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FIGURING GOOD-TIME—THE POSTCONVICTION PROCESS

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I. INTRODUCTION

On July 1, 1981, a new statutory scheme for the administration of parole release became effective in Virginia. Although these new statutes which deal with the system of awarding credits for good conduct are not novel, only two other states, Arkansas and Texas, are reported to have implemented such a scheme. The following article addresses, in a general sense, the parole eligibility and release process in Virginia. This may provide some guidance for practicing attorneys and aid them in representing their clients' interests before the Virginia Parole Board. Additionally, the article reviews the newly introduced good conduct allowance system and offers a comparative analysis with the prior system for good-time computations. Finally, the article discusses whether the actual projections for discretionary parole release under the new system show that it promotes the policies which the General Assembly sought to achieve.

II. PAROLE ELIGIBILITY AND RELEASE: THE DECISION-MAKING PROCESS

The Virginia Parole Board is the statutorily created agency¹ for the Commonwealth with the authority to consider the release of

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1. VA. CODE ANN. § 53-230 to -265.1 (Repl. Vol. 1978 & Cum. Supp. 1981).

adult offenders committed to the State Correctional System.² Virginia's enabling legislation provides that the Parole Board "shall consist of five members appointed by the Governor and subject to confirmation by the General Assembly."³ In fulfilling this delegated responsibility, the Parole Board's expressed policy is to release the adult offender at the earliest possible time while ensuring that the release is compatible with the welfare of society and of the individual.⁴

The time periods within which adult offenders become eligible for discretionary parole release are provided by statute.⁵ Once a

2. Interestingly, the Virginia General Assembly delegated to the Parole Board wide discretion to promulgate rules governing the granting of parole. VA. CODE ANN. § 53-238 (Repl. Vol. 1978). On the contrary, in Nebraska, the statutory scheme sets forth the criteria for parole release in the enabling legislation. NEB. REV. STAT. § 83-1, 114 & 115 (1976).

3. VA. CODE ANN. § 53-231 (Repl. Vol. 1978).

4. The policy goal of the Parole Board is expressed in its Annual Report:

The goal of the Parole Board is to release on parole, at the earliest possible time, those eligible offenders deemed suitable for release and whose release will be compatible with the welfare of the offender and society. The Parole Board, in conjunction with the Department of Corrections, strives to restore within the offender, a sense of self-esteem and personal responsibility and, at the same time, to secure adequate safeguards on behalf of the community.

VA. DEPT OF CORRECTIONS & VA. PAROLE BD. ANN. REP. 38 (1981).

5. VA. CODE ANN. § 53-251 (Cum. Supp. 1981) provides, in part:

(1) Except as herein otherwise provided, every person convicted of a felony, and sentenced and committed under the laws of this Commonwealth to any State correctional institution or as provided for in § 19.2-308.1;

(a) For the first time, shall be eligible for parole after serving one-fourth of the term of imprisonment imposed, or after serving twelve years of the term of imprisonment imposed if one-fourth of the term of imprisonment imposed is more than twelve years;

(b) For the second time, shall be eligible for parole after serving one-third of the term of imprisonment imposed, or after serving thirteen years of the term of imprisonment imposed if one-third of the term of imprisonment imposed is more than thirteen years;

(c) For the third time, shall be eligible for parole after serving one-half of the term of imprisonment imposed, or after serving fourteen years of the term of imprisonment imposed if one-half of the term of imprisonment imposed is more than fourteen years;

(d) For the fourth or subsequent time, shall be eligible for parole after serving three-fourths of the term of imprisonment imposed, or after serving fifteen years of the term of imprisonment imposed if three-fourths of the term of imprisonment imposed is more than fifteen years.

(2) Persons sentenced to die shall not be eligible for parole.

(3) Persons sentenced to life imprisonment for the first time shall be eligible for parole after serving fifteen years.

(3a) Any person who has been sentenced to two or more life sentences, except a person to whom the provisions of subsection (3b) of this section are applicable, shall

particular offender achieves a parole eligibility date, the prisoner is docketed for a personal interview with a member of the Board. The review process commences as a matter of legislative mandate: "the Board shall review and decide the case of each prisoner during the part of the calendar year during which he becomes eligible for a parole and thereafter during the same part of each ensuing calendar year until he is released on parole or otherwise."⁶ At the prisoner's interview, only the Board member, the inmate, and appropriate staff members are present. The hearing is not an adversary one; it merely provides the prisoner with an open forum for discussing with the Board member any reasons why discretionary parole should be granted.⁷

The decision by the Board to grant discretionary parole must be by a majority vote.⁸ However, the decision is not made immediately after the personal interview. Additional information is obtained after the personal interview is conducted. As part of the Board's decision-making process, a hearing is held at the Board's office with attorneys, family, and on occasion, other interested citizens. Additionally, the inmate's institutional record is reviewed along with any other supplemental information that may be tendered prior to the request for a vote on whether to grant parole to the particular inmate. In arriving at its determination on discretionary parole, the Board considers the following criteria: (1) whether there is a substantial risk that the individual will not conform to the conditions of parole; (2) whether the individual's release at the time of consideration would depreciate the seriousness of the individual's crime or promote disrespect for law; (3) whether the individual's release would have substantial adverse effect on institutional discipline; and (4) whether the individual's continued correctional treatment and vocational or other training in the institution will substantially enhance his capacity to lead a law-abiding life when released at a later date.

not be eligible for parole until after serving twenty years of imprisonment.

(3b) A person convicted of an offense and sentenced to life imprisonment after being paroled from a previous life sentence shall not be eligible for parole.

6. VA. CODE ANN. § 53-252 (Repl. Vol. 1978). One should note that it is Board policy which provides for a personal interview prior to the prisoner's consideration for parole release since the actual review process as set forth in the statutes does not mandate interviews. See VA. CODE ANN. §§ 53-230 to -265.1 (Repl. Vol. 1978 & Cum. Supp. 1981).

7. VA. DEP'T OF CORRECTIONS & VA. PAROLE BD. ANN. REP. 39 (1981).

8. *Id.* at 40. The requirement that the prisoner's release is subject to majority approval is not a legislative prerequisite but is a matter of Board policy.

In applying the aforementioned criteria, the Board considers numerous factors. Among the factors considered by the Board are the type and length of sentence; recommendations of judges, the Commonwealth's attorney, or other responsible officials; the facts and circumstances of the present offense including mitigating or aggravating factors and activities following arrest and prior to confinement; and the presence or absence of a prior criminal record, including the nature and pattern of offenses as well as adjustments to previous probation, parole, and confinement. The Board also considers personal and social history: family and marital history; intelligence and education; employment and military experience; and physical and emotional health. The institutional experience of the offender is considered: response to available programs; vocational education, training or work assignments; academic achievement; therapy; and interpersonal relationships with staff and other inmates. Any changes in motivation and behavior — such as changes in attitude toward oneself, changes in personal goals and descriptions of personal strengths or resources available to maintain motivation for law-abiding behavior and reasons underlying these changes — are also considered. Release plans — whether the offender will live alone, with family, or with others, and employment or education prospects as well as any special needs the offender may have such as drug programs, alcohol rehabilitation programs — are factors considered by the Board. Finally, the Board considers the results of psychological tests and evaluation, parole prediction data and its own impressions gained from the parole hearing.⁹

Once a decision is made regarding whether to grant the inmate discretionary parole, the inmate is notified of the Board's decision in writing, generally within thirty days. Aside from any special conditions that the Board may impose when it grants parole, there are several standard conditions of parole by which the inmate must abide.¹⁰ If the Board denies parole to the inmate, the decision may

9. *Id.* at 39-40.

10. The conditions of parole are:

1. I will obey all Municipal, County, State and Federal laws and ordinances.
2. I will report any arrests, including traffic tickets, within three days to the district parole office.
3. I will maintain regular employment and support myself and legal dependents to the best of my ability. I will notify my Parole Officer promptly of any changes in my employment.
4. I will obtain the written permission of my Parole Officer before buying or operating a motor vehicle.

be appealed by writing to the Chairman of the Virginia Parole Board. As a matter of Board policy, "[r]econsideration of the case must be based on error noted in the stated reasons for denial or new information which was not available to the Board when the final decision was rendered."¹¹ Should the prisoner's request for reconsideration be denied, the inmate may either resort to the judicial system or marshal additional evidence prior to the next yearly review.¹² Thus, the conclusion is self-evident that the Virginia Parole Board occupies the pivotal position between the Commonwealth and the incarcerated population and that its decisions have substantial societal impact.¹³

5. I will submit in person or by mail a written report at the end of each month to my Parole Officer on forms furnished by him/her and will report as otherwise instructed.

6. I will permit my Parole Officer to visit my home or place of employment.

7. I will follow my Parole Officer's instructions and will be truthful and cooperative.

8. I will not use alcoholic beverages to excess. The excessive use of alcohol here is understood to mean that the effects disrupt or interfere with my domestic life, employment or orderly conduct.

9. I will not illegally use, possess or distribute narcotics, dangerous drugs, controlled substances or related paraphernalia.

10. I will not use, own, possess, transport or carry a firearm.

11. I will not change my residence without the permission of my Parole Officer. I will not leave the State of Virginia or travel outside of a designated area without permission.

Virginia Parole Board, Parole Release Unit (June, 1981).

11. VA. DEP'T OF CORRECTIONS & VA. PAROLE BD. ANN REP. 40 (1981).

12. The liberty interests of those affected by the parole process are reflected in the table below which illustrates the number and frequency of parolees as a function of the number of interviews of each inmate:

<u>Parole Interviews</u>	<u>Number</u>	<u>Granted</u>	<u>Per Cent</u>
First Time	2,981	881	30
Second Time	1,933	905	47
Third Time	637	297	47
Fourth Time	338	152	45
Subsequent Times	316	120	38

Of the total 6,205 parole interviews in fiscal 1981, 2,355 (38%) of those reviewed were granted parole. VA. DEP'T OF CORRECTIONS & VA. PAROLE BD. ANN REP. 43 (1981).

13. In economic terms, the savings from release of prisoners from correctional facilities in fiscal 1981 can be calculated by multiplying the number of inmates released to parole supervision (2,365) by the annual per capita institutional cost of confinement (ranging from a minimum of \$5,885.00 to a maximum of \$33,267.00). Thus, the savings in terms of taxpayer dollars per parolee ranged from a minimum of \$13,918,025.00 to a maximum of \$78,676,455.00. *Id.* at 34-37. Furthermore, as an economic consideration, of the 1,128 parolees discharged from supervision, the net savings in taxpayer dollars in fiscal 1981 was approximately \$27,618,318.00. *Id.* at 46.

III. CONSTITUTIONAL LAW IN THE PAROLE PROCESS

Within the last ten years, the United States Supreme Court has been active in attempting to define the extent of due process guarantees in the context of prisoners' rights litigation. Notably, the Court has held that, with respect to the revocation of parole, the requirements of due process attach via the fourteenth amendment to the United States Constitution although the entire panoply of due process rights is not required.¹⁴ Similarly, like proceedings involving parole revocation, a probationer is afforded due process protections when threatened with revocation of his probation.¹⁵ In the most far-reaching of the opinions concerning prisoners' rights, the Supreme Court ruled that an inmate's right to due process protections must be observed when the inmate is threatened with disciplinary actions involving revocation of good-time credits already acquired.¹⁶ Thus, at least insofar as proceedings involving the revocation of parole, the revocation of probation, and the revocation of already acquired good-time credits, the Supreme Court has conferred limited due process protections.

In *Greenholtz v. Inmates of the Nebraska Penal & Correctional Complex*,¹⁷ the Supreme Court conveyed its most recent pronouncement regarding the extent of constitutional guarantees to be accorded to inmates. In *Greenholtz*, the Court granted *certiorari* to decide whether the due process clause of the fourteenth amendment applied to discretionary parole release determinations, and if so, the extent of the process due protection. In view of the line of cases established several years earlier,¹⁸ the Court was forced to address whether a discretionary parole release determination is so conceptually analogous to a parole revocation proceeding that due process guarantees are constitutionally required.

Relying primarily on *Board of Regents v. Roth*,¹⁹ the Court commented that a claim of a denial of due process must first be analyzed with respect to the nature of the individual's claimed interest. The Court noted:

To determine whether due process requirements apply in the first

14. *Morrissey v. Brewer*, 408 U.S. 471 (1972).

15. *Gagnon v. Scarpelli*, 411 U.S. 778 (1973).

16. *Wolf v. McDonnell*, 418 U.S. 539 (1974).

17. 442 U.S. 1 (1979).

18. See notes 13-16 *supra* and accompanying text.

19. 408 U.S. 564 (1972).

place, we must look not at the "weight but to the *nature* of the interest at stake"

. . . .

A person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate *claim of entitlement* to it.²⁰

In addressing this "claim of entitlement" analysis, the Court characterized the Nebraska statute concerning parole release as one which created an "expectancy of release . . . entitled to *some* measure of constitutional protection."²¹ However, the Court noted specifically that there was no constitutional nor inherent right of a convicted individual to be conditionally released before the expiration of a valid sentence of confinement, reasoning that although a state may elect to establish a parole system, it is under no obligation to do so.²² More importantly, the Court distinguished an earlier line of cases which conferred due process protections in matters involving parole and probation revocation.²³ In the course of rejecting the inmate's allegation that the parole release decision-making process is analogous to parole revocation proceedings, the Court in *Greenholtz* commented that "[t]here is a crucial distinction between being deprived of a liberty one has, as in parole, and being denied a conditional liberty that one desires."²⁴

This distinction was the linchpin of the *Greenholtz* decision, since the Court's earlier decision in *Board of Regents v. Roth* required more than a mere *possibility* of parole as a predicate to impressing the protections of constitutional due process.²⁵ As a consequence of the *Greenholtz* decision, the Supreme Court has effectively relegated critical determinations concerning the liberty

20. *Id.* at 570-71, 577 (emphasis added).

21. 442 U.S. at 12 (emphasis added).

22. *Id.* at 7.

23. *Gagnon v. Scarpelli*, 411 U.S. 778 (1973); *Morrissey v. Brewer*, 408 U.S. 471 (1972).

24. 442 U.S. at 9. Judge Henry Friendly noted: "There is a human difference between loving what one has and not getting what one wants." Friendly, *Some Kind of Hearing*, 123 U. PA. L. REV. 1269 (1978).

25. Although it seems clear that the claim of entitlement analysis would alone dispose of one issue, the Court proceeded to discuss "the quantum and the quality of the process due." 442 U.S. at 13. In concluding that Board direction is to be conferred upon the Parole Board since its decision-making function necessarily imports subjective evaluations the Court also noted that "[t]he requirement of a hearing . . . in all cases would provide at best a negligible decrease in the risk or error." *Id.* at 14. For a more detailed historical perspective, see Rea, *Procedural Due Process in Parole Release Decisions*, 18 ARIZ. L. REV. 1023 (1976) and Note, 63 MARQ. L. REV. 665 (1980).

interests of an entire class of individuals to decision-making bodies which are largely bureaucratic in nature.

In his cogent denunciation of the majority opinion in *Greenholtz*, Justice Powell reviewed the recent line of cases²⁶ in which the Court justified application of due process guarantees because of the liberty interests involved. Commenting that liberty from bodily restraint has traditionally been viewed as "the core of the liberty protected by the Due Process Clause from arbitrary governmental action,"²⁷ Justice Powell concluded that the presence of a parole system in and of itself was sufficient to create a liberty interest subject to constitutional scrutiny.²⁸

In a second dissenting opinion, Justice Marshall²⁹ concluded that, as a matter of constitutional dimension, the difference between the decision to revoke parole or probation and the determination for discretionary parole release is not relevant for constitutional inquiry. Justice Marshall relied on prior constitutional case law which impressed the due process clause to protect the liberty interests that individuals did not then currently enjoy.³⁰ Furthermore, the majority's distinction between parole release and parole revocation was rebuffed as conceptually unsound when viewed from the perspective that "[w]hether the immediate issue be release or revocation, the stakes are the same: conditional freedom versus incarceration."³¹

Justice Marshall also rejected the majority's conclusion that, since the state is under no obligation to establish a parole system, the creation of such a system in and of itself does no more than create an expectation of benefit. Quoting *Morrissey v. Brewer*, Jus-

26. *Wolff v. McDonnell*, 418 U.S. 539 (1974) (decision to revoke "good-time credits" which affects parole eligibility is subject to due process protection); *Gagnon v. Scarpelli*, 411 U.S. 778 (1973) (due process accorded in decision to revoke probation); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (due process attaches in decision to revoke parole).

27. 442 U.S. at 18 (Powell, J. dissenting) (citing *Ingraham v. Wright*, 430 U.S. 651 (1977)); *Board of Regents v. Roth*, 408 U.S. 564 (1972).

28. In the remainder of his dissent, Justice Powell concurred with the majority to the extent that the procedures established by Nebraska were sufficient to comply with the requirements of due process.

29. This dissent was joined by Justices Brennan and Stevens.

30. See, e.g., *Willner v. Committee on Character & Fitness*, 373 U.S. 96 (1963); *Speiser v. Randall*, 357 U.S. 513 (1958); *Konigsberg v. State Bar*, 353 U.S. 252 (1957); *Schwartz v. Board of Bar Examiners*, 353 U.S. 232 (1957); *Simmons v. United States*, 348 U.S. 397 (1955); *Goldsmith v. Board of Tax Appeals*, 270 U.S. 117 (1926).

31. 442 U.S. at 27 (Marshall, J. dissenting) (citing *Johnson v. Champion of New York St. Bd. of Parole*, 500 F.2d 925, 928 (2d Cir. 1974), *vacated as moot*, 419 U.S. 1015 (1974)).

tice Marshall noted that “[d]uring the past sixty years, the practice of releasing prisoners on parole before the end of their sentences has become an integral part of the penological system. . . . Rather than being an *ad hoc* exercise of clemency, parole is an established variation on imprisonment of convicted criminals.’”³² The majority’s claim that inmates have a mere expectancy of parole lacks support in fact as well as law. Parole statistics such as those published by the Virginia Department of Corrections³³ belie the majority’s assumption that inmates have a mere expectancy of release since significant numbers of inmates are released either on discretionary parole basis or pursuant to mandatory parole release provisions.

Although the majority did recognize that some measure of constitutional protection was to be accorded the inmates reviewed by the Nebraska Parole Board, the result was a Pyrrhic victory since the Court refused to impose the full panoply of due process protections. Rather than evaluate the case in light of its own precedent, the majority’s opinion relied on functional and factual considerations to deny full constitutional protection. The majority appeared preoccupied with the notion that the parole decision-making process falls within the ambit of the executive branch. By viewing the parole process as executive decision-making,³⁴ as opposed to actions undertaken by a judicial or quasi-judicial body, the Court’s evaluation necessarily begins from a position which would tend to defer to the decisions of an administrative body. This observation is supported when one reviews Supreme Court decisions which arise under the provision for review under the Administrative Procedure Act.³⁵ That line of cases demonstrates the Court’s philosophy that deference is to be accorded decisions undertaken by the various administrative agencies since these forums are viewed as enjoying such sensitivity and expertise in these complex areas that judges are not competent to review their discretionary acts. Indeed, in *Greenholtz*, the majority commented: “The parole release decision, however, is more subtle and depends on an amalgam of elements, some of which are factual but many of which are purely subjective appraisals by the Board members based upon their ex-

32. 442 U.S. at 30 (Marshall, J. dissenting) (quoting *Morrissey v. Brewer*, 408 U.S. at 477).

33. See VA. DEP’T OF CORRECTIONS & VA. PAROLE BD. ANN. REP. Tables I & VI (1981).

34. 442 U.S. at 7.

35. 5 U.S.C. §§ 551-706 (1976 & Supp. 1980).

perience with the difficult and sensitive task of evaluating the advisability of parole release."³⁶ By viewing the discretionary parole decision as a function of the executive branch, although conceding that a liberty interest was at stake, the Court was not compelled to invoke full due process protections and thus eschewed theoretical conflict with earlier precedent.³⁷

As a means of avoiding application of the entire array of due process protections, the Court reasoned as a matter of great moment that unlike the decision to release an inmate on discretionary parole, the parole revocation determination "involves a wholly *retrospective* factual question."³⁸ Such reasoning, however, belies proper constitutional analysis. The majority offered no explanation why "the nature of the *decisional process* has even the slightest bearing in assessing the nature of the *interests* that this process may terminate."³⁹ The factual fallacy of the argument lies in the characterization of the manner of the parole release decision as predictive, and the argument that in this respect it is different from the decision to revoke an inmate's parole. However, an earlier Supreme Court case⁴⁰ recognized that while the first step in the two-fold parole revocation decision involves factual questions concerning whether the parolee violated the conditions, the second step necessarily involves a predictive determination implicating a variety of subjective evaluations. In essence, this evaluation is analogous to the predictive aspect which is factored in any parole release decision. Therefore, even though the majority attempted to rely upon factual considerations as a means of distinguishing the *Greenholtz* decision from earlier precedent, such a distinction is not supported by current law.⁴¹

36. 442 U.S. at 9-10.

37. See note 26 *supra* and accompanying text.

38. 442 U.S. at 9 (emphasis added) (citing *Morrissey v. Brewer*, 408 U.S. at 479).

39. *Kent v. United States*, 383 U.S. 541 (1966) (The Court will not lend constitutional countenance to an "arbitrary procedure" even when legislation confers a "substantial degree of discretion" in assessing subjective considerations.).

40. *Morrissey v. Brewer*, 408 U.S. 471 (1972).

41. In *Morrissey*, the Court opined:

[I]f it is determined that the parolee did violate the conditions . . . [of parole, a] second question arise[s]: should the parolee be recommitted to prison or should other steps be taken to protect society and improve chances of rehabilitation? The first step is relatively simple; the second is more complex. The second question involves the application of expertise by the parole authority in making a prediction as to the ability of the individual to live in society without committing antisocial acts. . . . [T]his second step, deciding what to do about the violation once it is identified, is not purely factual but also predictive and discretionary.

IV. EVALUATING VIRGINIA'S GOOD CONDUCT INCENTIVE LAW

A. *A Policy Perspective*

On July 1, 1981, what may be referred to as the Good Conduct Law enacted by the Virginia General Assembly became effective.⁴² Unlike prior good conduct statutes,⁴³ the new sections attempt to award good-time for meritorious conduct and represent a distinct departure from the prior system in which good-time is granted essentially for the absence of negative behavior. Under that prior law, absent any rule infraction, an inmate automatically was awarded ten days good conduct allowance for every twenty days of confinement either in jail or in the State Correction System. The new statutes propose a system of hierarchical good-time classifications wherein an inmate with meritorious behavior is awarded good-time at a higher rate than an inmate who minimally complies with institutional regulations.

This hierarchical approach to good conduct allowance is a relatively new concept⁴⁴ in the administration of parole policy. Although the statutes establish general criteria concerning the nature of the individual sought to be embraced within each of four classifications for computing the good conduct allowance,⁴⁵ the Virginia Department of Corrections is charged with the duty of promulgating the rules and regulations that govern the earning of the good conduct allowance.⁴⁶ It is clear, however, that Department of Corrections policy is devoted to consideration of a broad spectrum of factors in assigning a particular offender to a specific good-time classification.⁴⁷ In this respect, Department of Corrections policy and the legislative intent are harmonious with prior state policy.

Id. at 479-80 (emphasis added).

42. VA. CODE ANN. §§ 53-209.1 to -209.6 (Cum. Supp. 1981).

43. VA. CODE ANN. § 53-213 (Cum. Supp. 1981).

44. To date only Arkansas and Texas have implemented this type of system. VA. DEP'T OF CORRECTIONS, POSITION PAPER ON THE MERITORIOUS GOOD TIME BILL 1 (n.d.) [hereinafter cited as POSITION PAPER].

45. VA. CODE ANN. § 53-209.4 (Cum. Supp. 1981).

46. VA. CODE ANN. § 53-209.3 (Cum. Supp. 1981) provides:

Rules and regulations approved by the Board of Corrections shall govern the earning of good conduct allowance. The amount of good conduct allowance to be credited to those persons eligible therefor shall be based upon compliance with written prison rules and regulations; a demonstration of responsibility in the performance of assignments; and a demonstration of a desire for self-improvement.

47. The three bases used by the Board in evaluating inmates are performance/responsibility related to institutional adjustment; personal conduct; work/program performance and motivation for self-improvement. See Appendix I.

Specifically, the new sections provide that each offender under the control of the Director of the Department of Corrections as of June 30, 1981, has the option of electing into the new system of good conduct allowances.⁴⁸ Any person who on or after July 1, 1981, has been convicted of a felony and is remanded to the custody of the Director, is automatically subject to the new good conduct allowance law.⁴⁹ Unlike the system employed prior to July 1, 1981, those persons to whom the new system is automatically applied (as well as those individuals who elect to adopt the new system) no longer become subject to the sections which provide for extraordinary good time allowance.⁵⁰ In spite of this change, the

48. VA. CODE ANN. § 53-209.1 (Cum. Supp. 1981) provides:

Every person who, on or before June thirty, nineteen hundred eighty-one, has been convicted of a felony and every person convicted of a misdemeanor, and to whom the provisions of §§ 53-251, 53-251.1 or § 53-251.2 apply may choose the system of good conduct allowances established in §§ 53-209.2 through 53-209.5 to govern the computing of the person's discharge date and eligibility for parole. A person who chooses the system established in §§ 53-209.1 *et seq.* may not thereafter be governed by the laws establishing good conduct allowances in effect prior to July one, nineteen hundred eighty-one.

49. VA. CODE ANN. § 53-209.2 (Cum. Supp. 1981) provides:

Every person who, on or after July one, nineteen hundred eighty-one, has been convicted of a felony and every person convicted of a misdemeanor and to whom the provisions of §§ 53-251, 53-251.1 or § 53-251.2 apply and every person who, in accordance with § 53-209.1, chooses the system of good conduct allowances set out herein, may be entitled to good conduct allowance not to exceed the amount set forth in § 53-209.4. Such good conduct allowance shall be applied to reduce the person's maximum term of confinement while that person is confined in any State correctional institution. One-half of the credit allowed under the provisions of § 53-209.4 shall be applied to reduce the period of time a person shall serve before being eligible for parole.

A person who has been sentenced to a term of life imprisonment or two or more life sentences shall be classified within the system established by § 53-209.4. Such person shall be eligible for no more than ten days good conduct credit for each thirty days served, regardless of the class to which he is assigned. One-half of such credit shall be applied to reduce the period of time such person shall serve before being eligible for parole. Additional good conduct credits may be approved by the Board for such persons in accordance with § 53-220.

50. VA. CODE ANN. § 53-209.6 (Cum. Supp. 1981) provides: "That the provisions of §§ 53-210, 53-211, 53-212, 53-213 and 53-213.1 of the Code of Virginia shall be applicable only to those persons who, in accordance with § 53-209.1 are not governed by the system of good conduct allowances established in §§ 53-209.2 through 53-209.4"

The new extraordinary good-time statute provides in pertinent part:

Every jail prisoner or convict under the control of the Director who shall follow a course of vocational or educational training while confined or who shows such interest and application in his work assignment as to exhibit unusual progress toward rehabilitation, may, in the discretion of the Director be allowed a credit toward his parole eligibility date and upon the total term of confinement to which he has been sentenced, from one day to five days for each month he has been engaged in such vocational or educational training or has applied himself in excess of minimal work as-

offender is still subject to allowance for special extraordinary good-time credits in cases of injuries or the performance of exceptional services.⁵¹ According to the Department of Corrections, it is the intent of the Department in making its evaluation for classification assignments to take into account those factors otherwise embraced under the prior extraordinary good-time sections. Thus, although not subject to the earlier provisions, an inmate who would otherwise be entitled to extraordinary good-time may receive a like benefit by being categorized in a higher good-time allowance rate classification.⁵²

Under the newly enacted system for good conduct allowance, the Department recognizes that a distinction must be drawn between the good-time classification and the security assignment of the offender. Acknowledging that these two concepts are not synonymous, the Department interprets the present legislation as intending to elicit a system of appropriate rewards for appropriate behavior. Consequently, although an offender may be assigned to a

signment requirements.

VA. CODE ANN. § 53-213.1 (Repl. Vol. 1978).

51. VA. CODE ANN. § 53-220 (Cum. Supp. 1981) provides:

The Board, with the consent of the Governor, may allow to any prisoner confined in a correctional institution who renders assistance in preventing the escape of another prisoner or in the apprehension of an escaped prisoner, or who gives blood donation to another prisoner, or who voluntarily or at the instance of the prison official renders other extraordinary services, or who while in the prison system suffers bodily injury, a credit upon his term of confinement of such period of time as the Board in its discretion determines for each such service or injury. Any such prisoner shall also receive credit for blood donated by him, under regulations prescribed by the Board, to blood banks licensed by or subject to regulations of the State Board of Health. Except as provided hereafter, any credit allowed under the provisions of this section shall be applied as provided in § 53-209.2. A prisoner who has been sentenced to a term of life imprisonment or to two or more life sentences shall be eligible for credits allowed under the provisions of this section. One-half of such credit shall be applied to reduce the period of time such prisoner shall serve before being eligible for parole.

Credits allowed under the provisions of this section may not be forfeited under § 53-214.

52. Consideration will be given to the demonstration of a desire for self-improvement. In its position paper on the new law, the Department observed:

In its dimension, as in the others, there is a continuum. The majority of offenders housed by the Department of Corrections have educational and vocational deficiencies, a history of drug or alcohol dependence, or some other demonstrable social or self-esteem problem. What is proposed is reward for movement in the direction of solution to those problems. Extra-ordinary good-time credit is currently granted for participation and progress in educational and vocational courses. *It is no break with current correctional policy to give consideration to an offender's efforts towards self-improvement.*

POSITION PAPER, *supra* note 44, at 4 (emphasis added).

minimum security institution because he offers little threat of escape or harm to others, if he does not adequately perform his task or cooperate with other inmates his good-time classification may be low. On the other hand, an offender who is assigned to the penitentiary because of his potential for escape, may make a significant contribution to the institution or demonstrate an attitude of cooperation deserving of reward and may be placed in a high level good-time class.⁵³ Under the new system for good conduct allowance, exemplary behavior on the part of an offender enjoys positive reinforcement, while negative behavior is subject to the converse.

Since the Department of Corrections has recognized that an offender's good-time classification will not be a function of his security assignment, the goals engendered by the good conduct incentive law may be more readily achieved. In terms of mathematics, the following section reflects that, while the higher earning classes receive some benefit insofar as earlier parole eligibility dates, the effects on their discretionary parole eligibility dates are not as drastic as one may expect. However, the discretionary parole eligibility dates for those offenders in the lowest earning rate categories will be shown to be months longer than the lowest rates under the current law. Thus, it appears that the newly enacted statutory scheme appropriately reinforces the policy of providing positive reinforcement for meritorious behavior and negative reinforcement for the opposite.

B. *An Empirical Perspective*

With the use of the tables that appear in this section, the component formulae used by the Department of Corrections to calculate an offender's discretionary parole eligibility date under the new law are discussed. Additionally the formula used in calculating the discretionary parole eligibility date under the old law is compared with this new methodology. Since the new sections require

53. For a system of meritorious good-time to operate effectively, a distinction must be drawn between good-time earning and security assignment. The security level of an offender's assignment refers to the amount of precaution which must be taken to insure the offender does not escape, harm someone else, or harm himself. The good-time earning class as it is conceived under the present legislation is part of a system of appropriate rewards for appropriate behavior. It is perfectly conceivable that an offender could be assigned to a low security institution because he offers little threat of escape or harm to others, and still not perform effectively in his job or get along with others. By the same token, an offender assigned to the penitentiary because of his escape potential, may be making a genuine contribution to the institution and deserves more time credited to him. *Id.* at 4-5.

those individuals who are remanded to the custody of the Director prior to June 30, 1982, to make an election whether to be included in the class of individuals subject to the incentive law, and since Department predictions indicate that some offenders will wish to remain subject to the prior good-time conduct sections, the Department is required to maintain both systems. To that end, a working knowledge of the process for computing discretionary parole eligibility dates under both systems will be helpful not only in evaluating the strengths and weaknesses of the newly enacted sections but also in assessing the relative degrees of benefit or detriment a particular offender may suffer as a result of electing under the new good-time incentive sections. The good-time earned by an offender works to his benefit in two ways. First, for each day of good-time credit earned, the offender's maximum sentence is reduced by one day. Second, for each two days of good-time credit earned, the offender's parole eligibility date is advanced by one day. When using the tables below, this dual impact should be kept in mind.

The initial computation to be made under both the old and new sections requires the conversion of all the felony terms imposed on an offender into total sentence days (TSD) using the Julian calendar as a base. Each year of a sentence is equal to 365.25 days; each month is equal to 30.4375 days. To arrive at the total sentence days, multiply the number of years imposed times 365.25 days; add to that figure the product of the number of months imposed times 30.4375; then add any additional days imposed.

All calculations for parole eligibility must be made in terms of sentence days. Table I below illustrates the series of computations that must be made in order to arrive at the total parole jail time credit (JTC) under the new system. Total parole jail time credit represents the number of days by which a felon's parole eligibility date is advanced by good-time credit earned while incarcerated in jail.

TABLE I

TOTAL PAROLE JAIL TIME CREDIT

(1) Jail Credit Days (JCD) \div 20 = Number of Periods (Drop any fractions.)

(2) Number of Periods \times 10 = Statutory Jail Good-Time (SJGT) earned

(3) SJGT earned - SJGT lost = Net SJGT

(4) Net SJGT \div 2 = Parole Credit SJGT

(5) JCD + Jail Extraordinary Good-Time (EGT)⁵⁴ + Net SJGT = Total JTC

(6) Total JTC - Parole Credit SJGT = Total Parole JTC

Calculating total parole jail time credit first requires a calculation of parole credit statutory good-time and total jail time credit. According to the statute, an offender may earn ten days statutory jail good-time credit for every twenty days incarcerated in jail. The total number of these jail credit days (JCD) divided by twenty equals the number of twenty-day periods served in jail. Any fraction of a period is not counted since the statute requires that a full twenty-day period be served prior to the award of any ten days of statutory jail good-time.⁵⁵ Consequently, by serving twenty days in jail, an offender would be entitled to ten days for statutory jail good-time. If the same offender were to serve thirty-nine days in jail, that offender would still be entitled to only ten days statutory jail good-time credit.⁵⁶ Subtracting from the statutory jail good-time earned any statutory jail good-time lost as a result of punishment for institutional infractions yields the net statutory jail good-time. The net statutory jail good-time is divided by two to reach the number of statutory jail good-time days allowed as credit toward advancing the parole eligibility date.⁵⁷ The sum of the number of jail credit days plus the number of jail extraordinary good-time credits plus the number of net statutory jail good-time credits equals the total jail time credit (JTC) figure. Finally, the difference between the total jail time credit and the number of parole credit statutory jail good-time days equals the total parole jail time credit.⁵⁸

54. See notes 49-52 and accompanying text.

55. VA. CODE ANN. § 53-213 (Cum. Supp. 1981).

56. VA. CODE ANN. § 53-151 (Repl. Vol. 1978).

57. VA. CODE ANN. § 53-209.5 (Cum. Supp. 1981).

58. By way of example, assume that the first offender felon is required to serve one year in the penitentiary and has spent thirty days in jail. As a first-time offender he must serve one quarter of the total sentence days of his term. Consequently, 365.25 divided by 4 equals 91 days. Ninety-one days represents the total number of days the offender would have to serve before being eligible for a discretionary parole without taking into account any statutory good-time or parole credit days. Since the offender spent thirty days in jail he is entitled to ten days SJGT. (30 divided by 20 equals 1.; 1. times ten equals 10 SJGT.) Since only one-half of the SJGT is applicable as parole credit SJGT days (VA. CODE ANN. § 53-209.5 (Cum. Supp. 1981)), the offender is entitled to five days parole credit SJGT. Since the of-

Table II below reveals the mathematics for converting felony terms imposed into a term of sentence days and for arriving at the total parole sentence days under the new system. At the outset, all terms are to be converted to days using the Julian calendar. Once all the terms imposed have been converted to sentence days, to arrive at the adjusted felony term sentence, flat-time days⁵⁹ must be added and any judicial good-time (JuGT) days subtracted. As Table II indicates, the adjusted felony term sentence is to be multiplied by a factor representing the minimum proportion of the term of imprisonment which must be served prior to an offender being eligible for parole.⁶⁰ Thus, if the individual was a first-time offender receiving a term of imprisonment for one year, with no additional flat-time and no judicial good-time, then one-fourth⁶¹ of

fender has already served thirty days in jail, one adds the thirty days JCD with the ten days SJGT to arrive at the total jail time credit of forty days as total jail time credit. By subtracting the five days parole credit SJGT from the forty days total JTC, the difference represents the total parole jail time credit which is set off against the ninety-one days the offender must serve before he is eligible for parole. Thus, the result of the calculations reflects that the offender has already served thirty days in jail and that he is entitled to five days as parole credit SJGT, which is merely one-half of the jail SJGT to which he is entitled according to statute. Hence, if the offender must serve ninety-one days prior to being eligible for discretionary parole, by serving an additional fifty-six days (91-35), the offender will then be eligible for discretionary parole.

59. Flat-time days refer to days which are added to the total number of felony term sentence days.

60. VA. CODE ANN. § 53-165 (Repl. Vol. 1978). See Table VII (3) *infra*.

61. VA. CODE ANN. § 53-251 (Cum. Supp. 1981) provides:

(1) Except as herein otherwise provided, every person convicted of a felony, and sentenced and committed under the laws of this Commonwealth to any State correctional institution or as provided for in § 19.2-308.1;

(a) For the first time, shall be eligible for parole after serving one-fourth of the term of imprisonment imposed, or after serving twelve years of the term of imprisonment imposed if one-fourth of the term of imprisonment imposed is more than twelve years;

(b) For the second time, shall be eligible for parole after serving one-third of the term of imprisonment imposed, or after serving thirteen years of the term of imprisonment imposed if one-third of the term of imprisonment imposed is more than thirteen years;

(c) For the third time, shall be eligible for parole after serving one-half of the term of imprisonment imposed, or after serving fourteen years of the term of imprisonment imposed if one-half of the term of imprisonment imposed is more than fourteen years;

(d) For the fourth or subsequent time, shall be eligible for parole after serving three-fourths of the term of imprisonment imposed, or after serving fifteen years of the term of imprisonment imposed if three-fourths of the term of imprisonment imposed is more than fifteen years.

(2) Persons sentenced to die shall not be eligible for parole.

(3) Persons sentenced to life imprisonment for the first time shall be eligible for

365.25 equals ninety-one days. This represents the sentence which the first-time offender must serve in days prior to being eligible for discretionary parole. If the offender were sentenced to two consecutive terms as a first-time offender, then one would simply have to add the first felony term sentence to the second felony term sentence and divide the sum by four to arrive at the offender's parole sentence date.

Table II below illustrates the calculation required if an offender has been sentenced to four consecutive felony terms: one as a first-time offender; another as a second-time offender; a third as a third-time offender; and one as a fourth time offender.

TABLE II

TOTAL FELONY TERM SENTENCE (FTS) AND PAROLE SENTENCE (PS)

- (1) Convert all terms to days using the Julian calendar.
- (2) The sums of these converted terms (FTS 1 + FTS 2 + FTS 3 + FTS 4) = Total FTS in days.
- (3) Total FTS + Flat-Time Total Sentence - Judicial Good-Time days (JuGT) = Adjusted Total FTS (Adj. Total FTS)
- (4) Adj. FTS 1 x $\frac{1}{4}$ = Felony 1 Parole Sentence (PS) in days
 Adj. FTS 2 x $\frac{1}{3}$ = Felony 2 PS in days
 Adj. FTS 3 x $\frac{1}{2}$ = Felony 3 PS in days
 Adj. FTS 4 x $\frac{3}{4}$ = Felony 4 PS in days
- (5) Felony 1 PS + Felony 2 PS + Felony 3 PS + Felony 4 PS = Total PS

As was discussed in the previous section and as is illustrated in Table I, the parole sentence reflects only the total number of days to be served prior to the offender becoming eligible for discretion-

parole after serving fifteen years.

(3a) Any person who has been sentenced to two or more life sentences, except to whom the provisions of subsection (3b) of this section are applicable, shall not be eligible for parole until after serving twenty years of imprisonment.

(3b) A person convicted of an offense and sentenced to life imprisonment after being paroled from a previous life sentence shall not be eligible for parole.

(4) The eligibility time for parole as specified in (1), (3) and (3a) above may be modified as provided in §§ 53-209.1, 53-213.1 and 53-220.

(5) The time for eligibility for parole as specified in paragraph (3a) hereof shall be effective on July one, nineteen hundred seventy-six, and shall apply only to those criminal acts committed on or after the aforementioned date.

(6) The provisions of subsections (1) (b), (c) and (d) shall apply only to persons committed to a State correctional institution on or after July one, nineteen hundred seventy-nine.

ary parole. Thus, assuming that the offender spent some time in jail prior to transferring to the state system, the total parole sentence in days would be reduced by the total parole jail time credit days as computed according to Table I.

The computations in Table III illustrate the manner in which an offender's parole sentence can be determined as a result of the date on which he was received into the state system.

TABLE III

TOTAL PAROLE SENTENCE AS OF DATE RECEIVED

(1) Total FTS - Total JTC - JuGT = Total FTS to be Served

(2) Total PS - Total Parole JTC = Total Parole Sentence at Date Received (DRC-Date)

The first equation requires one to subtract from the total felony term sentence, as computed in Table II (2), the total jail time credit from Table I (5) and any judicially imposed good-time. The result represents the total felony term sentence in days to be served. The second equation illustrates the manner of calculating the total parole sentence as of the date the offender was received into the state system. By subtracting the total parole jail time credit (Table I (6)) from the total parole sentence in days (Table II (5)), and counting forward from the date the offender was received into the system, the actual calendar day on which the offender becomes eligible for discretionary parole review is determined.

Tables IV and V, set forth below, relate directly to the classification system for good conduct allowance established under the good conduct incentive law.⁶² To compute the statutory good-time days earned at classification levels, one must multiply the number of days which the offender served while in a particular classification (*see* Table IV *infra*) by the parole sentence level (PSL) factor which is noted at the far right-hand column of Table V. The product represents the statutory good-time earned on time served at that classification level.

62. VA. CODE ANN. § 53-209.4 (Cum. Supp. 1981).

TABLE IV

DAYS SERVED AT CLASSIFICATION LEVEL

New Classification Level Effective Date (NSD) - Prior
Classification Level Effective Date (PrSD) = Days
Served at Prior Classification Level

TABLE V

EARNED STATUTORY GOOD-TIME AT STATUTORY GOOD-TIME
CLASSIFICATION LEVELS

<u>SGT Earning Classifications</u>	<u>Rate</u>	<u>Projecting Factor</u>
(a) Class O (PSL Entry Level)	15/30	0.8
(b) Class I (PSL)	30/30	0.06667
(c) Class II (PSL)	20/30	0.75
(d) Class III (PSL)	10/30	0.8571
(e) Class IV (PSL)	0/30	1.0

As Table VI *infra* indicates, to compute the total earned statutory good-time for determining the discretionary parole eligibility date, the mathematics involve use of the information in Tables V and VI. The sum of the days served while in each classification represents the total days served as of the new classification change. The sum of the earned statutory good-time for the current level and the total earned statutory good-time for each prior level reflects the total statutory good-time days earned to date. Subtracting from this figure any statutory good-time lost yields the net total statutory good-time earned to date. By dividing the net total statutory good-time earned to date by two, one gets the total earned statutory good-time credited toward reducing the amount of time remaining to be served prior to parole eligibility.

The results of the individual computations reflected in Tables I through V are to be used in projecting the discretionary parole eligibility date pursuant to the new good conduct incentive law, effective July 1, 1981. Table VI, set forth below, provides the methodology for arriving at the actual discretionary parole eligibility date (DPED) pursuant to the new statute.

TABLE VI

DISCRETIONARY PAROLE ELIGIBILITY DATE FORMULA

- (1) (a) Compute the total parole sentence as of the date received in the system (using Table II above);
- (b) subtract the total days served to date (using Table IV);
- (c) subtract any earned statutory good-time credit for parole

- (using Table I (6));
- (d) divide any sentence days commuted (by the governor) by two and subtract them to get total days left to serve to parole.
- (2) Total days left to serve to parole multiplied by discretionary parole eligibility projecting factor (*see* Table V *supra*) = projected days to serve to parole eligibility date (PED)
- (3) Total days served to date + projected days to serve to PED = adjusted total projected days to serve to PED
- (4) Date received in system + adjusted total projected days to be served to PED = new discretionary parole eligibility date

The first computation requires subtracting the total days served to date (*see* Table IV), the total earned statutory good-time credit for parole (Table I (4)), and any commuted sentence days divided by two, from the total parole sentence as of the date on which the offender was received into the system (Table II(6)). The difference reflects the total days left to serve to parole. By multiplying this number by the discretionary parole eligibility date projecting factor, one arrives at the projected days left to serve before the offender's parole eligibility date arrives. As Table VII reflects, in the far right-hand corner, the projecting factors vary with each classification level. Next, by adding the total days served to date (Table IV), the number of days projected to serve, and the parole eligibility date, the sum is the adjusted total projected days left to serve to parole eligibility date. Finally, by adding the total projected days to serve to parole eligibility date to the date received into the system, the new discretionary parole eligibility date is computed.

In contrast to the extremely lengthy and complex series of calculations required under the new statute, Table VII illustrates a comparatively simple formula for determining an offender's discretionary parole eligibility date pursuant to the law prior to June 30, 1982.

TABLE VII

DISCRETIONARY PAROLE ELIGIBILITY DATE UNDER 1979 STATUTE

- (1) Total Sentence Days - (JuGT + Unearned SGT) + Lost SGT = Adj. Sentence Days (ASD)
- (2) ASD x Constant = Sentence Periods (Retain fraction.)

<u>Felon</u>	<u>Constant</u>
1	1/90
2	1/70
3	1/50
4	3/110

- (3) Net Extraordinary Good-Time (Net EGT) \div [20 + (10 x Factor)] = EGT Periods

<u>Felon</u>	<u>Factor</u>
1	1/4
2	1/3
3	1/2
4	3/4

- (4) Sentence Periods - EGT Periods = Periods (Drop any Fraction.)
 (5) Periods x 10 = SGT
 (6) Periods x 20 = Unearned SGT
 (7) [(ASD - SGT) x Factor] - Net EGT = Unadj. Total Time (UTT)
 (8) UTT - Unadjusted Time Served (UTS) = Time Adjustment (TA)

If TA < 20, then TA = TA;

if TA \geq 20, then TA = 20.

- (9) Total Days for Parole Eligibility + Sentence Start Date = Discretionary Parole Eligibility Date (DPED)

As noted earlier, the first step in determining any parole eligibility date is to convert each felon term into total sentence days. By taking the number of total sentence days and subtracting the judicial good-time together with any unearned statutory good-time and adding any lost statutory good-time, one arrives at the adjusted sentence days. Multiplying the adjusted sentence date by the constant indicated in Table VII yields the total number of sentencing periods. The next computation requires taking the net extraordinary good-time and dividing that number by the sum of twenty plus ten times the felony factor. The dividend is the total number of extraordinary good-time periods. Subtracting the number of extraordinary good-time periods from sentence periods yields the total number of periods for computing statutory good-time. After the number of periods is rounded off, the number of periods is multiplied by ten. The product is the number of statutory good-time days the offender is awarded. When the number of periods is multiplied by twenty the result is the number of unearned statutory good-time days an offender is awarded. Thus, by subtracting the total statutory good-time credits from the adjusted sentence and multiplying that remainder by the felony factor, and subtracting the net extraordinary good-time, one arrives at

the number of unadjusted total days to serve. Finally, by adding the total number of days for parole eligibility to the sentence start date, the offender may find the date on which he becomes eligible for discretionary parole release.

Although the actual methodology for computing good-time under the old sections appears simple, the Department of Corrections opines that, "the present legislation replaces a good-time system that appears *deceptively simple* with one that is actually simple in its application [i.e., the new statute]."⁶³ Although the preceding sections will allow one to compute good-time under both statutory schemes, general observations are set forth below which assess the application of the new and old statutes based upon a five-year felony sentence.

C. *A Comparative Analysis*

The goal of the Department of Corrections and the General Assembly in instituting the new system for awarding good-time is to divest the correctional system of those offenders deserving an early release while maintaining the incarceration of those offenders who do not demonstrate rehabilitative behavior. Insofar as this policy goal is concerned, Table VIII illustrates that the new Virginia statute achieves that goal mathematically. Note, for example, that the earliest parole eligibility date of a first-time felon under the prior law, if awarded all of the extraordinary good-time days possible, would arise after serving eleven months and twenty-five days. Under the new law, however, a first-time felon committed for the same five-year sentence, who is placed in the highest class for meritorious behavior, would be eligible for parole after serving only ten months and ten days. This comparison for discretionary parole appears to illustrate that most offenders worthy of meritorious good-time will be released sooner than those offenders subject to the

63. The current good-time statutes are fraught with administrative problems and outright inequities. Since July of 1979, there have been thirty-five separate advisory letters issued by the Attorney General's office to try to clarify the statutes. Extensive problems are apparent because there are various kinds of good-time, each awarded for different specific periods of time (rather than rates of earning), and because each kind of good-time is differentially applied to reduce parole eligibility. Current time computations are immersed in a quagmire of misunderstanding at all levels, and are a considerable source of offender unrest. Many examples of inequities exist, but probably the most outstanding is the fact that an offender in punitive segregation continues to earn ordinary good-time at the same rate as a trustee in a responsible position, as long as he does not violate the rules of the institution every 20 days.

prior law. The Department of Corrections has commented on the problems with the old statute:

The . . . good-time statutes are fraught with administrative problems and outright inequities. Since July of 1979, there have been thirty-five separate advisory letters issued by the Attorney General's office to try to clarify the statutes. Extensive problems are apparent because there are various kinds of good-time, each awarded for different specific periods of time (rather than as rates of earnings), and because each kind of good-time is differentially applied to reduce parole eligibility. Current time computations are immersed in a quagmire of misunderstandings at all levels, and are a considerable source of offender unrest. Many examples of inequities exist, but probably the most outstanding is the fact that an offender in punitive segregation continues to earn ordinary good-time at the same rate as a trustee in a responsible position, as long as he does not violate the rules of the institution every 20 days.⁶⁴

Thus, under the new statute, a felon in the highest category, earning thirty days good-time for every thirty days served, benefits from a release date which arrives sooner than it would have under the old statutes. Once one moves from the highest category to the second category, where an offender earns twenty days good-time for every thirty days served, the effect on parole eligibility is negligible if compared to an offender who is earning all of the extraordinary good-time available under the old statute.

If one compares a Class III offender under the new sections with an offender who is earning no extraordinary good-time but is still earning his statutory good-time, the offender under the new sections again significantly reduces the amount of time to be served prior to his eligibility for parole. As Table VIII clearly indicates, an offender in Class III under the new sections would be receiving little if any benefit in electing to move to the new system unless the offender were earning all the extraordinary good-time credit available under the old sections. Indeed such an offender would serve a longer term as a fourth-time felon in Class III than if he were subject to the old sections.

An offender in Class IV under the new sections is obviously at a severe disadvantage compared to the offender under the old system regardless of the extraordinary good-time the offender was

64. *Id.*

earning under the prior sections. Thus, as the extremes illustrate, the policy goals under the new good-time incentive sections are promoted. As a Class I offender, meritorious behavior is positively reinforced. As a Class IV offender, negative behavior is clearly negatively reinforced. However, unlike the new sections, the prior law permits an offender in segregation to continue to earn statutory good-time so long as he does not violate any rules of the institution. At the same time, an offender who may occupy a position of trust, earns ordinary good-time at the same rate under the old statute as would the former offender. This inequity appears to be eradicated under the new statute.

From the social-statistics point of view, the good-time incentive statute appears to achieve the goals of the General Assembly as interpreted by the Department of Corrections. To that end, an earlier parole release eligibility date is a result of meritorious behavior. In the context of social behavior, in order to be classified in the highest category of good-time days earned per days served, the offender necessarily will have to be the kind of individual subject to a high degree of trust or one who has demonstrated a positive attitude toward self-improvement. In that respect, those offenders who deserve earlier parole release consideration receive it, while those who have not made an attempt toward "rehabilitation" may be held in the correctional system for a longer period.⁶⁵

The Department of Corrections has predicted one unlikely phenomenon resulting from the new sections. While the sections on their faces appear to liberalize the laws in relation to the release of prisoners prior to serving full term, those offenders in Classes III and IV may be held back on eligibility for parole release for a longer period of time than under the old law. As a result, the Department has indicated that it projects an increase in the corrections population, particularly with respect to recidivious offenders, since the new statute is skewed toward service of longer terms prior to the eligibility date. More particularly, with respect to second-, third-, and fourth-time felons who are categorized in Classes II, III and IV, each term to be served is longer than the length of the terms for second-, third-, and fourth-time felons under the old statute if those offenders earn all of the extraordinary good-time available under the old statute. As a result, a surprising mathematical conclusion borne out by the statute is longer terms of service

65. See note 47 *supra* and accompanying text.

even for relatively well-behaved inmates under the new sections (Class III) as opposed to offenders under the old statutes who are earning all of the extraordinary good-time available through self-improvement plus extraordinary good conduct.

D. The Good Conduct Allowance Statute: A Projection and Critique

In Appendix II of this article, the authors have approximated the length of service before arrival of the discretionary parole eligibility date under the new sections. The tables provide guides to the approximate length of term to be served by an offender in each class. The tables present these calculations according to the length of term ranging from one year to ten years consecutively and then at five-year intervals ending with a forty-year term. These figures may provide some guidance to users concerned with the relationship between offender category and good conduct classification.

As was indicated earlier, the Department of Corrections has observed that the prior good-time statute was fraught with administrative problems and inequities in its application. The Department commented that, under the prior system, each kind of good-time was applied in different manners resulting in a quagmire of misunderstandings at all levels. However, the authors submit that, under the present scheme, neither the administrative problems nor the "quagmire of misunderstandings" will be assuaged by the new statutory scheme. Indeed, the conclusion seems inexorable that the modified scheme for computing good-time may lead to greater misunderstandings, greater inequity, and merely compound the administrative problems that already exist.

One must note that the primary consideration in this new statutory scheme is to promote good conduct through positive reinforcement, as evidenced by the comparative reduction in the amount of time to be served by offenders in more advantageous categories as well as good conduct classifications. The problem faced by the inmate is understanding that, depending upon his offender category and his class, the length of his service may vary dramatically. For example, for a ten-year term, a first-time offender in Class IV would serve the same amount of time as a second-time offender in Class II (2 years 6 months). A third-time offender in Class I would be subject to discretionary parole at the same time as a second-time offender in Class IV (3 years 4 months). Since one of the primary considerations in changing the statutes is that the present

system was fraught with inequities and misunderstandings, it seems unavoidable that misunderstandings will arise when a third-time offender on a ten-year sentence may become eligible for discretionary parole at the same time a second-time offender becomes eligible. Thus, while the class system for good conduct allowance may promote more productive and cooperative behavior, the same system will inevitably promote frustration, misunderstanding, and mistrust.

Administratively, the new statutory scheme appears to place a difficult burden on the bureaucracy charged with actually computing the discretionary parole eligibility date. As one can readily see from the discussion concerning the actual formulae for computing an inmate's parole eligibility date, any fluctuations in good conduct allowance classes significantly affect the amount of time the inmate may have to serve prior to becoming eligible for discretionary parole. For a fifteen-year term, if an inmate is a first-time offender and placed in Class I for good conduct, the inmate will be subject to discretionary parole eligibility after serving two years and six months. The same first-time offender, however, if placed in Class IV would not be eligible for parole for three years and nine months. Each time the particular inmate is recommended for a class change either to a higher or lower classification, his length of service must be recomputed to project a new date. Taking into account the inmate population and considering the numerous variables which will affect the length of his term to be served prior to the inmate's eligibility for discretionary parole, an overwhelming burden is placed upon the Department of Corrections in keeping inmate records current.

An interesting aspect of the new statutory scheme is also revealed in the tables in Appendix II, particularly with respect to the tables concerning sentences for terms in excess of twenty-five years. In addition to the good conduct allowance classes, the new sections set maximum limits within which the first-, second-, third-, and fourth-time offender must become eligible for discretionary parole review.⁶⁶ According to the sections, a first-time offender shall become eligible for parole after serving one-fourth of the term of imprisonment imposed or after serving twelve years of the term of imprisonment if one-fourth of the term of imprisonment is more than twelve years. The second-time offender is eligi-

66. VA. CODE ANN. § 53-251 (Cum. Supp. 1981).

ble for parole after serving one-third of the term or thirteen years; the third-time offender is eligible for parole after serving one-half of the term or fourteen years; the fourth-time or subsequent offender is eligible for parole after serving three-fourths of the term or fifteen years. The effect this has upon discretionary parole eligibility for a particular inmate is that it sets the outside limits within which the inmate must be subject to review for release back into society according to the standards set forth by the Virginia Parole Board. By way of example, in the table which illustrates the projections to discretionary parole for a thirty-year term, the fourth-time offender is entirely beyond the scope of the statutory amendments since three-quarters of the term imposed, even with the benefit of the highest good conduct class, is no sooner than fifteen years. More dramatically, the table which reflects the parole eligibility dates with respect to forty-year terms virtually removed the third and fourth time offenders from the policy ostensibly promoted by the new act. Therefore, at least insofar as the serious long-term offenders are concerned, the policy of the statute is not furthered since these offenders will become subject to discretionary parole eligibility at a fixed time which cannot be advanced by good conduct. In that respect, the statutory scheme embodies policies which are at cross purposes, since inmates with long terms will realize that they will be subject to parole review within a fixed period regardless of positive or negative behavior. Admittedly, the Department of Corrections must undertake a study to reflect whether the goals of the good conduct allowance system are compatible with offenders with sentences in excess of twenty years.

V. CONCLUSION

Although the goals of the good conduct incentive law are laudable, the question remains whether the statutory scheme will achieve those goals. As this article illustrates, the good conduct incentive law is difficult legislation to understand and may prove to be even more difficult to implement.

Since one of the primary goals of the new parole statute is to promote good conduct through positive reinforcement for meritorious behavior, the linchpin of the system is that those inmates subject to the good conduct incentive law understand how the system works. The inexorable conclusion is that few, if any, of those subject to the new statute will fully appreciate the relationship between their good-time classification and their parole eligibility

dates. As the tables and the appendices show, for any particular term imposed, there will be at least four possible parole eligibility dates for an incarcerated offender. This does not take into account the variables which affect parole eligibility dates, including statutory jail good-time and changes in classification. Furthermore, more frustration and misunderstanding may result from the new scheme since it would be difficult to explain to an inmate how a third-time offender in Class I is subject to discretionary parole at the same time a second-time offender in Class IV becomes eligible. Unless the inmate population fully understands this system, the incentive for good conduct will not be present. Indeed, absent an understanding of the system, Department of Corrections policy may appear even more arbitrary than under the present system.

Administrative considerations also militate against success for the new system. This conclusion derives from the nature and complexity of the computations to be made for each inmate not only as he enters the system but also during the course of his incarceration. Each time an offender is reclassified, his parole eligibility date must be recomputed. Although it is unknown how often or how many inmates will shift along the classification scale, even a relatively small number of shifts would cause a tremendous administrative burden in maintaining proper inmate records. Thus, the post-conviction process as it stands under the new parole statute, may become mired not only by prison population frustration, but also by the unmanageability in administering the new system.

APPENDIX I

The following are the guidelines used by the Virginia Department of Corrections to evaluate inmate conduct when determining an inmate's good conduct classification.

B. *Areas of Performance/Responsibility*

Three areas of an inmate's individual/adjustment and performance shall be evaluated in determining or adjusting his/her GCA class:

1. Personal conduct which relates to the inmate's compliance with institutional written rules and regulations and general attitudinal/behavioral adjustment.
2. Work/Vocational or Educational Program assignment performance.
3. Motivation towards self-improvement which relates to the inmate's efforts at identifying personal treatment needs with treatment staff and his/her progress towards attaining treatment objectives formulated in his/her institutional treatment plan.

E. *Evaluating Personal Conduct*

Levels of expected performance and levels of demonstrated responsibility provide the criteria for this area related to each GCA class. Terms used to describe performance/responsibility levels—exemplary, satisfactory, marginal and unsatisfactory—are defined in this guideline.

1. Class I

- a. Level of performance—inmate has maintained a record free of major disciplinary infractions for a six month period.
- b. Level of responsibility—inmate consistently demonstrates an exemplary attitudinal/behavioral adjustment.

2. Class II

- a. Level of performance—inmate has been found guilty of no more than one major disciplinary infraction within a six month period.
- b. Level of responsibility—inmate consistently demonstrates a satisfactory attitudinal/behavioral adjustment.

3. Class III

- a. Level of performance—inmate has been found guilty of no more than two major disciplinary infractions within a six month period.
- b. Level of responsibility—inmate consistently demonstrates a marginal attitudinal/behavioral adjustment.

4. Class IV

- a. Level of performance—inmate has been placed in isolation or segregation due to disciplinary problems and/or has been found guilty of more than two major disciplinary infractions within a six month time period.
- b. Level of responsibility—inmate consistently demonstrates an unsatisfactory attitudinal/behavioral adjustment.

F. *Evaluating Work/Vocational or Educational Program Performance*

Levels of expected performance and levels of demonstrated responsibility provide the criteria for this area related to each GCA class. Terms used to describe the levels of performance/responsibility levels—exemplary, satisfactory, marginal and unsatisfactory—are defined in this guideline.

1. Class I

- a. Level of performance—inmate receives exemplary work/vocational or educational evaluations during a six month period.
- b. Level of responsibility—inmate consistently demonstrates a high degree of responsibility and trust with minimal supervision and/or demonstrates exemplary use of personal skills and abilities.

2. Class II

- a. Level of performance—inmate receives satisfactory work/vocational or educational evaluations during a six month period.
- b. Level of responsibility—inmate consistently demonstrates responsibility and trust with moderate supervision and/or demonstrates satisfactory use of personal

skills and abilities.

3. Class III

a. Level of performance—inmate receives marginal work/vocational or educational evaluations during a six month period.

b. Level of responsibility—inmate consistently requires intensive supervision due to demonstration of minor disciplinary problems and/or demonstrates marginal use of personal skills and abilities.

4. Class IV

a. Level of performance—inmate refuses to work and/or receives unsatisfactory work/vocational or educational evaluations during a six month period.

b. Level of responsibility—inmate demonstrates major disciplinary problems despite intensive supervision and/or demonstrates unsatisfactory use of personal skills and abilities.

G. Evaluating Self-Improvement

Levels of expected performance and levels of demonstrated responsibility provide the criteria for this area related to each GCA class. Terms used to describe the performance responsibility levels—exemplary, satisfactory, marginal and unsatisfactory—are defined in this guideline.

1. Class I

a. Level of performance—inmate displays exemplary progress, within a six month period, towards attainment of treatment objectives formulated in the institutional treatment plan.

b. Level of responsibility—inmate demonstrates initiative and exemplary cooperation/participation with treatment staff in the development of an institutional treatment plan.

2. Class II

a. Level of performance—inmate displays satisfactory progress, within a six month period, towards attainment

of treatment objectives formulated in the institutional treatment plan.

b. Level of responsibility—inmate demonstrates satisfactory cooperation with the treatment staff in the development of an institutional treatment plan.

3. Class III

a. Level of performance—inmate displays marginal progress, within a six month period, towards attainment of treatment objectives formulated in the institutional treatment plan.

b. Level of responsibility—inmate demonstrates marginal cooperation with treatment staff in the development of an institutional treatment plan.

4. Class IV

a. Level of performance—inmate displays unsatisfactory progress, within a six month period, towards attainment of treatment objectives formulated in the institutional treatment plan.

b. Level of responsibility—inmate refuses to cooperate and/or demonstrates unsatisfactory cooperation with treatment staff in the development of an institutional treatment plan.

DIVISION OF ADULT SERVICES, VA. DEP'T OF CORRECTIONS, DGL 806
GOOD CONDUCT ALLOWANCE 6-10 (July 1, 1981)

APPENDIX II¹

	GOOD CONDUCT ALLOWANCE CLASS	FIRST-TIME OFFENDER	SECOND-TIME OFFENDER	THIRD-TIME OFFENDER	FOURTH-TIME OFFENDER
ONE (1) YEAR TERM	Class I (30/30)	2 months	2 months 18 days	4 months	6 months
	Class II (20/30)	2 months 8 days	3 months	4 months 15 days	6 months 22 days
	Class III (10/30)	2 months 17 days	3 months 13 days	5 months 4 days	7 months 22 days
	Class IV (0/30)	3 months	4 months	6 months	9 months
TWO (2) YEAR TERM	Class I (30/30)	4 months	5 months 9 days	8 months	1 year
	Class II (20/30)	4 months 15 days	6 months	9 months	1 year 1 month
	Class III (10/30)	5 months 4 days	6 months 26 days	10 months 9 months	1 year 3 months 13 days
	Class IV (0/30)	6 months	8 months	1 year	1 year 6 months
THREE (3) YEAR TERM	Class I (30/30)	6 months	8 months	1 year	1 year 6 months
	Class II (20/30)	6 months 22 days	9 months	1 year 1 month 15 days	1 year 8 months 8 days
	Class III (10/30)	7 months 22 days	10 months 8 days	1 year 3 months 13 days	1 year 11 months 4 days
	Class IV (0/30)	9 months	1 year	1 year 6 months	2 years 3 months
FOUR (4) YEAR TERM	Class I (30/30)	8 months	10 months 18 days	1 year 4 months	2 years
	Class II (20/30)	9 months	1 year	1 year 6 months	2 years 3 months
	Class III (10/30)	10 months 8 days	1 year 1 month 21 days	1 year 8 months 17 days	2 years 6 months 26 days
	Class IV (0/30)	1 year	1 year 4 months	2 years	3 years
FIVE (5) YEAR TERM	Class I (30/30)	10 months	1 year 1 month 9 days	1 year 8 months	2 years 6 months
	Class II (20/30)	11 months 8 days	1 year 3 months	1 year 10 months 15 days	2 years 9 months 22 days
	Class III (10/30)	1 year 26 days	1 year 5 months 4 days	2 years 1 month 21 days	3 years 2 months 17 days
	Class IV (0/30)	1 year 3 months	1 year 8 months	2 years 6 months	3 years 9 months

1. This schedule is a tentative approximation of the time served to discretionary parole eligibility pursuant to the provisions of VA. CODE ANN. § 53-209.4 (Cum. Supp. 1981). However, one must bear in mind that the amount of time to serve to discretionary parole eligibility may fluctuate with the addition of jail credit or change in class levels as provided in the new statutory scheme. The figures for the following tables do not take into account credit allowed for time spent in jail awaiting trial or transfer to the Department of Corrections or time spent in the Department's classification and receiving units awaiting initial classification.

	GOOD CONDUCT ALLOWANCE CLASS	FIRST-TIME OFFENDER	SECOND-TIME OFFENDER	THIRD-TIME OFFENDER	FOURTH-TIME OFFENDER
SIX (6) YEAR TERM					
	Class I (30/30)	1 year	1 year 4 months	2 years	3 years
	Class II (20/30)	1 year 1 month 15 days	1 year 6 months	2 years 3 months	3 years 4 months 15 days
	Class III (10/30)	1 year 3 months 13 days	1 year 8 months 17 days	2 years 6 months 26 days	3 years 10 months 8 days
	Class IV (0/30)	1 year 6 months	2 years	3 years	4 years 6 months
SEVEN (7) YEAR TERM					
	Class I (30/30)	1 year 2 months	1 year 6 months 18 days	2 years 4 months	3 years 6 months
	Class II (20/30)	1 year 3 months 22 days	1 year 9 months	2 years 7 months 15 days	3 years 11 months 8 days
	Class III (10/30)	1 year 6 months	2 years	3 years	4 years 6 months
	Class IV (0/30)	1 year 9 months	2 years 4 months	3 years 6 months	5 years 3 months
EIGHT (8) YEAR TERM					
	Class I (30/30)	1 year 4 months	1 year 9 months 9 days	2 years 8 months	4 years
	Class II (20/30)	1 year 6 months	2 years	3 years	4 years 6 months
	Class III (10/30)	1 year 8 months 17 days	2 years 3 months 13 days	3 years 5 months 4 days	5 years 1 month 22 days
	Class IV (0/30)	2 years	2 years 8 months	4 years	6 years
NINE (9) YEAR TERM					
	Class I (30/30)	1 year 6 months	2 years	3 years	4 years 6 months
	Class II (20/30)	1 year 8 months 8 days	2 years 3 months	3 years 4 months 15 days	5 years 22 days
	Class III (10/30)	1 year 11 months 4 days	2 years 6 months 26 days	3 years 10 months 9 days	5 years 9 months 13 days
	Class IV (0/30)	2 years 3 months	3 years	4 years 6 months	6 years 9 months
TEN (10) YEAR TERM					
	Class I (30/30)	1 year 8 months	2 years 2 months 18 days	3 years 4 months	5 years
	Class II (20/30)	1 year 10 months 15 days	2 years 6 months	3 years 9 months	5 years 7 months 15 days
	Class III (10/30)	2 years 1 month 22 days	2 years 10 months 8 days	4 years 3 months 13 days	6 years 5 months 4 days
	Class IV (0/30)	2 years 6 months	3 years 4 months	5 years	7 years 6 months
FIFTEEN (15) YEAR TERM					
	Class I (30/30)	2 years 6 months	3 years 4 months	5 years	7 years 6 months
	Class II (20/30)	2 years 9 months 22 days	3 years 9 months	5 years 7 months 15 days	8 years 5 months 8 days
	Class III (10/30)	3 years 2 months 17 days	4 years 3 months 13 days	6 years 5 months 4 days	9 years 7 months 22 days
	Class IV (0/30)	3 years 9 months	5 years	7 years 6 months	11 years 3 months

	GOOD CONDUCT ALLOWANCE CLASS	FIRST-TIME OFFENDER	SECOND-TIME OFFENDER	THIRD-TIME OFFENDER	FOURTH-TIME OFFENDER
TWENTY (20) YEAR TERM					
	Class I (30/30)	3 years 4 months	4 years 5 months 9 days *	6 years 8 months	10 years
	Class II (20/30)	3 years 9 months	5 years	7 years 6 months	11 years 3 months
	Class III (10/30)	4 years 3 months 13 days	5 years 8 months 17 days	8 years 6 months 26 days	12 years 10 months 8 days
	Class IV (0/30)	5 years	6 years 8 months	10 years	15 years
TWENTY-FIVE (25) YEAR TERM					
	Class I (30/30)	4 years 2 months	5 years 6 months 18 days	8 years 4 months	12 years 6 months
	Class II (20/30)	4 years 8 months 8 days	6 years 3 months	9 years 4 months 15 days	14 years 22 days
	Class III (10/30)	5 years 4 months 8 days	7 years 1 month 21 days	10 years 8 months 17 days	15 years ⁹
	Class IV (0/30)	6 years 3 months	8 years 4 months	12 years 6 months	15 years ⁹
THIRTY (30) YEAR TERM					
	Class I (30/30)	5 years	6 years 8 months	10 years	15 years ⁹
	Class 2 (20/30)	5 years 7 months 15 days	7 years 6 months	11 years 3 months	15 years ⁹
	Class III (10/30)	6 years 5 months 4 days	8 years 6 months 26 days	12 years 10 months 9 days	15 years ⁷
	Class IV (0/30)	7 years 6 months	10 years	14 years ⁸	15 years ⁸
THIRTY-FIVE (35) YEAR TERM					
	Class I (30/30)	5 years 10 months	7 years 9 months 9 days	11 year 8 months	15 years ¹¹
	Class II (20/30)	6 years 6 months 22 days	8 years 9 months	13 years 1 month 15 days	15 years ¹²

2. VA. CODE ANN. § 53-251(1)(d) (Cum. Supp. 1981) requires eligibility for parole for a fourth-time offender after serving three-fourths of the term imposed or after serving fifteen (15) years, if the three-fourths term is more than fifteen (15) years.

3. *Id.*

5. VA. CODE ANN. § 53-251(1)(d) (Cum. Supp. 1981) requires eligibility for parole for a fourth-time offender after serving three-fourths of the term imposed or after serving fifteen (15) years, if the three-fourths term is more than fifteen (15) years.

6. *Id.*

7. *Id.*

4. VA. CODE ANN. § 53-251(1)(c) (Cum. Supp. 1981) requires eligibility for parole for a third-time offender after serving one-half of the term imposed or after serving fourteen (14) years, if the one-half term is more than fourteen (14) years.

8. *Id.*

11. VA. CODE ANN. § 53-251(1)(d) (Cum. Supp. 1981) requires eligibility for parole for a fourth-time offender after serving three-fourths of the term imposed or after serving fifteen (15) years, if the three-fourths term is more than fifteen (15) years.

12. *Id.*

	GOOD CONDUCT ALLOWANCE CLASS	FIRST-TIME OFFENDER	SECOND-TIME OFFENDER	THIRD-TIME OFFENDER	FOURTH-TIME OFFENDER
FORTY (40) YEAR TERM	Class III (10/30)	7 years 6 months	10 years	14 years*	15 years**
	Class IV (0/30)	8 years 9 months	11 years 8 months	14 years**	15 years**
	Class I (30/30)	6 years 8 months	8 years 10 months 18 days	13 years 4 months	15 years**
	Class II (20/30)	7 years 6 months	10 years	14 years**	15 years**
	Class III (10/30)	8 years 6 months 26 days	11 years 5 months 4 days	14 years**	15 years**
	Class IV (0/30)	10 years	13 years**	14 years**	15 years**

9. VA. CODE ANN. § 53-251(1)(c) (Cum. Supp. 1981) requires eligibility for parole for third-time offender after serving one-half of the term imposed or after serving fourteen (14) years, if the one-half term is more than fourteen (14) years.

13. *Id.*

10. *Id.*

14. *Id.*

19. VA. CODE ANN. § 53-251(1)(d) (Cum. Supp. 1981) requires eligibility for parole for a fourth-time offender after serving three-fourths of the term imposed or after serving fifteen (15) years, if the three-fourths term is more than fifteen (15) years.

16. VA. CODE ANN. § 53-251(1)(c) (Cum. Supp. 1981) requires eligibility for parole for third-time offender after serving one-half of the term imposed or after serving fourteen (14) years, if the one-half term is more than fourteen (14) years.

20. *Id.*

17. *Id.*

21. *Id.*

15. VA. CODE ANN. § 53-251(1)(b) (Cum. Supp. 1981) requires eligibility for parole for a second-time offender after serving one-third of the term imposed or after serving thirteen (13) years, if the one-third term is more than thirteen (13) years.

18. *Id.*

22. *Id.*