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**HOUSE BILL NO. 763**

Offered January 9, 2008

Prefiled January 8, 2008

*A BILL to amend and reenact §§ 19.2-294.2, 53.1-145, 53.1-218, and 53.1-220.1 of the Code of Virginia, relating to powers and duties of probation and parole officers; Central Criminal Records Exchange; correctional facilities; reporting and transfer of aliens to the U.S. Bureau of Immigration and Customs Enforcement.*

Patrons—Rust, Albo, Athey, Bell, Cole, Cosgrove, Crockett-Stark, Gilbert, Lingamfelter, Massie, Merricks, Miller, J.H., Poindexter, Purkey and Sherwood

Referred to Committee on Rules

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

**1. That §§ 19.2-294.2, 53.1-145, 53.1-218, and 53.1-220.1 of the Code of Virginia are amended and reenacted as follows:**

§ 19.2-294.2. Procedure when aliens convicted of certain felonies; duties of probation and parole officer.

A. Whenever a person is (i) convicted in a circuit court of any felony and (ii) referred to a probation or parole officer for a report pursuant to § 19.2-299, or for probation supervision, the probation or parole officer shall inquire as to the citizenship of such person. If upon inquiry it is determined that the person may be an alien based upon his failure to produce evidence of United States citizenship, the probation or parole officer shall report this determination to the Central Criminal Records Exchange of the Department of State Police on forms provided by the Exchange.

B. The inquiry required by this section need not be made if it is apparent that a report on alien status has previously been made to the Central Criminal Records Exchange pursuant to this section.

C. It shall be the responsibility of the Central Criminal Records Exchange of the Department of State Police to review arrest reports submitted by law-enforcement agencies and reports of suspected alien-status inquiries made by probation or parole officers, and to report within sixty days of final disposition to the U. S. Bureau of Immigration and Naturalization Service Customs Enforcement the identity of all convicted offenders suspected of being an alien.

§ 53.1-145. Powers and duties of probation and parole officers.

In addition to other powers and duties prescribed by this article, each probation and parole officer shall:

1. Investigate and report on any case pending in any court or before any judge in his jurisdiction referred to him by the court or judge;

2. Supervise and assist all persons within his territory placed on probation, secure, as appropriate and when available resources permit, placement of such persons in a substance abuse treatment program which may include utilization of acupuncture and other treatment modalities, and furnish every such person with a written statement of the conditions of his probation and instruct him therein; if any such person has been committed to the Department of Mental Health, Mental Retardation and Substance Abuse Services under the provisions of Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, the conditions of probation shall include the requirement that the person comply with all conditions given him by the Department of Mental Health, Mental Retardation and Substance Abuse Services, and that he follow all of the terms of his treatment plan;

3. Supervise and assist all persons within his territory released on parole or postrelease supervision, secure, as appropriate and when available resources permit, placement of such persons in a substance abuse treatment program which may include utilization of acupuncture and other treatment modalities, and, in his discretion, assist any person within his territory who has completed his parole, postrelease supervision, or has been mandatorily released from any correctional facility in the Commonwealth and requests assistance in finding a place to live, finding employment, or in otherwise becoming adjusted to the community;

4. Arrest and recommit to the place of confinement from which he was released, or in which he would have been confined but for the suspension of his sentence or of its imposition, for violation of the terms of probation, post-release supervision pursuant to § 19.2-295.2 or parole, any probationer, person subject to post-release supervision or parolee under his supervision, or as directed by the Chairman, Board member or the court, pending a hearing by the Board or the court, as the case may be;

5. Keep such records, make such reports, and perform other duties as may be required of him by the Director or by regulations prescribed by the Board of Corrections, and the court or judge by whom he

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58 was authorized;

59 6. Order and conduct, in his discretion, drug and alcohol screening tests of any probationer, person  
60 subject to post-release supervision pursuant to § 19.2-295.2 or parolee under his supervision who the  
61 officer has reason to believe is engaged in the illegal use of controlled substances or marijuana or the  
62 abuse of alcohol. The cost of the test may be charged to the person under supervision. Regulations  
63 governing the officer's exercise of this authority shall be promulgated by the Board;

64 7. Have the power to carry a concealed weapon in accordance with regulations promulgated by the  
65 Board and upon the certification of appropriate training and specific authorization by a judge of a circuit  
66 court;

67 8. Provide services in accordance with any contract entered into between the Department of  
68 Corrections and the Department of Mental Health, Mental Retardation and Substance Abuse Services  
69 pursuant to § 37.2-912;

70 9. Pursuant to any contract entered into between the Department of Corrections and the Department  
71 of Mental Health, Mental Retardation and Substance Abuse Services, probation and parole officers shall  
72 have the power to provide intensive supervision services to persons placed on conditional release,  
73 regardless of whether the person has any time remaining to serve on any criminal sentence, pursuant to  
74 Chapter 9 (§ 37.2-900 et seq.);

75 10. Determine by reviewing the Local Inmate Data System upon intake and again prior to release  
76 whether a blood, saliva, or tissue sample has been taken for DNA analysis for each person placed on  
77 probation or parole required to submit a sample pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter  
78 18 of Title 19.2 and, if no sample has been taken, require a person placed on probation or parole to  
79 submit a sample for DNA analysis; and

80 11. For every offender accepted pursuant to the Interstate Compact for the Supervision of Adult  
81 Offenders (§ 53.1-176.1 et seq.) who has been convicted of an offense that, if committed in Virginia,  
82 would be considered a felony, take a sample or verify that a sample has been taken and accepted into  
83 the data bank for DNA analysis in the Commonwealth; and

84 12. *Screen all offenders within his supervision in accordance with § 19.2-294.2 and assist with the*  
85 *initiation of federal deportation proceedings for those determined to be illegal aliens with the U.S.*  
86 *Bureau of Immigration and Customs Enforcement upon their completion of the sentence imposed on*  
87 *state criminal charges.*

88 Nothing in this article shall require probation and parole officers to investigate or supervise cases  
89 before general district or juvenile and domestic relations district courts.

90 § 53.1-218. Duty of officer in charge to inquire as to citizenship; notice to federal immigration  
91 officer of commitment of alien.

92 Whenever any person is committed to a correctional facility, it shall be the duty of the director,  
93 sheriff or other officer in charge of such facility to inquire as to whether the person is a citizen of the  
94 United States, and if he is not, such director, sheriff or other officer shall inquire as to the person's alien  
95 status.

96 If it appears that the person is an alien, the director, sheriff or other officer in charge of the facility  
97 shall immediately notify the Central Criminal Records Exchange *and the U. S. Bureau of Immigration*  
98 *and Customs Enforcement.* However, notification need not be made if it is apparent that a report on  
99 alien status has previously been made to the Exchange pursuant to § 19.2-294.2.

100 § 53.1-220.1. Transfer of prisoners convicted of designated illegal acts.

101 With the consent of the appropriate state or local authorities, the U. S. Bureau of Immigration and  
102 ~~Naturalization Service~~ Customs Enforcement may, following notification under § 19.2-294.2 or otherwise  
103 in accordance with § 53.1-218, take physical custody of and responsibility for any alien convicted of  
104 any (i) ~~felony offense involving murder, rape, robbery, burglary, larceny, extortion, or abduction, or (ii)~~  
105 ~~illegal drug violation designated as a felony under Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title~~  
106 ~~18.2~~ *crime and those detained in accordance with § 19.2-81.6.* The director, sheriff or other official in  
107 charge of the facility in which such alien is incarcerated may enter into an agreement, which includes  
108 provisions relating to reimbursement, with the Bureau of Immigration and ~~Naturalization Service~~ Customs  
109 *Enforcement* to retain custody or supervision of such alien until he is deported or until other mutually  
110 satisfactory arrangements are made to transfer custody of such alien to the ~~Service~~ *immigration*  
111 *authorities.*