have a drug MSO crime type at release as compared to 36% of scheduled Enhanced ESC Releases.
4. Significant differences exist in the most serious offense (MSO) at release between scheduled Regular Releases and scheduled Enhanced ESC Releases.¹⁴
 - 79% of scheduled Regular Releases have a MSO at release for either rape/sexual assault (25%), robbery (29%), or assault (25%), as compared to only 11% of scheduled Enhanced ESC Releases who have a MSO at release of rape/sexual assault (1%), robbery (<1%), or assault (9%).
 - Less than 2% of scheduled Regular Releases have a MSO at release for either larceny/fraud, drug sales, drug possession, or burglary/B&E, as compared to 74% of scheduled Enhanced ESC Releases who have a MSO at release of either larceny/fraud (25%), drug sales (23%), drug possession (14%), or burglary/B&E (12%).
5. The risk of general recidivism varies between scheduled Regular Releases and scheduled Enhanced ESC Releases, with Enhanced ESC Releases categorized as having a higher risk of general recidivism as compared to Regular Releases.¹⁵
 - Specifically, 48% of scheduled Regular Releases are categorized as having a “low risk” of general recidivism, as compared to only 22% of scheduled Enhanced ESC Releases.¹⁶

Enhanced Earned Sentence Credits (ESC) Impact on FY2023 State Responsible (SR) Releases (N=9,324)

	REGULAR RELEASES (N=1,995)	ENHANCED ESC RELEASES, NO FY CHANGE (N=4,947)	ENHANCED ESC RELEASES, FY CHANGE (N=2,382)	ALL FY2023 RELEASES (N=9,324)
CRIME TYPE OF MOST SERIOUS OFFENSE (MSO) AT RELEASE				
VIOLENT	93%	21%	22%	36%
PROPERTY/PUBLIC ORDER	7%	44%	39%	35%
DRUG	-	35%	39%	29%
PRIOR CONVICTION FOR VIOLENT OFFENSE ON CRIMINAL RECORD PER § 17.1-805¹⁷				
NO	1%	52%	46%	40%
YES	99%	48%	54%	60%
MOST SERIOUS OFFENSE AT RELEASE				
CAPITAL MURDER/HOMICIDE - 1 ST /HOMICIDE-2 ND	6%	<1%	-	1%
MANSLAUGHTER	<1%	2%	3%	2%
ABDUCTION	8%	<1%	-	2%
RAPE/SEXUAL ASSAULT	25%	1%	1%	6%
ROBBERY	29%	<1%	<1%	6%
ASSAULT	25%	9%	9%	12%
WEAPONS	<1%	9%	8%	7%
ARSON	<1%	<1%	1%	<1%
BURGLARY/B&E	1%	11%	14%	10%
LARCENY/FRAUD	<1%	27%	21%	19%
CONSPIRACY	-	<1%	1%	<1%
SEX OFFENSE ¹⁸	6%	1%	1%	2%
DUI	-	3%	1%	2%
HABITUAL OFFENDER	-	2%	1%	1%
OTHER NON-VIOLENT	<1%	<1%	<1%	<1%
DRUG SALES	-	20%	28%	18%
DRUG POSSESSION	-	15%	11%	11%
COMPAS RISK OF GENERAL RECIDIVISM¹⁹				
LOW	48%	21%	24%	27%
MEDIUM	25%	24%	28%	25%
HIGH	17%	23%	29%	23%
NOT REPORTED	11%	32%	19%	24%

Source: Virginia Department of Corrections, personal communication, July 22, 2022.

¹ Virginia Department of Corrections, personal communication, July 22, 2022. Data reflects scheduled releases as of June 30, 2022. The numbers reported are preliminary and will likely change. The numbers reported include tentative release dates that require further review by time computation auditors.

² Releases who are eligible for Enhanced ESC are offenders that are scheduled to be released *earlier* than their original release date due to the application of enhanced ESC.

³ Virginia Department of Corrections, personal communication, July 22, 2022.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Percentages for risk levels of general recidivism are based on all 9,324 FY2023 releases, including offenders whose COMPAS risk level of general recidivism was not recorded. If the 2,238 offenders without a recorded COMPAS risk of general recidivism score are excluded, percentages for risk levels are as follows: 53% of scheduled Regular Releases are categorized as having a “low risk” of general recidivism, as compared to only 30% of scheduled Enhanced ESC releases.

¹⁷ See VA. CODE ANN. § 17.1-805(C) (2022). This category indicates whether an inmate has a conviction in their VADOC sentence history for an offense considered violent per the definition set forth in VA. CODE ANN. § 17.1-805 and whether an inmate qualifies for sentence length enhancements in the Virginia Criminal Sentencing Commission sentencing guidelines. This category differs from VADOC crime type in that it takes into account an inmate’s entire criminal history record rather than just the crime type for the inmate’s current SR term of incarceration. A significant difference is that VA. CODE ANN. § 17.1-805 treats burglary offenses as being violent.

¹⁸ These sex offenses are non-violent sex-related offenses, such as indecent exposure, failure to register as a sex offender, etc.

¹⁹ The COMPAS is a risk and needs assessment instrument used by VADOC. The risk of general recidivism was based on the last COMPAS assessment from this release term as of June 30, 2022. For more information on the COMPAS risk and needs assessment instrument, see Equivant. (2019, April 4). *Practitioner’s guide to COMPAS core*. (Viewed August 2, 2022). Retrieved from <https://www.equivant.com/practitioners-guide-to-compas-core/>.

APPENDIX F: STATUTORY EXCLUSIONS ACROSS EARLY RELEASE MECHANISMS IN VIRGINIA

EXCLUDED CRIME(S) PER VA. CODE	§ 53.1-151 DISCRETIONARY PAROLE ¹	§ 53.1-165.1(B) <i>FISHBACK</i> PAROLE ²	§ 53.1-40.01 GERIATRIC PAROLE ³	§ 53.1-40.02 TERMINALLY ILL PAROLE ⁴	§ 53.1-165.1(E) JUVENILE PAROLE ⁵	§ 19.2-311 YOUTHFUL OFFENDER PAROLE ⁶	§ 53.1-202.3 EARNED SENTENCE CREDITS (ESC) ⁷	BUDGET COVID-19 RELEASE ⁸ (EXPIRED)
Murder, rape, or robbery by the presenting of firearms or other deadly weapon	✓ ⁹							
Felony – manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give or distribute a controlled substance	✓ ¹⁰							
§ 3.2-6570(F) – cruelty to animals							✓	
§ 16.1-253.2 (felony) –protective order violation				✓			✓	
§ 18.2-10(a) – Class 1 felony		✓	✓	✓			✓	✓
§ 18.2-29 – solicitation to commit murder							✓	
§ 18.2-31 – aggravated murder						✓		
§ 18.2-32 – 1 st and 2 nd degree murder				✓		✓	✓	
§ 18.2-32.1 – murder of a pregnant woman				✓			✓	
§ 18.2-32.2 – killing a fetus				✓			✓	
§ 18.2-33 – felony murder				✓			✓	
§ 18.2-40 – lynching				✓			✓	
§ 18.2-45 – persons suffering death from mob attempting to lynch another person ¹¹				✓			✓	
§ 18.2-46.5 – committing, conspiring, aiding & abetting an act of terrorism				✓			✓ ¹²	

EXCLUDED CRIME(S) PER VA. CODE	§ 53.1-151 DISCRETIONARY PAROLE ¹	§ 53.1- 165.1(B) <i>FISHBACK</i> PAROLE ²	§ 53.1- 40.01 GERIATRIC PAROLE ³	§ 53.1-40.02 TERMINALLY ILL PAROLE ⁴	§ 53.1- 165.1(E) JUVENILE PAROLE ⁵	§ 19.2- 311 YOUTHFUL OFFENDER PAROLE ⁶	§ 53.1-202.3 EARNED SENTENCE CREDITS (ESC) ⁷	BUDGET COVID-19 RELEASE ⁸ (EXPIRED)
§ 18.2-46.6(A) – possess, etc., weapon of terrorism				✓			✓	
§ 18.2-46.6(B) – possess, etc., weapon of terrorism container				✓				
§ 18.2-46.7 – bioterrorism				✓				
Article 3 of Chapter 4 of Title 18.2 (§ 18.2-47 <i>et seq.</i>) – any kidnapping or abduction felony				✓ ¹³			✓	
Article 4 of Chapter 4 of Title 18.2 (§ 18.2-51 <i>et seq.</i>) – any malicious felonious assault or malicious bodily wounding				✓			✓	
§ 18.2-51.6 – strangulation							✓	
§ 18.2-51.7 – female genital mutilation				✓			✓	
§ 18.2-54.1 – attempts to poison				✓				
§ 18.2-54.2 – adulteration of food, drink, drugs, cosmetics, etc.				✓				
§ 18.2-57.2 (felony) – assault and battery against family or household member				✓			✓	
§ 18.2-58 – robbery				✓			✓	
§ 18.2-58.1 – carjacking				✓			✓	
§ 18.2-60.3 (felony) – stalking				✓			✓	
§ 18.2-60.4 (felony) – protective order violation				✓			✓	

EXCLUDED CRIME(S) PER VA. CODE	§ 53.1-151 DISCRETIONARY PAROLE ¹	§ 53.1-165.1(B) <i>FISHBACK</i> PAROLE ²	§ 53.1-40.01 GERIATRIC PAROLE ³	§ 53.1-40.02 TERMINALLY ILL PAROLE ⁴	§ 53.1-165.1(E) JUVENILE PAROLE ⁵	§ 19.2-311 YOUTHFUL OFFENDER PAROLE ⁶	§ 53.1-202.3 EARNED SENTENCE CREDITS (ESC) ⁷	BUDGET COVID-19 RELEASE ⁸ (EXPIRED)
Article 7 of Chapter 4 of Title 18.2 (§ 18.2-61 <i>et seq.</i>) – specific felonious sexual assaults				✓ ¹⁴		✓ ¹⁵	✓	
Article 7 of Chapter 4 of Title 18.2 (§ 18.2-61 <i>et seq.</i>) – specific sexual assaults where the victim was a minor		✓ ¹⁶				✓ ¹⁷		
§ 18.2-90 – burglary with intent to commit murder, rape, robbery or arson				✓			✓	
§ 18.2-93 – entering bank, armed, with intent to commit larceny				✓				
§ 18.2-128 – felony trespass on church or school property							✓	
§ 18.2-289 – use of machine gun in crime of violence				✓			✓	
§ 18.2-300(A) – possession or use of “sawed-off” shotgun or rifle for crime of violence				✓			✓	
Article 3 of Chapter 8 of Title 18.2 (§ 18.2-346 <i>et seq.</i>) – prostitution, commercial sexual conduct				✓ ¹⁸			✓	
Article 4 of Chapter 8 of Title 18.2 (§ 18.2-362 <i>et seq.</i>) – family offenses; crimes against children, etc.				✓ ¹⁹			✓ ²⁰	
Article 5 of Chapter 8 of Title 18.2 (§ 18.2-372 <i>et seq.</i>) – obscenity (any felony offense)				✓ ²¹			✓ ²²	
§ 18.2-481 – treason				✓			✓	

EXCLUDED CRIME(S) PER VA. CODE	§ 53.1-151 DISCRETIONARY PAROLE ¹	§ 53.1- 165.1(B) <i>FISHBACK</i> PAROLE ²	§ 53.1- 40.01 GERIATRIC PAROLE ³	§ 53.1-40.02 TERMINALLY ILL PAROLE ⁴	§ 53.1- 165.1(E) JUVENILE PAROLE ⁵	§ 19.2- 311 YOUTHFUL OFFENDER PAROLE ⁶	§ 53.1-202.3 EARNED SENTENCE CREDITS (ESC) ⁷	BUDGET COVID-19 RELEASE ⁸ (EXPIRED)
§ 37.2-900 – any sexually violent offense								✓ ²³
§ 37.2-917 – escape of persons committed							✓	
§ 37.2-918 – persons on conditional release leaving Commonwealth							✓	
§ 40.1-100.2 – employ, etc. a person under eighteen for sexually explicit visual material				✓			✓	
§ 40.1-103 – cruelty and injuries to children				✓			✓	
SECOND OR SUBSEQUENT FELONY VIOLATION OF THE FOLLOWING²⁴								
§ 3.2-6571 – felony animal fighting							✓	
§ 18.2-30 – voluntary manslaughter				✓			✓	
§ 18.2-30 – involuntary manslaughter				✓				
§ 18.2-41 – shooting, stabbing, etc., with intent to maim, kill, etc., by mob				✓			✓	
§ 18.2-42.1 – acts of violence by mob				✓			✓	
§ 18.2-46.5(B), (C), or (D) – committing, conspiring, and aiding and abetting acts of terrorism							✓	
§ 18.2-46.6(C) – use, sell, etc., imitation weapon of terrorism				✓				
§ 18.2-46.7 – bioterrorism							✓	
§ 18.2-51 – unlawful wounding				✓			✓	
§ 18.2-51.1 – unlawful wounding of law-enforcement, etc.				✓			✓	

EXCLUDED CRIME(S) PER VA. CODE	§ 53.1-151 DISCRETIONARY PAROLE ¹	§ 53.1- 165.1(B) <i>FISHBACK</i> PAROLE ²	§ 53.1- 40.01 GERIATRIC PAROLE ³	§ 53.1-40.02 TERMINALLY ILL PAROLE ⁴	§ 53.1- 165.1(E) JUVENILE PAROLE ⁵	§ 19.2- 311 YOUTHFUL OFFENDER PAROLE ⁶	§ 53.1-202.3 EARNED SENTENCE CREDITS (ESC) ⁷	BUDGET COVID-19 RELEASE ⁸ (EXPIRED)
§ 18.2-54.1 – attempts to poison							✓	
§ 18.2-54.2 – adulteration of food, drink, drugs, cosmetics, etc.							✓	
§ 18.2-77 – burning or destroying dwelling house, etc. (when occupied)				✓			✓	
§ 18.2-79 – burning or destroying meeting house, etc. when occupied (Class 3 felony only)				✓			✓	
§ 18.2-89 – burglary (intent to commit larceny)				✓			✓	
§ 18.2-92 – breaking and entering dwelling house with intent to commit other misdemeanor				✓			✓	
§ 18.2-374.1:1(A) – possession of child pornography				✓			✓	
§ 18.2-423 – burning cross on property of another or public place with intent to intimidate				✓			✓	
§ 18.2-423.01 – burning object on property of another or a highway or other public place with intent to intimidate				✓			✓	
§ 18.2-423.1 – placing swastika on certain property with intent to intimidate				✓			✓	

EXCLUDED CRIME(S) PER VA. CODE	§ 53.1-151 DISCRETIONARY PAROLE ¹	§ 53.1-165.1(B) FISHBACK PAROLE ²	§ 53.1-40.01 GERIATRIC PAROLE ³	§ 53.1-40.02 TERMINALLY ILL PAROLE ⁴	§ 53.1-165.1(E) JUVENILE PAROLE ⁵	§ 19.2-311 YOUTHFUL OFFENDER PAROLE ⁶	§ 53.1-202.3 EARNED SENTENCE CREDITS (ESC) ⁷	BUDGET COVID-19 RELEASE ⁸ (EXPIRED)
§ 18.2-423.2 – displaying noose on property of another or a highway or other public place with intent to intimidate				✓			✓	
§ 18.2-433.2 – paramilitary activity				✓			✓	
§ 40.1-29(E)(2) – withholding wages \$10,000 or more or second or subsequent conviction regardless of value				✓			✓	

Table prepared by Crime Commission staff based on legal analysis as of July 2022.

¹ Discretionary parole encompasses three Virginia Code sections: VA. CODE ANN. § 53.1-151 (felonies only), § 53.1-152 (combination of felonies and misdemeanors and sentenced to prison), and § 53.1-153 (combination of felonies and misdemeanors, or misdemeanors only, and sentenced to jail). The exclusions set forth in VA. CODE ANN. § 53.1-151 are also applicable to VA. CODE ANN. §§ 53.1-152 and 53.1-153.

² *Fishback v. Commonwealth*, 532 S.E.2d 629, 260 Va. 104 (June 9, 2000).

³ To qualify for conditional release under this statute, the person must have reached the age of 65 and served at least 5 years of their sentence, or reached the age of 60 and served at least 10 years of their sentence.

⁴ “Terminally ill” means having a chronic or progressive medical condition caused by injury, disease, or illness where the medical prognosis is the person’s death within 12 months.

⁵ There are no excluded crimes for juvenile parole. Requirements to qualify for juvenile parole are listed in VA. CODE ANN. § 53.1-165.1(E).

⁶ The court makes the initial determination whether to sentence the person to the youthful offender program that will then make them eligible for parole. The exclusions listed in this column will disqualify a person from being sentenced to the youthful offender program.

⁷ The ESC statute does not contain any excluded crimes. ESC are included in this table to show the crimes for which those sentenced may only earn a maximum of 4.5 days for each 30 days served. Per the language of the 2022 Special Session I Budget Bill, this includes any sentence that is concurrent with or consecutive to a sentence for a conviction of an offense listed in the table (subsection A of VA. CODE ANN. § 53.1-202.3). See 2022 Va. Acts, Sp. Sess. I, ch. 2, Item 404(R)(2). Retrieved from <https://budget.lis.virginia.gov/item/2022/2/HB30/Chapter/1/404/>. For any crime not listed in this table, the rate of days earned depends on whether the person is classified as Level I, II, III or IV within the Virginia Department of Corrections.

⁸ The provisions of this section expired on July 1, 2021. See 2020 Va. Acts, Sp. Sess. I, ch. 56, Item 402(W). Retrieved from <https://budget.lis.virginia.gov/item/2020/2/HB5005/Chapter/1/402/>.

⁹ Three separate felony offenses when not part of a common act, transaction, or scheme.

¹⁰ Three separate felony offenses when not part of a common act, transaction, or scheme and the person has been at liberty between each conviction.

¹¹ Every person suffering death from a mob attempting to lynch another person shall come within the provisions of this article, and his personal representative shall be entitled to relief in the same manner and to the same extent as if he were the originally intended victim of such mob.

¹² Only subsections (A) and (D) of VA. CODE ANN. § 18.2-46.5.

¹³ Except VA. CODE ANN. § 18.2-49.1 (violation of court order regarding custody and visitation).

¹⁴ Except VA. CODE ANN. § 18.2-67.3(A)(5) (aggravated sexual battery by massage therapist, etc. not committed against minor); VA. CODE ANN. § 18.2-67.4:1 (infected sexual battery not committed against a minor); VA. CODE ANN. § 18.2-67.5(B) (attempted rape, forcible sodomy, object sexual penetration, etc. not committed against a minor); or, VA. CODE ANN. § 18.2-67.5:1 (sexual battery third offense not committed against a minor).

¹⁵ Only the following: VA. CODE ANN. § 18.2-61 (rape); VA. CODE ANN. § 18.2-67.1 (forcible sodomy); VA. CODE ANN. § 18.2-67.2 (object sexual penetration); and VA. CODE ANN. § 18.2-67.3(A)(1) (aggravated sexual battery with a complaining witness less than 13 years of age).

¹⁶ VA. CODE ANN. § 18.2-61 (rape), VA. CODE ANN. § 18.2-67.1 (forcible sodomy), VA. CODE ANN. § 18.2-67.2 (object sexual penetration), VA. CODE ANN. § 18.2-67.3 (aggravated sexual battery), VA. CODE ANN. § 18.2-63(a)(b)(c) & (d) (carnal knowledge of a child between thirteen and fifteen years of age), and the following attempt crimes: VA. CODE ANN. § 18.2-63 (carnal knowledge of a child between thirteen and fifteen years of age); VA. CODE ANN. § 18.2-64.1 (carnal knowledge of certain minors); and VA. CODE ANN. § 18.2-64.2 (carnal knowledge of a person detained or arrested).

¹⁷ Only the following: VA. CODE ANN. § 18.2-67.3(A)(1) (aggravated sexual battery where the complaining witness is less than 13 years of age).

¹⁸ Involving a minor victim.

¹⁹ Involving a minor victim, except VA. CODE ANN. § 18.2-362 (bigamy); VA. CODE ANN. § 18.2-370.5 (offenses prohibiting entry onto school or other property); or, VA. CODE ANN. § 18.2-371.1(B) (abuse and neglect of children - Class 6 felony).

²⁰ Except VA. CODE ANN. § 18.2-362 (bigamy) or VA. CODE ANN. § 18.2-371(B) (abuse & neglect - Class 6 felony).

²¹ Involving a minor victim, except VA. CODE ANN. § 18.2-374.1:1(A) (possession of child pornography).

²² Except VA. CODE ANN. § 18.2-374.1:1(A) (possession of child pornography).

²³ "Sexually violent offense" means a felony under (i) former § 18-54, former § 18.1-44, subdivision A5 of § 18.2-31, § 18.2-61, 18.2-67.1, or 18.2-67.2; (ii) § 18.2-48 (ii), 18.2-48 (iii), 18.2-63, 18.2-64.1, or 18.2-67.3; (iii) subdivision A1 of § 18.2-31 where the abduction was committed with intent to defile the victim; (iv) § 18.2-32 when the killing was in the commission of, or attempt to commit rape, forcible sodomy, or inanimate or animate object sexual penetration; (v) the laws of the Commonwealth for a forcible sexual offense committed prior to July 1, 1981, where the criminal behavior is set forth in §§ 18.2-67.1 or 18.2-67.2, or is set forth in § 18.2-67.3; or (vi) conspiracy to commit or attempt to commit any of the above offenses. VA. CODE ANN. § 37.2-900 (2022).

²⁴ Only when offenses were not part of a common act, transaction, or scheme and such person has been at liberty as defined in VA. CODE ANN. § 53.1-151 between each conviction.

APPENDIX G: RECENT CHANGES TO SENTENCING IN VIRGINIA

Jury Sentencing

- The General Assembly enacted legislation during 2020 Special Session I that repealed mandatory jury sentencing in Virginia (SB5007). Under the new law, the defendant chooses whether to be sentenced by the jury or by the judge following a finding of guilt in a jury trial.
- SB5007: <https://lis.virginia.gov/cgi-bin/legp604.exe?202+sum+SB5007>

Technical Probation Violations

- The General Assembly enacted legislation during 2021 Special Session I that placed limits on the amount of active incarceration a court can impose as a result of a technical probation violation (HB2038). The court cannot impose active incarceration for a first technical violation and may only impose up to 14 days of active incarceration for a second technical violation. The court may impose whatever portion of the remaining suspended sentence it deems appropriate following a third technical violation.
- HB2038: <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=212&typ=bil&val=hb2038>

Sentencing Guidelines – Substantial Assistance, Acceptance of Responsibility, or Remorse

- In 2020, the Virginia Criminal Sentencing Commission modified the low end of the sentencing guidelines range when a judge determines the defendant provided substantial assistance, accepted responsibility, or expressed genuine remorse. If the judge makes such a determination and the low end of the sentencing guidelines range is three years or less, then the low end will be reduced to zero. The midpoint and the high end of the sentencing guidelines range will remain unchanged.
- While this change effects the low end of the sentencing guidelines range in certain instances, the sentencing guidelines themselves remain discretionary in nature (*see* Va. Code § 19.2-298.01) and the court may still sentence the defendant up to the maximum penalty allowed by law.
- For further information, see the Virginia Criminal Sentencing Commission's *2020 Annual Report*, pages 118-121: <http://www.vcsc.virginia.gov/2020VCSCAnnualReport>

