

Parole Board Subcommittee  
of the Virginia Freedom of Information Advisory Council  
Meeting Summary  
Monday, July 2, 2012  
10:30 AM  
General Assembly Building  
Richmond, Virginia

The Parole Board Subcommittee<sup>1</sup> (the Subcommittee) of the Freedom of Information Advisory Council (the Council) held its first meeting on Monday, July 2, 2012 to consider HB 397 (Hope), which bill was referred to the Council by the General Assembly.<sup>2</sup>

As its first order of business, the Subcommittee elected Mr. Landon as Chair by unanimous vote. Mr. Landon observed that Delegate Hope and interested constituents spoke to his bill at the last full Council meeting on May 23, 2012, but that they were not in attendance at today's Subcommittee meeting. Staff presented a brief review of the legislative history of the Parole Board exemption in FOIA.<sup>3</sup> It appears that parole boards were exempted from FOIA entirely when FOIA was first enacted in 1968.<sup>4</sup> In 1995 and 1996, the exemption was changed to require the release of certain statistical information regarding inmates and parolees,<sup>5</sup> and in 1999 the exemption was changed again to require the release of financial information of the Parole Board.<sup>6</sup> Subsequent changes to § 2.2-3703 did not affect the provisions concerning access to records of the Parole Board.

Mr. Landon then invited comment from William Muse, Chair of the Parole Board, and Karen Brown, Vice-Chair of the Parole Board. Mr. Muse stated that the Parole Board opposed HB 397 for several reasons, primarily because it is unclear what the actual intent and effect of the bill would be. He observed that HB 397 refers to "guidance documents, as defined in § 2.2-4001," which is a reference to the Administrative Process Act (APA). However, because the APA does not apply to the Parole Board, Mr. Muse stated that the Parole Board does not have any such "guidance documents." He further stated that the Parole Board is already required to publish on

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<sup>1</sup> Subcommittee members Tavenner, Schliessmann, and Landon were all present.

<sup>2</sup> HB397 (Hope), 2012 Session, Virginia Parole Board; exceptions to the Freedom of Information Act. Requires guidance documents of the Board to be available as public records under the Freedom of Information Act. The bill has a delayed effective date to give the Freedom of Information Advisory Council an opportunity to review the legislation and report on its implementation.

<sup>3</sup> Current subdivision A 1 of § 2.2-3703 provides that *[t]he provisions of [FOIA] shall not apply to...The Virginia Parole Board, except that (i) information from the Virginia Parole Board providing the number of inmates considered by such Board for discretionary parole, the number of inmates granted or denied parole, and the number of parolees returned to the custody of the Department of Corrections solely as a result of a determination by such Board of a violation of parole shall be open to inspection and available for release, on a monthly basis, as provided by § 2.2-3704 and (ii) all records concerning the finances of the Virginia Parole Board shall be public records and subject to the provisions of this chapter. The information required by clause (i) shall be furnished by offense, sex, race, age of the inmate, and the locality in which the conviction was obtained, upon the request of the party seeking the information.*

<sup>4</sup> See 1968 Acts of Assembly, c. 479 (codified as former Code § 2.1-345).

<sup>5</sup> 1995 Acts of Assembly, c. 588, and 1996 Acts of Assembly, c. 321, added what is now clause (i) and the final sentence of subdivision A 1 of § 2.2-3703.

<sup>6</sup> 1999 Acts of Assembly, cc. 703 and 726, added what is now clause (ii) of subdivision A 1 of § 2.2-3703.

its website its policies, procedures, and actions regarding the parole of prisoners.<sup>7</sup> He indicated that the policies and procedures currently posted on the Parole Board's website were last revised and approved by the Governor in 2006. Mr. Muse indicated that the nature of the Parole Board's work is similar to jury deliberations and requires confidentiality in considering individual case records, records from the Department of Corrections, and interviews with offenders, victims, families, and counselors. He stated that it would be counterproductive to make these deliberations public, and that he was concerned that a public process might turn political.

Mr. Schliessmann observed that based on Mr. Muse's statements, it appears that even if HB 397 passed as written, there exist no "guidance documents" to which it would apply. He suggested that it might be productive for Mr. Muse and the patron to speak directly about the goals of the bill and how they might be implemented. Mr. Muse indicated he would be happy to do so.

Mr. Landon then asked for public comment. Megan Rhyne, of the Virginia Coalition for Open Government (VCOG), inquired regarding the effect of the elimination of discretionary parole under Governor Allen in 1995, as comments were made at the last Council meeting regarding this change. Staff related that at the May 23, 2012 meeting of the Council, Steve Northup, from the law firm of Troutman Sanders, stated that many prisoners convicted prior to the abolition of discretionary parole in 1995 were given very lengthy sentences with the expectation that they would be released on parole once eligible, but many have not been so released. At the Council meeting Mr. Northup stated that the result is that those convicted before 1995 serve longer sentences than those convicted after 1995, for the same offenses. In response, Mr. Muse noted a common misconception that people are given a range of punishment when convicted, but that in Virginia, persons convicted are sentenced to a term of years, not a range. He further stated that the expectation is that persons convicted will serve the full sentence, unless they are eligible for and are granted parole in the discretion of the Parole Board. He also stated that sentencing guidelines were one of the factors considered by the Parole Board, and that the process is published on the Parole Board's website.

Ms. Brown noted that she had met with Virginia CURE, an advocacy organization on behalf of prisoners and their families, three times. She stated that the organization wanted to know if the Governor told the Parole Board who to release, to release prisoners convicted of certain types of crimes, or how long of a sentence someone should serve. Both Mr. Muse and Ms. Brown indicated that the Governor had not done so. She stated that it appears there is a misunderstanding of the fact that the Parole Board exercises its own discretion in making parole decisions, and that they want to know the thought processes of the Parole Board members in making those decisions.

In response to further inquiries, Mr. Muse and Ms. Brown indicated that the Parole Board does not hold traditional "meetings" as other public bodies do, but the members generally work with

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<sup>7</sup> Subdivision 1 of § 53.1-136 provides that the Board shall *[a]dopt, subject to approval by the Governor, general rules governing the granting of parole and eligibility requirements, which shall be published and posted for public review.* Subdivision 6 of the same section provides that the Board shall *[p]ublish monthly a statement regarding the action taken by the Board on the parole of prisoners. The statement shall list the name of each prisoner considered for parole and indicate whether parole was granted or denied, as well as the basis for denial of parole as described in subdivision 2 (a).*

staff in an office environment, communicate informally, and vote on cases using an electronic voting system. Mr. Muse indicated that the Parole Board handles approximately 4300 cases per year, and that it would be impractical to hold formal meetings to discuss and vote on each case. Mr. Muse also stated that when asked questions about the process, the Parole Board answers them, but does not speak about individual case deliberations. He also indicated that the Governor has directed the Parole Board to be open with stakeholders' groups and to speak publicly; as an example to that end, he described a recent event where the Parole Board spoke to approximately 150 inmates regarding geriatric parole.

Craig Fifer, speaking as a citizen and member of the FOIA Council,<sup>8</sup> stated he would prefer to see the Parole Board treated as other public bodies subject to FOIA, but with all of the necessary exemptions it would need to conduct business.

Peter Dansie, intern with VCOG, presented research he had done on how other states addressed confidentiality with regard to parole decisions. He indicated that the majority do not specifically address parole boards, but do have some relevant exemptions; those that do mention parole boards generally exempt individual information, but not policies and procedures. He described a few specific examples, such as Kentucky as the most transparent and Texas as the least, as its parole board is entirely exempt from FOIA. He also stated that some states use a balancing test to weigh the public interest against the cost. Finally, he indicated that his research was not exhaustive and had been made more difficult because some states have parole boards, others only have departments of corrections, some have both, and many states do not specifically address the relevant access issues through legislation.

After some further discussion of the Parole Board as a quasi-judicial agency, the Subcommittee considered its options going forward. Mr. Tavenner indicated he preferred Mr. Fifer's idea (making the Parole Board subject to FOIA, but giving it all necessary exemptions) but that was not the bill before the Subcommittee; he stated that he would not recommend HB 397 as drafted. Mr. Landon indicated he felt the agency should embrace transparency, but he would prefer a narrowly drawn bill that would address the issues by statute. Mr. Schliessmann also agreed he would not recommend HB 397 as drafted, but would like the stakeholders to meet and then to continue the work of the Subcommittee at another meeting. By consensus, the Subcommittee agreed to have staff facilitate a meeting between the patron and supporters of HB 397 and the representatives of the Parole Board, and to have staff research other states' laws for possible alternatives. The Subcommittee suggested it meet again during the last two weeks of August, and directed staff to poll the members for dates. The meeting was then adjourned.

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<sup>8</sup> Note that while he attended today's meeting and is a member of the FOIA Council, Mr. Fifer is not a member of the Parole Board Subcommittee.