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SENATE BILL NO. 249

Offered January 11, 2006

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A BILL to amend and reenact §§ 53.1-136, 53.1-151, 53.1-154, and 53.1-159 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 53.1-135.1 and 53.1-153.1, relating to parole.

Patrons—Ticer, Devolites Davis and Quayle; Delegates: Reid, Rust and Saxman

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 53.1-136, 53.1-151, 53.1-154, and 53.1-159 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 53.1-135.1 and 53.1-153.1 as follows:

§ 53.1-135.1. Parole Guidelines Review Panel established.

A. The Parole Guidelines Review Panel is established as an advisory panel in the executive branch of state government. The purpose of the Panel is to quadrennially review the general rules governing the granting of parole and eligibility requirements.

B. The Panel shall have a total membership of 18 members that shall consist of six legislative members, and 12 nonlegislative citizen members. Members shall be appointed as follows: two members of the Senate Committee for Courts of Justice upon the recommendation of the chairman of such committee, to be appointed by the Senate Committee on Rules; four members of the House Committee for Health, Welfare, and Institutions upon the recommendation of the chairman of such committee, to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; and 12 nonlegislative citizen members, including one member of the Virginia State Crime Commission, two members of the Virginia Criminal Sentencing Commission, two members of the Virginia Indigent Defense Commission, one representative of a circuit court, one representative of the Supreme Court of Virginia, one representative of the Parole Board, one member of the Virginia State Bar, one member of a crime victims' organization or a victim of crime as defined in subsection B of § 19.2-11.01, one nonlegislative citizen member with an immediate family member incarcerated in Virginia under a parole-eligible sentence, and one nonlegislative citizen member who shall be a member of a faith-based or other nonprofit organization working with offenders to be appointed by the Governor upon consideration of the recommendation of the Secretary of Public Safety, if any, and subject to confirmation by the General Assembly. Nonlegislative citizen members of the Panel shall be citizens of the Commonwealth.

C. Legislative members of the Panel shall serve terms coincident with their terms of office. Nonlegislative citizen members shall serve at the pleasure of the Governor. All members may be reappointed. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed.

D. The Panel shall elect a chairman and vice-chairman from among its membership. A majority of the members shall constitute a quorum. The meetings of the Panel shall be held at the call of the chairman or whenever the majority of the members so request.

E. Legislative members of the Panel shall receive such compensation as provided in § 30-19.12, and nonlegislative citizen members shall receive such compensation for the performance of their duties as provided in § 2.2-2813. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be provided by the Parole Board.

F. The Panel shall determine the adequacy of the guidelines for the determination of parole release by considering current research and data on the risks of recidivism, the expectations of sentencing courts at the time parole-eligible sentences were imposed, the expectations for parole on certain sentences prior to the abolishment of parole, and any other resources it deems relevant to such review. The chairman of the Panel shall submit to the Governor and the General Assembly a quadrennial executive summary of the interim activity and work of the Panel no later than the first day of the 2007 regular session of the General Assembly and every four years thereafter. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents, and reports shall be posted on the General Assembly's website.

G. The Parole Board shall provide staff support to the Panel. All agencies of the Commonwealth

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59 *shall provide assistance to the Panel, upon request.*

60 § 53.1-136. Powers and duties of Board; notice of release of certain inmates.

61 In addition to the other powers and duties imposed upon the Board by this article, the Board shall:

62 1. (a) Adopt, subject to approval by the Governor, general rules governing the granting of parole and
63 eligibility requirements, *including an analytical scale to assess risk*, which shall be published and posted
64 for public review;

65 (b) *Ensure that the general rules governing the granting of parole and eligibility requirements,*
66 *including an analytical scale to assess risk, set out in this section is reviewed by the Parole Guidelines*
67 *Review Panel.*

68 2. (a) Release on parole for such time and upon such terms and conditions as the Board shall
69 prescribe, persons convicted of felonies and confined under the laws of the Commonwealth in any
70 correctional facility in Virginia when those persons become eligible and are found suitable for parole,
71 according to those rules adopted pursuant to subdivision 1;

72 (b) Establish the conditions of postrelease supervision authorized pursuant to §§ 18.2-10 and
73 19.2-295.2 A;

74 (c) Notify by certified mail at least 21 business days prior to release on discretionary parole of any
75 inmate convicted of a felony and sentenced to a term of 10 or more years, the attorney for the
76 Commonwealth in the jurisdiction where the inmate was sentenced. In the case of parole granted for
77 medical reasons, where death is imminent, the Commonwealth's Attorney may be notified by telephone
78 or other electronic means prior to release. Nothing in this subsection shall be construed to alter the
79 obligations of the Board under § 53.1-155 for investigation prior to release;

80 3. Revoke parole and any period of postrelease and order the reincarceration of any parolee or felon
81 serving a period of postrelease supervision or impose a condition of participation in any component of
82 the Statewide Community-Based Corrections System for State-Responsible Offenders (§ 53.1-67.2 et
83 seq.) on any eligible parolee, when, in the judgment of the Board, he has violated the conditions of his
84 parole, postrelease supervision or is otherwise unfit to be on parole or on postrelease supervision;

85 4. Issue final discharges to persons released by the Board on parole when the Board is of the opinion
86 that the discharge of the parolee will not be incompatible with the welfare of such person or of society;

87 5. Make investigations and reports with respect to any commutation of sentence, pardon, reprieve or
88 remission of fine or penalty when requested by the Governor; and

89 6. Publish monthly a statement regarding the action taken by the Board on the parole of prisoners,
90 *which shall be posted for public review.* The statement shall list the name of each prisoner considered
91 for parole and indicate whether parole was granted or denied, as well as the basis for denial of parole as
92 described in subdivision 2 (a).

93 § 53.1-151. Eligibility for parole.

94 A. Except as herein otherwise provided, every person convicted of a felony and sentenced and
95 committed by a court under the laws of this Commonwealth to the Department of Corrections, whether
96 or not such person is physically received at a Department of Corrections facility, or as provided for in
97 § 19.2-308.1:

98 1. For the first time, shall be eligible for parole after serving one-fourth of the term of imprisonment
99 imposed, or after serving twelve years of the term of imprisonment imposed if one-fourth of the term of
100 imprisonment imposed is more than twelve years;

101 2. For the second time, shall be eligible for parole after serving one-third of the term of
102 imprisonment imposed, or after serving thirteen years of the term of imprisonment imposed if one-third
103 of the term of imprisonment imposed is more than thirteen years;

104 3. For the third time, shall be eligible for parole after serving one-half of the term of imprisonment
105 imposed, or after serving fourteen years of the term of imprisonment imposed if one-half of the term of
106 imprisonment imposed is more than fourteen years;

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

110 For the purposes of subdivisions 2, 3 and 4 of subsection A and for the purposes of subsections B1
111 and B2, prior commitments shall include commitments to any correctional facility under the laws of any
112 state, the District of Columbia, the United States or its territories for murder, rape, robbery, forcible
113 sodomy, animate or inanimate object sexual penetration, aggravated sexual battery, abduction,
114 kidnapping, burglary, felonious assault or wounding, or manufacturing, selling, giving, distributing or
115 possessing with the intent to manufacture, sell, give or distribute a controlled substance, if such would
116 be a felony if committed in the Commonwealth. Only prior commitments interrupted by a person's being
117 at liberty, or resulting from the commission of a felony while in a correctional facility of the
118 Commonwealth, of any other state or of the United States, shall be included in determining the number
119 of times such person has been convicted, sentenced and committed for the purposes of subdivisions 2, 3
120 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 not be eligible for parole.

B1. Any person convicted of three separate felony offenses of (i) murder, (ii) rape or (iii) robbery by the presenting of firearms or other deadly weapon, or any combination of the offenses specified in subdivisions (i), (ii) or (iii) when such offenses were not part of a common act, transaction or scheme, and who has been at liberty as defined in this section between any of these offenses and convictions, shall not be eligible for parole. In the event of a determination by the Department of Corrections that an individual is not eligible for parole under this subsection, the Parole Board may in its discretion, review that determination, and make a determination for parole eligibility pursuant to regulations promulgated by it for that purpose. Any determination of the Parole Board of parole eligibility thereby shall supersede any prior determination of parole ineligibility by the Department of Corrections under this subsection.

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

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

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

E. 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.

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

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

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

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

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

§ 53.1-153.1. *Consideration of nature of the offense.*

Except as provided in the analytical scale to assess risk pursuant to § 53.1-136, once any person is considered eligible for parole pursuant to §§ 53.1-151, 53.1-152, or 53.1-153, the Board shall not use the nature of the offense in determining that person's eligibility or suitability for release on parole, and

182 *no person shall then be denied parole based solely on the nature of the offense after the fifth year of*
183 *becoming eligible for parole pursuant to §§ 53.1-151, 53.1-152, or 53.1-153.*

184 § 53.1-154. Times at which Virginia Parole Board to review cases.

185 The Virginia Parole Board shall by regulation divide each calendar year into such equal parts as it
186 may deem appropriate to the efficient administration of the parole system. Unless there be reasonable
187 cause for extension of the time within which to review and decide a case, the Board shall review and
188 decide the case of each prisoner no later than that part of the calendar year in which he becomes
189 eligible for parole, and at least annually thereafter, until he is released on parole or discharged, except
190 that upon any such review the Board may schedule the next review as much as three years thereafter,
191 provided there are ten years or more of life imprisonment remaining on the sentence in such case.
192 Notwithstanding any other provision of this article, in the case of a parole revocation, if such person is
193 otherwise eligible for parole, the Board shall review and decide his case no later than that part of the
194 calendar year one year subsequent to the part of the calendar year in which he was returned to a facility
195 as provided in § 53.1-161. Thereafter, his case shall be reviewed as specified in this section. The Board,
196 in addition, may review the case of any prisoner eligible for parole at any other time and may review
197 the case of any prisoner prior to that part of the year otherwise specified. In the discretion of the Board,
198 interviews may be conducted *in person or using any two-way electronic video and audio communication*
199 *system by the voting members of the Board or its representatives, provided the interviews are*
200 *recorded in full via electronic means and can be reviewed by the voting members, and may be either*
201 *public or private. Any two-way electronic video and audio communication system used for an interview*
202 *shall meet the standards set forth in subsection B of § 19.2-3.1.*

203 § 53.1-159. Mandatory release on parole.

204 Every person who is sentenced and committed under the laws of the Commonwealth to the
205 Department of Corrections or as provided for in §§ 19.2-308.1, 53.1-152 or § 53.1-153 shall be released
206 on parole by the Virginia Parole Board six months prior to his date of final release. Each person so
207 sentenced or committed, however, shall serve a minimum of three months of his sentence prior to such a
208 release. Persons who are so released on parole shall be subject to a minimum of six months' supervision
209 and an additional period of parole ending on the date upon which the parolee would have served the
210 maximum term of confinement, or any period the Board otherwise deems appropriate in accordance with
211 § 53.1-156. Such persons shall also be subject, for the entire period of parole fixed by the Board, to
212 such terms and conditions prescribed by the Board in accordance with § 53.1-157.

213 Notwithstanding the provisions of the preceding paragraph, if within thirty days of a release
214 scheduled pursuant to this section, new information is presented to the Board which gives the Board
215 reasonable cause to believe that the release poses a clear and present danger to the life or physical safety
216 of any person, the Board may delay the release for up to six months to investigate the matter and to
217 refer it to law-enforcement, mental health or other appropriate authorities for investigation and any other
218 appropriate action by such authorities.

219 No person released on parole pursuant to § 53.1-136, and whose parole is subsequently revoked, shall
220 be released on parole pursuant to this section until at least six months have elapsed from the date of the
221 decision revoking his parole. *However, if parole was revoked on a technical violation, such person shall*
222 *not be required to serve the minimum six months.* No person released on parole pursuant to this section,
223 whose parole is subsequently revoked, shall thereafter be released on parole pursuant to this section.
224 Final discharge may be extended to require the prisoner to serve the full portion of the term imposed by
225 the sentencing court which was unexpired when the prisoner was released on parole.

226 For purposes of this section, (i) "maximum term of confinement" means the maximum term of
227 incarceration established by law as punishment for the offense, (ii) "mandatory release date" means that
228 date which is six months prior to the scheduled date of release and takes into consideration good
229 conduct credits, and (iii) "final discharge" and "discharge from parole" mean that a prisoner is released
230 from confinement having satisfied the full term imposed by the sentencing court *minus any good*
231 *conduct credit in cases of technical violations and without regard to good conduct credit in cases where*
232 *the prisoner has been found guilty of a new and subsequent charge, and (iv) "technical violation" means*
233 *any failure to adhere to conditions of parole that is not deliberate defiance of those conditions or does*
234 *not constitute further criminal conduct, or both.* Nothing contained herein shall be construed to create a
235 right or entitlement to parole.