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SENATE BILL NO. 1167

Offered January 10, 2001

Prefiled January 10, 2001

A BILL to amend and reenact §§ 53.1-40.01 and 53.1-151 of the Code of Virginia, relating to conditional release of geriatric prisoners.

Patron—Hanger

Referred to Committee on Rehabilitation and Social Services

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 53.1-40.01 and 53.1-151 of the Code of Virginia are amended and reenacted as follows:**

§ 53.1-40.01. Conditional release of geriatric prisoners.

Any person serving a sentence imposed upon a conviction for a felony offense, other than a Class 1 felony, committed on or after January 1, 1995, (i) who has reached the age of sixty-five or older and who has served at least five years of the sentence imposed or (ii) who has reached the age of sixty or older and who has served at least ten years of the sentence imposed may petition the Parole Board for conditional release. *The provisions of this section shall include persons who have committed crimes prior to, on and after January 1, 1995, and those persons otherwise ineligible under subsection B1. of § 53.1-151.* The Parole Board shall promulgate regulations to implement the provisions of this section.

§ 53.1-151. Eligibility for parole.

A. Except as herein otherwise provided, every person convicted of a felony and sentenced and committed by a court under the laws of this Commonwealth to the Department of Corrections, whether or not such person is physically received at a Department of Corrections facility, or as provided for in § 19.2-308.1:

1. 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;

2. 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;

3. 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;

4. 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.

For the purposes of subdivisions 2, 3 and 4 of subsection A and for the purposes of subsections B1 and B2, prior commitments shall include commitments to any correctional facility under the laws of any state, the District of Columbia, the United States or its territories for murder, rape, robbery, forcible sodomy, animate or inanimate object sexual penetration, aggravated sexual battery, abduction, kidnapping, burglary, felonious assault or wounding, or manufacturing, selling, giving, distributing or possessing with the intent to manufacture, sell, give or distribute a controlled substance, if such would be a felony if committed in the Commonwealth. Only prior commitments interrupted by a person's being at liberty, or resulting from the commission of a felony while in a correctional facility of the Commonwealth, of any other state or of the United States, shall be included in determining the number of times such person has been convicted, sentenced and committed for the purposes of subdivisions 2, 3 and 4 of subsection A. "At liberty" as used herein shall include not only freedom without any legal restraints, but shall also include release pending trial, sentencing or appeal, or release on probation or parole or escape. In the case of terms of imprisonment to be served consecutively, the total time imposed shall constitute the term of the imprisonment; in the case of terms of imprisonment to be served concurrently, the longest term imposed shall be the term of imprisonment. In any case in which a parolee commits an offense while on parole, only the sentence imposed for such offense and not the sentence or sentences or any part thereof from which he was paroled shall constitute the term of imprisonment.

The Department of Corrections shall make all reasonable efforts to determine prior convictions and commitments of each inmate for the enumerated offenses.

B. Persons sentenced to die shall not be eligible for parole. Any person sentenced to life imprisonment who escapes from a correctional facility or from any person in charge of his custody shall

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59 not be eligible for parole.

60 B1. Any person convicted of three separate felony offenses of (i) murder, (ii) rape or (iii) robbery by  
61 the presenting of firearms or other deadly weapon, or any combination of the offenses specified in  
62 subdivisions (i), (ii) or (iii) when such offenses were not part of a common act, transaction or scheme  
63 shall not be eligible for parole, *except as provided in § 53.1-40.01*. In the event of a determination by  
64 the Department of Corrections that an individual is not eligible for parole under this subsection, the  
65 Parole Board may in its discretion, review that determination, and make a determination for parole  
66 eligibility pursuant to regulations promulgated by it for that purpose. Any determination of the Parole  
67 Board of parole eligibility thereby shall supersede any prior determination of parole ineligibility by the  
68 Department of Corrections under this subsection.

69 B2. Any person convicted of three separate felony offenses of manufacturing, selling, giving,  
70 distributing or possessing with the intent to manufacture, sell, give or distribute a controlled substance,  
71 when such offenses were not part of a common act, transaction or scheme, and who has been at liberty  
72 as defined in this section between each conviction, shall not be eligible for parole.

73 C. Any person sentenced to life imprisonment for the first time shall be eligible for parole after  
74 serving fifteen years, except that if such sentence was for a Class 1 felony violation or the first degree  
75 murder of a child under the age of eight in violation of § 18.2-32, he shall be eligible for parole after  
76 serving twenty-five years, unless he is ineligible for parole pursuant to subsection B1 or B2.

77 D. A person who has been sentenced to two or more life sentences, except a person to whom the  
78 provisions of subsection B1, B2, or E of this section are applicable, shall be eligible for parole after  
79 serving twenty years of imprisonment, except that if either such sentence, or both, was or were for a  
80 Class 1 felony violation, and he is not otherwise ineligible for parole pursuant to subsection B1, B2, or  
81 E of this section, he shall be eligible for parole only after serving thirty years.

82 E. A person convicted of an offense and sentenced to life imprisonment after being paroled from a  
83 previous life sentence shall not be eligible for parole.

84 E1. Any person who has been convicted of murder in the first degree, rape in violation of § 18.2-61,  
85 forcible sodomy, animate or inanimate object sexual penetration or aggravated sexual battery and who  
86 has been sentenced to a term of years shall, upon a first commitment to the Department of Corrections,  
87 be eligible for parole after serving two-thirds of the term of imprisonment imposed or after serving  
88 fourteen years of the term of imprisonment imposed if two-thirds of the term of imprisonment imposed  
89 is more than fourteen years. If such person has been previously committed to the Department of  
90 Corrections, such person shall be eligible for parole after serving three-fourths of the term of  
91 imprisonment imposed or after serving fifteen years of the terms of imprisonment imposed if  
92 three-fourths of the term of imprisonment imposed is more than fifteen years.

93 F. If the sentence of a person convicted of a felony and sentenced to the Department is partially  
94 suspended, he shall be eligible for parole based on the portion of such sentence execution which was not  
95 suspended.

96 G. The eligibility time for parole as specified in subsections A, C and D of this section may be  
97 modified as provided in §§ 53.1-191, 53.1-197 and 53.1-198.

98 H. The time for eligibility for parole as specified in subsection D of this section shall apply only to  
99 those criminal acts committed on or after July 1, 1976.

100 I. The provisions of subdivisions 2, 3 and 4 of subsection A shall apply only to persons committed  
101 to the Department of Corrections on or after July 1, 1979, but such persons' convictions and  
102 commitments shall include all felony convictions and commitments without regard to the date of such  
103 convictions and commitments.