

**ACLU Approved Settlement -- About Appeals**

**Our question to the DOC from 6/15/2020:**

The settlement states:  
 “ iv. VDOC agrees that it will exercise its authority to consider the review and release of eligible individuals on a rolling basis, meaning VDOC will consider those who are or become eligible for release at any point during the period of the emergency declaration, or any emergency declaration that meets the conditions of the Budget Amendment, not just those who became eligible at a static time period when the policy was adopted.”

So, just to be clear, does that mean that the one year or less left on the sentence from when the amendment was signed has evolved into one year or less on any given date as long as the state of emergency exists? In other words, if an inmate's release date was 6/16/2021, then because there is no end date to the state of emergency, their release would be considered now as it is a "rolling" release and the meaning of "one year or less" changes with every day while the state of emergency is in effect? Can you please clarify?

**DOC answer on 6/17/2020 (Ms. Rose Durbin)**

Yes. The eligibility based on release date has been on a rolling basis since the ACLU Settlement became effective. Those who were denied appeals based on their release date being outside the initial one year time frame will automatically be considered and do not need to file a new appeal.

**August Special Session**

Members of the Virginia Legislative Black Caucus are calling for immediate action to be taken to reform policing in the state, announcing sweeping legislative proposals Wednesday “to eliminate law enforcement abuse, prevent and punish racist behaviors, weed out institutional discrimination, and increase accountability at all levels of law enforcement.” The caucus released a list of legislative priorities — which is provided below — that its members intend to introduce during this summer’s special session. In addition to police reforms, the legislative Black Caucus has cited the need to:

Continue the Fight for Criminal Justice Reform by: Implementing Automatic Expungement Reinstating Parole, Passing Cash Bail Reform, Increasing Good Behavior Sentence Credits, and Legalizing Marijuana.

Democrats in VA’s congressional delegation have backed the Justice in Policing Act, a  
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**Doing Time**

A poem by Chad Bertholdt, WRSP

It's really hard when your doing time-  
 You're out of sight, and you're out of mind.  
 It's waiting on visits, that never take place-  
 From friends and loved ones, who have forgotten your face.  
 It's calling and hearing a block on the phone-  
 That's when you realize, you're completely alone.  
 It's anger, pain, regret, and remorse-  
 It's feelings of shame, pain, and loss.  
 It's crying at night to hide the tears-  
 All that's left to your life is misery, and fears.  
 The days go on, no end in sight-  
 At the end of the tunnel, there is no light.  
 You try to remember where things went wrong?  
 You try to hold on, you try to be strong.  
 Memories haunt you, from times long past-  
 The clock keeps ticking, how long will this last?  
 Your life is over, when your doing time-  
 You're out of sight, and you're out of mind.

**About Discovery Rules**

Long-awaited criminal discovery reforms take effect July 1. The changes in practice will be significant, but how the pretrial routine will change is not yet entirely clear as judges and attorneys need to interpret the new language. Excerpt from the Due Process Institute Blog: “Discovery is the pre-trial procedure in which the prosecution shares information in its possession with the defense. The U.S. Constitution requires that exculpatory evidence—that is, evidence that tends to demonstrate the defendant’s innocence—is shared with the defense. This mandated exculpatory evidence is sometimes known as Brady material. Beyond Brady material, current Virginia discovery requirements also mandate prosecutors share any statements made by the defendant, the defendant’s criminal record, information on expert witnesses and the results of any scientific tests performed for the case. Upon request, the Commonwealth must also disclose tangible evidence such as books and papers if they are deemed “material to the preparation of his defense and that the request is reasonable.” Unfortunately, in practice, prosecutors don’t always turn over all the evidence they should, nor do they always do so in a timely manner. As a result, defendants and their attorneys can show up in the courtroom with little idea of what the prosecution’s case looks like. This  
*(continued on page 2)*

**Mandatory Minimums and More (Spanish follows - el español sigue)**

On June 19th, Virginia Democrats said that they will move to try to end mandatory minimum sentencing and enact other criminal justice reforms, said House Majority leader Charniele Herring (D-Alexandria). She spoke in a panel on criminal justice reform during the party’s first virtual statewide convention. “We’ve got to get rid of that,” Herring said, referring to mandatory minimum sentencing. Herring, as well as Virginia Attorney General Mark Herring, U.S. Rep Bobby Scott, and Del. Jennifer Carroll Foy (D-Prince William) amplified the calls for change. Herring also said: “This national reckoning gives us the opportunity to really make some advances that are long overdue and to recognize that this stems from a century of law enforcement being used to enforce Jim Crow laws, to enforce segregation, to break up civil rights demonstrations, and be a part of mass incarceration. Both the attorney general and Foy are running for the Democratic nomination for governor. The reform group, Justice Forward Virginia, was pleased to hear talk of scrapping mandatory minimums and dropping other laws that disproportionately burden Black people but advocates noted “I didn’t hear any explicit promises but I was encouraged by what [Charniele Herring] said.”

**(español)**

Los demócratas de Virginia propondrán la terminación de las penas mínimas obligatorias y promulgar otras reformas de la justicia penal, dijo la líder de la mayoría en la Cámara de Representantes Charniele Herring (D-Alexandria). Ella habló como parte de un panel sobre las reformas de la justicia penal durante la primera convención virtual estatal del partido. “Tenemos que quitarlo del sistema,” dijo Herring, haciendo referencia a las penas mínimas obligatorias. La discusión ocurrió en medio de tres semanas de manifestaciones para la igualdad racial después del asesinato de George Floyd. C. Herring, además del fiscal general de Virginia Mark Herring, el representante del EEUU Bobby Scott y la delegada Jennifer Carroll Foy (D-Prince William) aumentaron los llamados por cambio. “Lo que estamos viendo ahora mismo es un juicio nacional de la brutalidad policial contra las personas Negras en esta país y las averías sistémicas que causan y permiten que esta mala conducta se perpetúe,” dijo el fiscal general Mark Herring. “Este juicio nacional nos da la oportunidad para realmente hacer algunos avances que hace mucho han sido atrasados y  
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federal bill that would ban the use of chokeholds by police and create a national database of use-of-force incidents, among other things. Locally, elected leaders are discussing civilian review boards and an alert system that would mandate that mental health professionals be the first responders in a suspected or confirmed mental health crisis rather than law enforcement. As lawmakers eye action during the special session, they are looking at banning chokeholds, boosting police training in excessive use of force, mandating citizen review boards to boost oversight of police misconduct, expanding avenues to fire or punish misbehaving officers, and rethinking the presence of police in schools. A filing date for legislation for the special session has not been set. Send them your thoughts.

**The Man in the Glass**  
Poem by David Bonefonte

When you get what you want in your struggles for self and the world makes you king for a day, just go to a mirror and look at yourself and see what the man or woman has to say....  
For it isn't your father or mother, wife, or spouse whose judgement upon you must pass. The person whose verdict counts most in your life is the one staring back from the glass...  
Some people might think you're a straight shooting chum and call you a wonderful guy or gal...  
But the one in the glass says you're only a bum  
If you can't look 'em straight in the eye...  
You're the one to please, never mind all the rest  
For you're there clear to the end and you've passed  
Your most dangerous test  
If the person in the glass is your friend.  
You may fool the whole world down the pathway of years  
And get pats on the back as you pass  
But your final reward will be heartache and tears  
If you've cheated the person staring back at you from the glass.

**Why Prisons Are Overpopulated**  
David Sowers, Augusta (an excerpt)

In 1992, US Attorney General William Barr, writing in a preface to the US Department of Justice report titled "The Case for More Incarceration", argued that "prison works" and urged that the number of people in prisons be increased, in addition to proposing a major national program of prison construction. Barr emphasized that almost all prisoners were released before their maximum sentences expired. This was a deceptive (intentional) way to appeal to society's fomenting anger that "somehow" convicted felons were "getting" over on a system and that criminal justice  
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situation is known as "trial by ambush." This lack of disclosure is also harmful to a fair plea process. The vast majority of convictions in state and federal courts are the result of guilty pleas and plea bargaining. If the prosecutor doesn't turn over exculpatory evidence, an innocent defendant may plead guilty because he doesn't want to risk losing and face a harsher sentence if convicted at trial. Of course, the prosecutor likely personally believes that the defendant is guilty and views a trial as a waste of time and resources. But making pleas "easier" is not in the interest of justice. When the prosecutor holds all the relevant information pertaining to the offense and has the discretion to dramatically modify what a person is charged with (and thus the range of years a person is facing in prison), these plea bargaining situations can become unfair, even coercive. Changes to instruct the commonwealth's attorneys to provide police reports, witness statements, a witness list, details and the expected testimony of expert witnesses, and allow the defense to review these materials. The changes state that the defense must share its witness information as well."

In September 2018, the Virginia Supreme Court finally approved new discovery requirements for Commonwealth Attorneys and defense attorneys alike. The new rules will affect Circuit Court criminal cases by expanding discovery for both sides. For the accused, the new rules now give access to 1) police reports, 2) witnesses' statements, 3) expert witnesses' opinions even when no report is prepared, and, 4) a witness list and contact information for witnesses expected to testify for the Commonwealth. None of these things were previously required to be disclosed under the existing discovery rules. New discovery rules similar to those passed have been the subject of discussion for a number of years. In the past five years, the Supreme Court of Virginia has considered changing criminal discovery procedures three times. However, it only passed the new rules in 2018 despite support from the joint task force comprised of criminal defense attorneys, prosecutors, and others in the past. This reform was long overdue in Virginia because most other states have much more expansive criminal discovery rules. The new rules were set to go into effect on July 1, 2019. However, criminal discovery reform has been delayed as of January 29, 2019, when the Supreme Court of Virginia issued an order delaying the effective date of the rules until July 1, 2020. The Supreme Court of Virginia gave this reasoning in support of its move: "Having received requests from the chairs of the Senate Finance Committee and the House Appropriations Committee to delay the effective date of the criminal discovery rules  
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para reconocer que este proviene de un siglo de usar los cuerpos policiales para hacer cumplir las leyes de Jim Crow, para obligar la segregación, para dispersar las manifestaciones sobre derechos civiles y para ser una parte del encarcelamiento masivo." Ambos el fiscal general y Foy están presentándose al nombramiento democrático para gobernador. En 2020, el partido tomó el control de ambas cámaras de la Asamblea General. Con el apoyo del gobernador democrático Ralph Northam, ellos aprobaron el Acta de la Policía Comunitaria de Virginia en la sesión de este año. El Acta requiere que los cuerpos policiales recopilen los datos incluso la raza, la etnia, la edad, y el género de la persona detenida, además de cuáles de las citaciones de advertencia, las citaciones judiciales, o los arrestos fueron emitidos. Sobre otras medidas, el partido fue más cauteloso. Retrasó el restablecimiento de la libertad condicional, la expansión de antecedentes sellados, el aumento del pago de los abogados de oficio, entre otras medidas, según un análisis de Virginia Mercury. Los críticos dijeron que los demócratas podrían haber utilizado su mayoría para lograr más. El líder de la mayoría C. Herring expuso un enfoque más deliberado. "Lo que es clave para la larga duración es para tener, estaría genial, tener el apoyo bipartito," dijo ella. Brad Haywood, un abogado de oficio en Arlington y el fundador del grupo de las reformas Justice Forward Virginia, "no oí cualquier promesas explícitas pero me sentía animado por lo que dijo [Charniele Herring]," él dijo. "No quiero oír sobre unas pocas manzanas malas. No quiero oír de incidentes aislados. Lo que quiero oír es que este es un síntoma de un problema que ha atormentado nuestro país por siglos."

**Unfair Sentencing: What Do We Do?**  
Nicole Williams, Central VA Correctional

It's very clear that Virginia's prison system is in need of reform. It's important that those incarcerated work with the many organizations that fight for prisoners and prison reform. While prison reform continues to be a battle for the many inmates incarcerated, we must not forget or neglect another issue within the Commonwealth of Virginia: unfair sentencing. Many inmates currently serving time are serving sentences in which their sentencing judge went over their sentencing guidelines, or get max punishments even if a deal was made with persecution for a lesser sentence. So what are we to do? We fight for prison reform, which is very much needed, but the need for judicial reform in VA is in desperate need of change. VADOC facilities continue to be overpopulated with first time and returning inmates that were eligible to receive lesser sentences than the ones imposed by their judge. Other states give offenders a chance to reduce their sentence with  
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professions , i.e. psychologists, social workers, prison administrators, parole board members, just to name a few, were incapable of doing their jobs -- that politicians and lawmakers were the only capable ones left to do it. He urged that discretionary parole release be completely abandoned as a way to achieve more incarceration. Proposals like Barr's were enacted in the Violent Crime Control and Law Enforcement Act of 1994. In 1995, newly elected Governor George Allen adopted Barr's ideology and abandoned parole release to thousands of convicted "old law" parole eligible prisoners. Near the end of 1994, the parole rate was at 42%. During 1995, the parole rate dropped to 2%. Allen defined prisoners as violent, incapable of being rehabilitated and used metaphors such as "the worst of the worst" Such metaphors were mindless acts of hate and bigotry by the Allen administration and subsequent governors and parole board members. In essence, George Allen's unjust characterization was an attempt to mislead the public and defame the men and women housed in the VADOC. And, in time, Allen found out how harmful metaphors can be when he referred to a man as "macaca". Regardless of who we are, or where we are in the world, all human beings have a right to reinvent themselves in a more positive light, with positive self-accounts that bear no resemblance of the harsh realities of our past. We did not deserve the "door of justice" slammed in our faces.

### Prison Gerrymandering Ended

SB717/HB 1255 passed and ensures that people in state prisons will be counted as residents of their home addresses when new legislative districts are drawn. The new law makes VA the ninth state to end the practice known as prison gerrymandering, effective 7/1/2020. This ends the practice of counting inmates as residents of the prison district, dilutes the votes of everyone who does not live next to the state's largest prisons, and distorts the constitutional principle of one person, one vote. This new law offers Virginia voters a fairer data set on which future districts will be drawn." Very important bills!

**NOTE: The Virginia Prison Justice Network Newsletter** is published by the Coalition for Justice. PO Box 299, Blacksburg, VA 24063  
 Have a poem or thought you'd like published? Send them! Please note: we are not lawyers.  
**No somos abogados. Ayudamos a los presos con sus quejas durante el encarcelamiento ¡Ahora tenemos apoyo con el español para quejas o pregunta. ¿Tienes un poema o ensayo corto que te gustaría publicar? ¡Mándanoslas!**s Article is abbreviated from full text.

to allow further assessment of this significant issue [referring to the "additional responsibilities upon the Commonwealth's Attorneys" to assess body camera footage], the Court agreed to postpone the effective date of the rules until July 1, 2020." Letter from Chief Justice Lemons. What's odd about this delay is that this is not a new issue and was known on or before September 2018. More importantly, Chief Justice Lemons noted in his January 2019 letter that the body camera footage issues are separate and apart from the new discovery rules. Nevertheless, this additional investigation leaves the door open to the possibility of the new rules not going into effect if the Supreme Court of VA finds that the burden imposed by bodycam footage (which is not required by law and is not used by every law enforcement agency) is so high that it would impact prosecutor's ability to comply with these new rules. Criminal discovery reform in VA has needed to happen for a long time. We are very glad that the new rules will be in effect on July 1, 2020.

### Thoughts on HB 35, Juvenile Parole

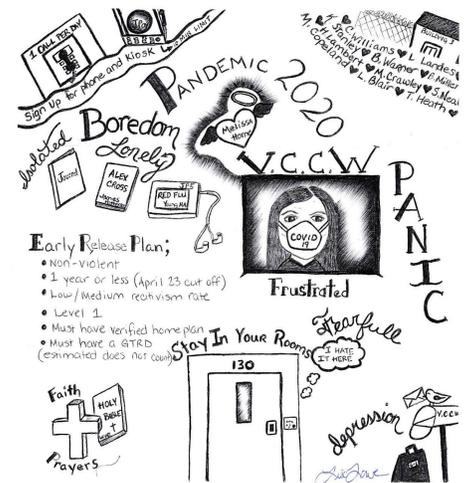
By Leonard Dillard, Green Rock

First, thanks to everyone who was involved and getting HB35 passed including Senators Lindsey and Marsden. They have been pushing and pushing for this bill for many years now. It's been a long time coming. I am an inmate at GROC and I am eligible for this bill. I was a mere 17 yrs. old when I was tried as an adult back in 7/8/98. I'll be 40 on March 28th. I am nearing my release date, which is 8/25/22. I survived my 27 year sentence but knowing that "parole" could be a great possibility really means a lot to me and my family. There are a lot of JAOs (Juvenile Adult Offenders) who are ready to be productive members of society. "We" have spent a number of years behind these walls, more years in here than what we spent on the streets. We grew up in prison and for guys who formed the organization "Kids Doin' Bids", I praise them more than they'll ever know simply because they stayed strong for 20 plus years and made a positive path for themselves as well as for others. Now, hopefully, the PB will look thoroughly into our files and give "us" a chance by granting parole. I want to be successful and on the winning side of life after my prison story. I am up for all challenges upon my release. Continue to stay strong JAO!

### Early Release Stats

As of 6/25/2020: 759 cases reviewed, 611 approved and awaiting release, 294 DOC released and 141 DOC inmates in jail released, 127 denied.

good behavior, class and certification participation, as well as work programs and halfway houses. Parole is still offered in many states. Yet, VA is a state that makes sentence reduction impossible. Central VA Correctional Unit houses an inmate who was sentenced to 16 years by her judge out of Stafford County for a probation violation -- no new charge, she just had a few dirty urines. She was not offered a rehab program. She paid all the courts costs and fines, and her guidelines were six months max. Prosecution agreed to six months, yet the judge gave her max of 16 years. Are we to call this justice? Or, what about Jahmon -- a first time offender sentenced to 38 years for a crime, just because he was there but didn't facilitate the crime? Even when he agreed to a plea, the judge goes way over the plea agreement. Are we to call this justice? Who will fight for inmates such as these two? We don't have millions of dollars to get Kim K. or Jay Z to bring awareness to their unfair rulings of the judges. However, we can't let this stop us. We must bring awareness ourselves. Write to reform/justice organizations. Have family members get involved in legislative meetings. Write the Commonwealth Attorney. We must fight for Jahmon and Amber who were unfairly sentenced. We must be our own voice. So, what do we do about unfair sentencing? We get involved and fight back.



Lisa Lowe, we wish we could fit your lovely drawing into a larger space but we love it and appreciate your talent! Keep creating!

### June Newsletter - Not Rec'd?

A number of people did not get the June newsletter, which was mailed out on 5/28/2020. If you would like a copy, let me know. Stamp would be much appreciated but not required.