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SENATE BILL NO. 661

Offered January 17, 2014

A BILL to amend and reenact §§ 19.2-11.01, 19.2-299, 19.2-315, 19.2-316.2, 19.2-316.3, 19.2-390, 53.1-40.10, 53.1-67.6, 53.1-133.03, 53.1-136, and 53.1-165.1, and 53.1- of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 4 of Title 53.1 an article numbered 3.1, consisting of sections numbered 53.1-165.2 through 53.1-165.16, relating to parole for nonviolent felons.

Patron—Puckett

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-11.01, 19.2-299, 19.2-315, 19.2-316.2, 19.2-316.3, 19.2-390, 53.1-40.10, 53.1-67.6, 53.1-133.03, 53.1-136, and 53.1-165.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 4 of Title 53.1 an article numbered 3.1, consisting of sections numbered 53.1-165.2 through 53.1-165.16, as follows:

§ 19.2-11.01. Crime victim and witness rights.

A. In recognition of the Commonwealth's concern for the victims and witnesses of crime, it is the purpose of this chapter to ensure that the full impact of crime is brought to the attention of the courts of the Commonwealth; that crime victims and witnesses are treated with dignity, respect and sensitivity; and that their privacy is protected to the extent permissible under law. It is the further purpose of this chapter to ensure that victims and witnesses are informed of the rights provided to them under the laws of the Commonwealth; that they receive authorized services as appropriate; and that they have the opportunity to be heard by law-enforcement agencies, attorneys for the Commonwealth, corrections agencies and the judiciary at all critical stages of the criminal justice process to the extent permissible under law. Unless otherwise stated and subject to the provisions of § 19.2-11.1, it shall be the responsibility of a locality's crime victim and witness assistance program to provide the information and assistance required by this chapter, including verification that the standardized form listing the specific rights afforded to crime victims has been received by the victim.

As soon as practicable after identifying a victim of a crime, the investigating law-enforcement agency shall provide the victim with a standardized form listing the specific rights afforded to crime victims. The form shall include a telephone number by which the victim can receive further information and assistance in securing the rights afforded crime victims, the name, address and telephone number of the office of the attorney for the Commonwealth, the name, address and telephone number of the investigating law-enforcement agency, and a summary of the victim's rights under § 40.1-28.7:2.

1. Victim and witness protection and law-enforcement contacts.

a. In order that victims and witnesses receive protection from harm and threats of harm arising out of their cooperation with law-enforcement, or prosecution efforts, they shall be provided with information as to the level of protection which may be available pursuant to § 52-35 or to any other federal, state or local program providing protection, and shall be assisted in obtaining this protection from the appropriate authorities.

b. Victims and witnesses shall be provided, where available, a separate waiting area during court proceedings that affords them privacy and protection from intimidation, and that does not place the victim in close proximity to the defendant or the defendant's family.

2. Financial assistance.

a. Victims shall be informed of financial assistance and social services available to them as victims of a crime, including information on their possible right to file a claim for compensation from the Crime Victims' Compensation Fund pursuant to Chapter 21.1 (§ 19.2-368.1 et seq.) of this title and on other available assistance and services.

b. Victims shall be assisted in having any property held by law-enforcement agencies for evidentiary purposes returned promptly in accordance with §§ 19.2-270.1 and 19.2-270.2.

c. Victims shall be advised that restitution is available for damages or loss resulting from an offense and shall be assisted in seeking restitution in accordance with §§ 19.2-305, 19.2-305.1, Chapter 21.1 (§ 19.2-368.1 et seq.) of this title, Article 21 (§ 58.1-520 et seq.) of Chapter 3 of Title 58.1, and other applicable laws of the Commonwealth.

3. Notices.

a. Victims and witnesses shall be (i) provided with appropriate employer intercession services to ensure that employers of victims and witnesses will cooperate with the criminal justice process in order

to minimize an employee's loss of pay and other benefits resulting from court appearances and (ii) advised that pursuant to § 18.2-465.1 it is unlawful for an employer to penalize an employee for appearing in court pursuant to a summons or subpoena.

b. Victims shall receive advance notification when practicable from the attorney for the Commonwealth of judicial proceedings relating to their case and shall be notified when practicable of any change in court dates in accordance with § 19.2-265.01 if they have provided their names, current addresses and telephone numbers.

c. Victims shall receive notification, if requested, subject to such reasonable procedures as the Attorney General may require pursuant to § 2.2-511, from the Attorney General of the filing and disposition of any appeal or habeas corpus proceeding involving their case.

d. Victims shall be notified by the Department of Corrections or a sheriff or jail superintendent (i) in whose custody an escape, change of name, transfer, release or discharge of a prisoner occurs pursuant to the provisions of §§ 53.1-133.02 and 53.1-160 or (ii) when an accused is released on bail, if they have provided their names, current addresses and telephone numbers in writing. Such notification may be provided through the Virginia Statewide VINE (Victim Information and Notification Everyday) System or other similar electronic or automated system.

e. Victims shall be advised that, in order to protect their right to receive notices and offer input, all agencies and persons having such duties must have current victim addresses and telephone numbers given by the victims. Victims shall also be advised that any such information given shall be confidential as provided by § 19.2-11.2.

4. Victim input.

a. Victims shall be given the opportunity, pursuant to § 19.2-299.1, to prepare a written victim impact statement prior to sentencing of a defendant and may provide information to any individual or agency charged with investigating the social history of a person or preparing a victim impact statement under the provisions of §§ 16.1-273 ~~and~~, 53.1-155, *and 53.1-165.7* or any other applicable law.

b. Victims shall have the right to remain in the courtroom during a criminal trial or proceeding pursuant to the provisions of § 19.2-265.01.

c. On motion of the attorney for the Commonwealth, victims shall be given the opportunity, pursuant to §§ 19.2-264.4 and 19.2-295.3, to testify prior to sentencing of a defendant regarding the impact of the offense.

d. In a felony case, the attorney for the Commonwealth, upon the victim's written request, shall consult with the victim either verbally or in writing (i) to inform the victim of the contents of a proposed plea agreement and (ii) to obtain the victim's views about the disposition of the case, including the victim's views concerning dismissal, pleas, plea negotiations and sentencing. However, nothing in this section shall limit the ability of the attorney for the Commonwealth to exercise his discretion on behalf of the citizens of the Commonwealth in the disposition of any criminal case. The court shall not accept the plea agreement unless it finds that, except for good cause shown, the Commonwealth has complied with clauses (i) and (ii). Good cause shown shall include, but not be limited to, the unavailability of the victim due to incarceration, hospitalization, failure to appear at trial when subpoenaed, or change of address without notice.

Upon the victim's written request, the victim shall be notified in accordance with subdivision A 3 b of any proceeding in which the plea agreement will be tendered to the court.

The responsibility to consult with the victim under this subdivision shall not confer upon the defendant any substantive or procedural rights and shall not affect the validity of any plea entered by the defendant.

5. Courtroom assistance.

a. Victims and witnesses shall be informed that their addresses and telephone numbers may not be disclosed, pursuant to the provisions of §§ 19.2-11.2 and 19.2-269.2, except when necessary for the conduct of the criminal proceeding.

b. Victims and witnesses shall be advised that they have the right to the services of an interpreter in accordance with §§ 19.2-164 and 19.2-164.1.

c. Victims and witnesses of certain sexual offenses shall be advised that there may be a closed preliminary hearing in accordance with § 18.2-67.8 and, if a victim was 14 years of age or younger on the date of the offense and is 16 or under at the time of the trial, or a witness to the offense is 14 years of age or younger at the time of the trial, that two-way closed-circuit television may be used in the taking of testimony in accordance with § 18.2-67.9.

6. Post trial assistance.

a. Within 30 days of receipt of a victim's written request after the final trial court proceeding in the case, the attorney for the Commonwealth shall notify the victim in writing, of (i) the disposition of the case, (ii) the crimes of which the defendant was convicted, (iii) the defendant's right to appeal, if known, and (iv) the telephone number of offices to contact in the event of nonpayment of restitution by the defendant.

b. If the defendant has been released on bail pending the outcome of an appeal, the agency that had custody of the defendant immediately prior to his release shall notify the victim as soon as practicable that the defendant has been released.

c. If the defendant's conviction is overturned, and the attorney for the Commonwealth decides to retry the case or the case is remanded for a new trial, the victim shall be entitled to the same rights as if the first trial did not take place.

B. For purposes of this chapter, "victim" means (i) a person who has suffered physical, psychological or economic harm as a direct result of the commission of a felony or of assault and battery in violation of § 18.2-57 or § 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, maiming or driving while intoxicated in violation of § 18.2-51.4 or § 18.2-266, (ii) a spouse or child of such a person, (iii) a parent or legal guardian of such a person who is a minor, (iv) for the purposes of subdivision A 4 of this section only, a current or former foster parent or other person who has or has had physical custody of such a person who is a minor, for six months or more or for the majority of the minor's life, or (v) a spouse, parent, sibling or legal guardian of such a person who is physically or mentally incapacitated or was the victim of a homicide; however, "victim" does not mean a parent, child, spouse, sibling or legal guardian who commits a felony or other enumerated criminal offense against a victim as defined in clause (i).

C. Officials and employees of the judiciary, including court services units, law-enforcement agencies, the Department of Corrections, attorneys for the Commonwealth and public defenders, shall be provided with copies of this chapter by the Department of Criminal Justice Services or a crime victim and witness assistance program. Each agency, officer or employee who has a responsibility or responsibilities to victims under this chapter or other applicable law shall make reasonable efforts to become informed about these responsibilities and to ensure that victims and witnesses receive such information and services to which they may be entitled under applicable law, provided that no liability or cause of action shall arise from the failure to make such efforts or from the failure of such victims or witnesses to receive any such information or services.

§ 19.2-299. Investigations and reports by probation officers in certain cases.

A. When a person is tried in a circuit court (i) upon a charge of assault and battery in violation of § 18.2-57 or 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, or driving while intoxicated in violation of § 18.2-266, and is adjudged guilty of such charge, unless waived by the court and the defendant and the attorney for the Commonwealth, the court may, or on motion of the defendant shall; or (ii) upon a felony charge not set forth in subdivision (iii) below, the court may when there is a plea agreement between the defendant and the Commonwealth and shall when the defendant pleads guilty without a plea agreement or is found guilty by the court after a plea of not guilty; or (iii) the court shall when a person is charged and adjudged guilty of a felony violation, or conspiracy to commit or attempt to commit a felony violation, of § 18.2-46.2, 18.2-46.3, 18.2-48, clause (2) or (3) of § 18.2-49, § 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4:1, 18.2-67.5, 18.2-67.5:1, 18.2-355, 18.2-356, 18.2-357, 18.2-361, 18.2-362, 18.2-366, 18.2-368, 18.2-370, 18.2-370.1, or 18.2-370.2, or any attempt to commit or conspiracy to commit any felony violation of § 18.2-67.5, 18.2-67.5:2, or 18.2-67.5:3, direct a probation officer of such court to thoroughly investigate and report upon the history of the accused, including a report of the accused's criminal record as an adult and available juvenile court records, any information regarding the accused's participation or membership in a criminal street gang as defined in § 18.2-46.1, and all other relevant facts, to fully advise the court so the court may determine the appropriate sentence to be imposed. Unless the defendant or the attorney for the Commonwealth objects, the court may order that the report contain no more than the defendant's criminal history, any history of substance abuse, any physical or health-related problems as may be pertinent, and any applicable sentencing guideline worksheets. This expedited report shall be subject to all the same procedures as all other sentencing reports and sentencing guidelines worksheets. The probation officer, after having furnished a copy of this report at least five days prior to sentencing to counsel for the accused and the attorney for the Commonwealth for their permanent use, shall submit his report in advance of the sentencing hearing to the judge in chambers, who shall keep such report confidential. Counsel for the accused may provide the accused with a copy of the presentence report. The probation officer shall be available to testify from this report in open court in the presence of the accused, who shall have been provided with a copy of the presentence report by his counsel or advised of its contents and be given the right to cross-examine the investigating officer as to any matter contained therein and to present any additional facts bearing upon the matter. The report of the investigating officer shall at all times be kept confidential by each recipient, and shall be filed as a part of the record in the case. Any report so filed shall be made available only by court order and shall be sealed upon final order by the court, except that such reports or copies thereof shall be available at any time to any criminal justice agency, as defined in § 9.1-101, of this or any other state or of the United

States; to any agency where the accused is referred for treatment by the court or by probation and parole services; and to counsel for any person who has been indicted jointly for the same felony as the person subject to the report. Subject to the limitations set forth in § 37.2-901, any report prepared pursuant to the provisions hereof shall without court order be made available to counsel for the person who is the subject of the report if that person (i) is charged with a felony subsequent to the time of the preparation of the report or (ii) has been convicted of the crime or crimes for which the report was prepared and is pursuing a post-conviction remedy. The presentence report shall be in a form prescribed by the Department of Corrections. In all cases where such report is not ordered, a simplified report shall be prepared on a form prescribed by the Department of Corrections. For the purposes of this subsection, information regarding the accused's participation or membership in a criminal street gang may include the characteristics, specific rivalries, common practices, social customs and behavior, terminology, and types of crimes that are likely to be committed by that criminal street gang.

B. As a part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony, the court probation officer shall advise any victim of such offense in writing that he may submit to the Virginia Parole Board a written request (i) to be given the opportunity to submit to the Board a written statement in advance of any parole hearing describing the impact of the offense upon him and his opinion regarding the defendant's release and (ii) to receive copies of such other notifications pertaining to the defendant as the Board may provide pursuant to subsection B of § 53.1-155 *or subsection B of § 53.1-165.7*.

C. As part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony drug offense set forth in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, the presentence report shall include any known association of the defendant with illicit drug operations or markets.

D. As a part of any presentence investigation conducted pursuant to subsection A, when the offense for which the defendant was convicted was a felony, not a capital offense, committed on or after January 1, 2000, the defendant shall be required to undergo a substance abuse screening pursuant to § 18.2-251.01.

§ 19.2-315. Compliance with terms and conditions of parole; time on parole not counted as part of commitment period.

Every person on parole under § 19.2-314 shall comply with such terms and conditions as may be prescribed by the Board according to § 53.1-157 *or 53.1-165.10* and shall be subject to the penalties imposed by law for a violation of such terms and conditions. Notwithstanding any other provision of the Code, if parole is revoked as a result of any such violation, such person may be returned to the institution established pursuant to § 53.1-63 upon the direction of the Parole Board with the concurrence of the Department of Corrections, provided such person has not been convicted since his release on parole of an offense constituting a felony under the laws of the Commonwealth. Time on parole shall not be counted as part of the four-year period of commitment under this section. In addition, such person may be brought before the sentencing court for imposition of all or part of the suspended sentence.

§ 19.2-316.2. Eligibility for participation in detention center incarceration program; evaluation; sentencing; withdrawal or removal from program.

A. A defendant who otherwise would have been sentenced to incarceration for a nonviolent felony as defined in § 19.2-316.1 or who has been previously incarcerated for a nonviolent felony as defined in § 19.2-316.1 but otherwise meets the following criteria and (i) who is determined by the court to need more security or supervision than provided by the diversion center incarceration program under § 53.1-67.7, (ii) whose age or physical condition disqualifies him from the Boot Camp Incarceration Program under § 53.1-67.1, and (iii) who can benefit from a regimented environment and structured program, may be considered for commitment to a detention center established under § 53.1-67.8 as follows:

1. Following conviction and prior to imposition of sentence or following a finding that the defendant's probation should be revoked, upon motion of the defendant or the attorney for the Commonwealth or upon the court's own motion, the court may order such defendant committed to the Department of Corrections for a period not to exceed 60 days from the date of commitment for evaluation and diagnosis by the Department to determine suitability for participation in the Detention Center Incarceration Program. The evaluation and diagnosis shall include a complete physical and mental examination of the defendant and may be conducted by the Department at any state or local correctional facility, probation and parole office, or other location deemed appropriate by the Department. When a defendant who has not been charged with a new criminal offense and who may be subject to a revocation of probation, scores incarceration on the probation violation guidelines and agrees to participate, the probation and parole officer, with the approval of the court, may commit the defendant to the Department for such evaluation, for a period not to exceed 60 days.

2. Upon determination that (i) such defendant is physically and emotionally suited for the program,

(ii) such commitment is in the best interest of the Commonwealth and the defendant, and (iii) facilities are available for the confinement of the defendant, the Department shall recommend to the court in writing that the defendant be committed to the Detention Center Incarceration Program.

3. Upon receipt of such a recommendation and a determination by the court that the defendant will benefit from the program and is capable of returning to society as a productive citizen following successful completion of the program, and if the defendant would otherwise be committed to the Department, the court (i) shall impose sentence, suspend the sentence, and place the defendant on probation or (ii) following a finding that the defendant has violated the terms and conditions of his probation previously ordered, shall place the defendant on probation pursuant to this section. Such probation shall be conditioned upon the defendant's entry into and successful completion of the Detention Center Incarceration Program. The court shall order that, upon successful completion of the program, the defendant shall be released from confinement and be under intensive probation supervision for a period to be specified by the court followed by an additional period of regular probation of not less than one year. The court shall further order that the defendant, following release from confinement, shall (a) make reasonable efforts to secure and maintain employment, (b) comply with a plan of restitution or community service, (c) comply with a plan for payment of fines, if any, and costs of court, and (d) undergo appropriate substance abuse treatment, if necessary. The court may impose such other terms and conditions of probation as it deems appropriate. A sentence to the Detention Center Incarceration Program shall not be imposed as an addition to an active sentence to a state correctional facility.

4. Upon the defendant's (i) voluntary withdrawal from the program, (ii) removal from the program by the Department for intractable behavior as defined in § 19.2-316.1, or (iii) failure to comply with the terms and conditions of probation, the court shall cause the defendant to show cause why his probation and suspension of sentence should not be revoked. Upon a finding that the defendant voluntarily withdrew from the program, was removed from the program by the Department for intractable behavior, or failed to comply with the terms and conditions of probation, the court may revoke all or part of the probation and suspended sentence and commit the defendant as otherwise provided in this chapter.

B. Any offender as described in § 19.2-316.1 paroled under § 53.1-155 *or 53.1-165.7* or mandatorily released under § 53.1-159 and for whom probable cause that a violation of parole or of the terms and conditions of mandatory release, other than for the occurrence of a new felony or Class 1 or Class 2 misdemeanor, has been determined under § 53.1-165 *or 53.1-165.16*, may be considered by the Parole Board for commitment to a detention center as established under § 53.1-67.8 as follows:

1. The Parole Board or its authorized hearing officer, with the violator's consent, may order the violator to be evaluated and diagnosed by the Department of Corrections to determine suitability for participation in the Detention Center Incarceration Program. The evaluation and diagnosis may be conducted by the Department at any state or local correctional facility, probation or parole office, or other location deemed appropriate by the Department.

2. Upon determination that (i) such commitment is in the best interest of the Commonwealth and the violator and (ii) facilities are available for the confinement of the violator, or upon receipt of a defendant's voluntary participation form from the probation and parole officer and a determination that (i) and (ii) have been met, the Department shall recommend to the Parole Board in writing that the violator be committed to the Detention Center Incarceration Program. The Department shall have the final authority to determine an individual's suitability for the program.

3. Upon receipt of such a recommendation and a determination by the Parole Board that the violator will benefit from the program and is capable of returning to society as a productive citizen following successful completion of the program, the violator shall be placed under parole supervision for a period of not less than one year. The Parole Board may impose such other terms and conditions of parole or mandatory release as it deems appropriate.

4. Upon the violator's (i) voluntary withdrawal from the program, (ii) removal from the program for intractable behavior as defined in § 19.2-316.1, or (iii) failure to comply with the terms and conditions of parole or mandatory release, the Department shall conduct a preliminary parole violation hearing to determine if probable cause exists to revoke his parole or mandatory release. Upon a finding that the violator voluntarily withdrew from the program, was removed from the program by the Department for intractable behavior, or failed to comply with the terms and conditions of parole or mandatory release, the Parole Board shall revoke parole or mandatory release and recommit the violator as provided in § 53.1-165 *or 53.1-165.16*.

§ 19.2-316.3. Eligibility for participation in diversion center incarceration program; evaluation; sentencing; withdrawal or removal from program; payment for costs.

A. A defendant (i) who otherwise would have been sentenced to incarceration for a nonviolent felony as defined in § 19.2-316.1 and who the court determines requires more security or supervision than provided by intensive probation supervision or (ii) whose suspension of sentence would otherwise be

revoked after a finding that the defendant has violated the terms and conditions of probation for a nonviolent felony as defined in § 19.2-316.1, may be considered for commitment to a diversion center established under § 53.1-67.7 as follows:

1. Following conviction and prior to imposition of sentence or following a finding that the defendant's probation should be revoked, upon motion of the defendant or the attorney for the Commonwealth or upon the court's own motion, the court may order such defendant committed to the Department of Corrections for a period not to exceed 45 days from the date of commitment for evaluation and diagnosis by the Department to determine suitability for participation in the Diversion Center Incarceration Program. The evaluation and diagnosis may be conducted by the Department at any state or local correctional facility, probation and parole office, or other location deemed appropriate by the Department. When a defendant who has not been charged with a new criminal offense and who may be subject to a revocation of probation, scores incarceration on the probation violation guidelines and agrees to participate, the probation and parole officer, with the approval of the court, may commit the defendant to the Department for such evaluation, for a period not to exceed 45 days.

2. Upon determination that (i) such commitment is in the best interest of the Commonwealth and the defendant and (ii) facilities are available for the confinement of the defendant, the Department shall recommend to the court in writing that the defendant be committed to the Diversion Center Incarceration Program.

3. Upon receipt of such a recommendation and a determination by the court that the defendant will benefit from the program and is capable of returning to society as a productive citizen following successful completion of the program, and if the defendant would otherwise be committed to the Department, the court (i) shall impose sentence, suspend the sentence, and place the defendant on probation pursuant to this section or (ii) following a finding that the defendant has violated the terms and conditions of his probation previously ordered, shall place the defendant on probation pursuant to this section. Such probation shall be conditioned upon the defendant's entry into and successful completion of the Diversion Center Incarceration Program. The court shall order that, upon successful completion of the program, the defendant shall be released from confinement and be under intensive probation supervision for a period to be specified by the court followed by an additional period of regular probation of not less than one year. The court shall further order that the defendant, prior to release from confinement, shall (a) make reasonable efforts to secure and maintain employment, (b) comply with a plan of restitution or community service, (c) comply with a plan for payment of fines, if any, and costs of court, and (d) undergo substance abuse treatment, if necessary. The court may impose such other terms and conditions of probation as it deems appropriate. A sentence to the Diversion Center Incarceration Program shall not be imposed in addition to an active sentence to a state correctional facility.

4. Upon the defendant's (i) voluntary withdrawal from the program, (ii) removal from the program by the Department for intractable behavior as defined in § 19.2-316.1, or (iii) failure to comply with the terms and conditions of probation, the court shall cause the defendant to show cause why his probation and suspension of sentence should not be revoked. Upon a finding that the defendant voluntarily withdrew from the program, was removed from the program by the Department for intractable behavior, or failed to comply with the terms and conditions of probation, the court may revoke all or part of the probation and suspended sentence, and commit the defendant as otherwise provided in this chapter.

B. Any offender as described in § 19.2-316.1 paroled under § 53.1-155 *or 53.1-165.7* or mandatorily released under § 53.1-159 and for whom probable cause that a violation of parole or of the terms and conditions of mandatory release, other than the occurrence of a new felony or Class 1 or Class 2 misdemeanor, has been determined under § 53.1-165 *or 53.1-165.16*, may be considered by the Parole Board for commitment to a diversion center as established under § 53.1-67.7 as follows:

1. The Parole Board or its authorized hearing officer, with the violator's consent or upon receipt of a defendant's written voluntary agreement to participate form from the probation and parole officer, may order the violator to be evaluated and diagnosed by the Department of Corrections to determine suitability for participation in the Diversion Center Incarceration Program. The evaluation and diagnosis may be conducted by the Department at any state or local correctional facility, probation or parole office, or other location deemed appropriate by the Department.

2. Upon determination that (i) such commitment is in the best interest of the Commonwealth and the violator and (ii) facilities are available for the confinement of the violator, the Department shall recommend to the Parole Board in writing that the violator be committed to the Diversion Center Incarceration Program. The Department shall have the final authority to determine an individual's suitability for the program.

3. Upon receipt of such a recommendation and a determination by the Parole Board that the violator will benefit from the program and is capable of returning to society as a productive citizen following successful completion of the program and if the violator would otherwise be committed to the Department, the Parole Board shall restore the violator to parole supervision conditioned upon entry into

and successful completion of the Diversion Center Incarceration Program. The Parole Board shall order that, upon successful completion of the program, the violator shall be placed under parole supervision for a period of not less than one year. The Parole Board may impose such other terms and conditions of parole or mandatory release as it deems appropriate. The time spent in the program shall not be counted as service of any part of a term of imprisonment for which he was sentenced upon his conviction.

4. Upon the violator's (i) voluntary withdrawal from the program, (ii) removal from the program by the Department for intractable behavior as defined in § 19.2-316.1, or (iii) failure to comply with the terms and conditions of parole or mandatory release, the Parole Board may revoke parole or mandatory release and recommit the violator as provided in § 53.1-165 *or 53.1-165.16*.

C. A person sentenced pursuant to this article shall be required to pay an amount to be determined by the Board of Corrections pursuant to regulation to defray the cost of his keep.

§ 19.2-390. Reports to be made by local law-enforcement officers, conservators of the peace, clerks of court, Secretary of the Commonwealth and Corrections officials to State Police; material submitted by other agencies.

A. 1. Every state official or agency having the power to arrest, the sheriffs of counties, the police officials of cities and towns, and any other local law-enforcement officer or conservator of the peace having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange, on forms provided by it, of any arrest, including those arrests involving the taking into custody of, or service of process upon, any person on charges resulting from an indictment, presentment or information, the arrest on capias or warrant for failure to appear, and the service of a warrant for another jurisdiction, on any of the following charges:

a. Treason;

b. Any felony;

c. Any offense punishable as a misdemeanor under Title 54.1; or

d. Any misdemeanor punishable by confinement in jail (i) under Title 18.2 or 19.2, except an arrest for a violation of § 18.2-119, Article 2 (§ 18.2-415 et seq.) of Chapter 9 of Title 18.2, or any similar ordinance of any county, city or town, (ii) under § 20-61, or (iii) under § 16.1-253.2.

The reports shall contain such information as is required by the Exchange and shall be accompanied by fingerprints of the individual arrested. Effective January 1, 2006, the corresponding photograph of the individual arrested shall accompany the report. Fingerprint cards prepared by a law-enforcement agency for inclusion in a national criminal justice file shall be forwarded to the Exchange for transmittal to the appropriate bureau. Nothing in this section shall preclude each local law-enforcement agency from maintaining its own separate photographic database. Fingerprints and photographs required to be taken pursuant to this subsection or subdivision A 3c of § 19.2-123 may be taken at the facility where the magistrate is located, including a regional jail, even if the accused is not committed to jail.

2. For persons arrested and released on summonses in accordance with § 19.2-74, such report shall not be required until (i) a conviction is entered and no appeal is noted or if an appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his appeal; (ii) the court dismisses the proceeding pursuant to § 18.2-251; or (iii) an acquittal by reason of insanity pursuant to § 19.2-182.2 is entered. Upon such conviction or acquittal, the court shall remand the individual to the custody of the office of the chief law-enforcement officer of the county or city. It shall be the duty of the chief law-enforcement officer, or his designee who may be the arresting officer, to ensure that such report is completed after a determination of guilt or acquittal by reason of insanity. The court shall require the officer to complete the report immediately following the person's conviction or acquittal, and the individual shall be discharged from custody forthwith, unless the court has imposed a jail sentence to be served by him or ordered him committed to the custody of the Commissioner of Behavioral Health and Developmental Services.

B. Within 72 hours following the receipt of (i) a warrant or capias for the arrest of any person on a charge of a felony or (ii) a Governor's warrant of arrest of a person issued pursuant to § 19.2-92, the law-enforcement agency which received the warrant shall enter the person's name and other appropriate information required by the Department of State Police into the "information systems" known as the Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the National Crime Information Center (NCIC), maintained by the Federal Bureau of Investigation. The report shall include the person's name, date of birth, social security number and such other known information which the State Police or Federal Bureau of Investigation may require. Where feasible and practical, the magistrate or court issuing the warrant or capias may transfer information electronically into VCIN. When the information is electronically transferred to VCIN, the court or magistrate shall forthwith forward the warrant or capias to the local police department or sheriff's office. When criminal process has been ordered destroyed pursuant to § 19.2-76.1, the law-enforcement agency destroying such process shall ensure the removal of any information relating to the destroyed criminal process from the VCIN and NCIC.

B1. Within 72 hours following the receipt of a written statement issued by a parole officer pursuant to § 53.1-149 ~~or~~, 53.1-162, *or 53.1-165.13* authorizing the arrest of a person who has violated the provisions of his post-release supervision or probation, the law-enforcement agency that received the written statement shall enter, or cause to be entered, the person's name and other appropriate information required by the Department of State Police into the "information systems" known as the Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52.

C. The clerk of each circuit court and district court shall make an electronic report to the Central Criminal Records Exchange of (i) any dismissal, indefinite postponement or continuance, charge still pending due to mental incompetency or incapacity, nolle prosequi, acquittal, or conviction of, including any sentence imposed, or failure of a grand jury to return a true bill as to, any person charged with an offense listed in subsection A, including any action which may have resulted from an indictment, presentment or information, and (ii) any adjudication of delinquency based upon an act which, if committed by an adult, would require fingerprints to be filed pursuant to subsection A. In the case of offenses not required to be reported to the Exchange by subsection A, the reports of any of the foregoing dispositions shall be filed by the law-enforcement agency making the arrest with the arrest record required to be maintained by § 15.2-1722. Upon conviction of any person, including juveniles tried and convicted in the circuit courts pursuant to § 16.1-269.1, whether sentenced as adults or juveniles, for an offense for which registration is required as defined in § 9.1-902, the clerk shall within seven days of sentencing submit a report to the Sex Offender and Crimes Against Minors Registry. The report to the Registry shall include the name of the person convicted and all aliases which he is known to have used, the date and locality of the conviction for which registration is required, his date of birth, social security number, last known address, and specific reference to the offense for which he was convicted. No report of conviction or adjudication in a district court shall be filed unless the period allowed for an appeal has elapsed and no appeal has been perfected. In the event that the records in the office of any clerk show that any conviction or adjudication has been nullified in any manner, he shall also make a report of that fact to the Exchange and, if appropriate, to the Registry. In addition, each clerk of a circuit court, upon receipt of certification thereof from the Supreme Court, shall report to the Exchange or the Registry, or to the law-enforcement agency making the arrest in the case of offenses not required to be reported to the Exchange, on forms provided by the Exchange or Registry, as the case may be, any reversal or other amendment to a prior sentence or disposition previously reported. When criminal process is ordered destroyed pursuant to § 19.2-76.1, the clerk shall report such action to the law-enforcement agency that entered the warrant or capias into the VCIN.

D. In addition to those offenses enumerated in subsection A of this section, the Central Criminal Records Exchange may receive, classify and file any other fingerprints, photographs, and records of arrest or confinement submitted to it by any law-enforcement agency or any correctional institution.

E. Corrections officials, sheriffs, and jail superintendents of regional jails, responsible for maintaining correctional status information, as required by the regulations of the Department of Criminal Justice Services, with respect to individuals about whom reports have been made under the provisions of this chapter shall make reports of changes in correctional status information to the Central Criminal Records Exchange. The reports to the Exchange shall include any commitment to or release or escape from a state or local correctional facility, including commitment to or release from a parole or probation agency.

F. Any pardon, reprieve or executive commutation of sentence by the Governor shall be reported to the Exchange by the office of the Secretary of the Commonwealth.

G. Officials responsible for reporting disposition of charges, and correctional changes of status of individuals under this section, including those reports made to the Registry, shall adopt procedures reasonably designed at a minimum (i) to ensure that such reports are accurately made as soon as feasible by the most expeditious means and in no instance later than 30 days after occurrence of the disposition or correctional change of status and (ii) to report promptly any correction, deletion, or revision of the information.

H. Upon receiving a correction, deletion, or revision of information, the Central Criminal Records Exchange shall notify all criminal justice agencies known to have previously received the information.

As used in this section:

"Chief law-enforcement officer" means the chief of police of cities and towns and sheriffs of counties, unless a political subdivision has otherwise designated its chief law-enforcement officer by appropriate resolution or ordinance, in which case the local designation shall be controlling.

"Electronic report" means a report transmitted to, or otherwise forwarded to, the Central Criminal Records Exchange in an electronic format approved by the Exchange. The report shall contain the name of the person convicted and all aliases which he is known to have used, the date and locality of the conviction, his date of birth, social security number, last known address, and specific reference to the offense including the Virginia Code section and any subsection, the Virginia crime code for the offense,

and the offense tracking number for the offense for which he was convicted.

§ 53.1-40.10. Exchange of medical and mental health information and records.

Medical and mental health information and records of any person committed to the Department of Corrections may be exchanged among the following:

1. Administrative personnel for the facility in which the prisoner is imprisoned when there is reasonable cause to believe that such information is necessary to maintain the security and safety of the facility, its employees, or other prisoners. The information exchanged shall continue to be confidential and disclosure shall be limited to that necessary to ensure the safety and security of the facility.

2. Members of the Parole Board, as specified in § 53.1-138, in order to conduct the investigation required under § 53.1-155 *or 53.1-165.7*.

3. Probation and parole officers for use in parole and probation planning, release and supervision.

4. Officials within the Department for the purpose of formulating recommendations for treatment and rehabilitative programs; classification, security and work assignments; and determining the necessity for medical, dental and mental health care, treatment and programs.

5. Medical and mental health hospitals and facilities, both public and private, including community service boards, for use in planning for and supervision of post-incarceration medical and mental health care, treatment, and programs.

6. The Department for Aging and Rehabilitative Services, the Department of Social Services, and any local department of social services in the Commonwealth for the purposes of reentry planning and post-incarceration placement and services.

Substance abuse records subject to federal regulations, Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. § 2.11 et seq., shall not be subject to the provisions of this section. The disclosure of results of a test for human immunodeficiency virus shall not be permitted except as provided in § 32.1-36.1.

The release of medical and mental health information and records to any other agency or individual shall be subject to all regulations promulgated by the Department which govern confidentiality of such records. Medical and mental health information concerning a prisoner which has been exchanged pursuant to this section may be used only as provided herein and shall otherwise remain confidential and protected from disclosure.

§ 53.1-67.6. Minimum programs.

The Statewide Community-Based Corrections System shall include, but not be limited to, the following programs, services and facilities: regular and intensive probation supervision, regular and intensive parole supervision for those state-responsible offenders sentenced for an offense committed prior to January 1, 1995, *and for state-responsible offenders sentenced for an offense other than a felony that is an act of violence as defined in § 19.2-297.1 committed on or after January 1, 1995*, home/electronic incarceration, diversion center incarceration, boot camp incarceration, detention center incarceration, work release, pre-release centers, probation-violator and parole-violator centers, halfway houses and, for selected offenders, drug testing and treatment. The programs, facilities, and services required under this article shall be made available to each judicial circuit, but the manner in which such are provided shall be determined by the Board. Additional programs, services, and facilities may be established by the Board.

§ 53.1-133.03. Exchange of medical and mental health information and records.

Notwithstanding any other provision of law relating to disclosure and confidentiality of patient records maintained by a health care provider, medical and mental health information and records of any person committed to jail, and transferred to another correctional facility, may be exchanged among the following:

1. Administrative personnel of the correctional facilities involved and of the administrative personnel within the holding facility when there is reasonable cause to believe that such information is necessary to maintain the security and safety of the holding facility, its employees, or prisoners. The information exchanged shall continue to be confidential and disclosure shall be limited to that necessary to ensure the safety and security of the facility.

2. Members of the Parole Board or its designees, as specified in § 53.1-138, in order to conduct the investigation required under § 53.1-155 *or 53.1-165.7*.

3. Probation and parole officers for use in parole and probation planning, release and supervision.

4. Officials of the facilities involved and officials within the holding facility for the purpose of formulating recommendations for treatment and rehabilitative programs; classification, security and work assignments; and determining the necessity for medical, dental and mental health care, treatment and other such programs.

5. Medical and mental health hospitals and facilities, both public and private, including community service boards and health departments, for use in treatment while committed to jail or a correctional facility while under supervision of a probation or parole officer.

Substance abuse records subject to federal regulations, Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. § 2.11 et seq., shall not be subject to the provisions of this section. The disclosure of results of a test for human immunodeficiency virus shall not be permitted except as provided in §§ 32.1-36.1 and 32.1-116.3.

The release of medical and mental health information and records to any other agency or individual shall be subject to all regulations promulgated by the Board of Corrections which govern confidentiality of such records. Medical and mental health information concerning a prisoner which has been exchanged pursuant to this section may be used only as provided herein and shall otherwise remain confidential and protected from disclosure.

Nothing contained in this section shall prohibit the release of records to the Department of Health Professions or health regulatory boards consistent with Subtitle III (§ 54.1-2400 et seq.) of Title 54.1 of the Code of Virginia.

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

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

1. Adopt, subject to approval by the Governor, general rules governing the granting of parole and eligibility requirements, which shall be published and posted for public review;

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

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

(c) Notify by certified mail at least 21 business days prior to release on discretionary parole of any inmate convicted of a felony and sentenced to a term of 10 or more years, the attorney for the Commonwealth in the jurisdiction where the inmate was sentenced. In the case of parole granted for medical reasons, where death is imminent, the Commonwealth's Attorney may be notified by telephone or other electronic means prior to release. Nothing in this subsection shall be construed to alter the obligations of the Board under § 53.1-155 *or 53.1-165.7* for investigation prior to release;

(d) In any case where a person who is released on parole or postrelease supervision has been committed to the Department of Behavioral Health and Developmental Services under the provisions of Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, the conditions of his parole or postrelease supervision shall include the requirement that the person comply with all conditions given him by the Department of Behavioral Health and Developmental Services, and that he follow all of the terms of his treatment plan;

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

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

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

6. Publish monthly a statement regarding the action taken by the Board on the parole of prisoners. The statement shall list the name of each prisoner considered for parole and indicate whether parole was granted or denied, as well as the basis for denial of parole as described in subdivision 2 (a); and

7. Ensure that each person eligible for parole receives a timely and thorough review of his suitability for release on parole, including a review of any relevant post-sentencing information. If parole is denied, the basis for the denial of parole shall be in writing and shall give specific reasons for such denial to such inmate.

§ 53.1-165.1. Limitation on the application of parole statutes.

The provisions of this article, except §§ 53.1-160 and 53.1-160.1, shall not apply to any sentence imposed or to any prisoner incarcerated upon a conviction for a felony offense committed on or after January 1, 1995. Any person sentenced to a term of incarceration for a felony offense committed on or after January 1, 1995, shall not be eligible for parole upon that offense *except as provided in Article 3.1 (§ 53.1-165.2 et seq.)*.

Article 3.1.

Procedures Governing Parole for Persons Convicted of Nonviolent Offenses Committed on or after January 1, 1995.

§ 53.1-165.2. Eligibility for parole; persons convicted of certain felony offenses committed on or after January 1, 1995.

A. Except as herein otherwise provided, every person convicted of a felony that was committed on or after January 1, 1995, that was not an act of violence as defined in § 19.2-297.1 and sentenced and

committed by a court under the laws of the 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-half of the term of imprisonment imposed;

2. For the second time or subsequent time, shall be eligible for parole after serving three-fourths of the term of imprisonment imposed.

For the purposes of subdivision 2, 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 offenses that 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. "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. If the sentence of a person convicted of a felony that is not an act of violence as defined in § 19.2-297.1 and sentenced to the Department is partially suspended, he shall be eligible for parole based on the portion of such sentence execution that was not suspended.

§ 53.1-165.3. Eligibility of persons sentenced for combinations of felony and misdemeanor offenses.

Every person who is convicted of a felony and also convicted of a misdemeanor and sentenced and committed for the same under the laws of the Commonwealth or of its political subdivisions shall be eligible for parole on the combination of said sentences in the same manner as provided in § 53.1-165.2.

§ 53.1-165.4. Eligibility of persons sentenced to jails for more than 12 months.

Persons convicted of felonies or misdemeanors who are sentenced to jails and not eligible for parole under § 53.1-165.3 shall be eligible for parole in the same manner as provided in § 53.1-165.2 when the total sentences to be served, exclusive of fines, are more than 12 months. The Virginia Parole Board shall have the same powers and duties to carry out the provisions of this section as are set forth in § 53.1-136.

§ 53.1-165.5. Times at which Virginia Parole Board to review cases.

The Virginia Parole Board shall by regulation divide each calendar year into such equal parts as it may deem appropriate to the efficient administration of the parole system. Unless there be reasonable cause for extension of the time within which to review and decide a case, the Board shall review and decide the case of each prisoner no later than that part of the calendar year in which he becomes eligible for parole, and at least annually thereafter, until he is released on parole or discharged, except that upon any such review the Board may schedule the next review as much as three years thereafter, provided there are 10 years or more or life imprisonment remaining on the sentence in such case. Notwithstanding any other provision of this article, in the case of a parole revocation, if such person is otherwise eligible for parole, the Board shall review and decide his case no later than that part of the calendar year one year subsequent to the part of the calendar year in which he was returned to a facility as provided in § 53.1-165.12. Thereafter, his case shall be reviewed as specified in this section. The Board, in addition, may review the case of any prisoner eligible for parole at any other time and may review the case of any prisoner prior to that part of the year otherwise specified. In the discretion of the Board, interviews may be conducted by the Board or its representatives and may be either public or private.

§ 53.1-165.6. Authority of Director to recommend parole review; release upon review.

The Director is authorized, in accordance with rules and regulations adopted by the Board of Corrections, to determine those prisoners who may be suitable parole risks and whose interests and those of society will be served by their early parole release and to recommend such prisoners to the Parole Board for early parole consideration. In making such recommendation, the Director shall take into account the prisoner's criminal history record, mental and physical condition, employability, institutional adjustment, and such other factors as may be appropriate, including the risk of violence to others. The case of any such prisoner so recommended may be reviewed by the Parole Board prior to

such prisoner's date of eligibility for parole. Upon appropriate review, the Parole Board may release on parole prior to the date of eligibility for parole any prisoner so recommended by the Director. However, no prisoner shall be released until he has served at least one-half of the term of imprisonment imposed, except as such time is reduced by any other provision of law.

§ 53.1-165.7. Investigation prior to release.

A. No person shall be released on parole by the Board until a thorough investigation has been made into the prisoner's history, physical and mental condition, and character and his conduct, employment, and attitude while in prison. The Board shall also determine that his release on parole will not be incompatible with the interests of society or of the prisoner.

B. An investigation conducted pursuant to this section shall include notification that a victim may submit to the Virginia Parole Board evidence concerning the impact that the release of the prisoner will have on such victim. This notification shall be sent to the last address provided to the Board by any victim of a crime for which the prisoner was incarcerated. The Board shall endeavor diligently to contact the victim prior to making any decision to release any inmate on discretionary parole. The victim of a crime for which the prisoner is incarcerated may present to the Board oral or written testimony concerning the impact that the release of the prisoner will have on the victim, and the Board shall consider such testimony in its review. Once testimony is submitted by a victim, such testimony shall remain in the prisoner's parole file and shall be considered by the Board at every parole review. The victim of a crime for which the prisoner is incarcerated may submit a written request to the Board to be notified of (i) the prisoner's parole eligibility date as determined by the Department of Corrections, (ii) any parole-related interview dates, and (iii) the Board's decision regarding parole for the prisoner. The victim may request that the Board only notify the victim if, following its review, the Board is inclined to grant parole to the prisoner, in which case the victim shall have 45 days to present written or oral testimony for the Board's consideration. If the victim has requested to be notified only if the Board is inclined to grant parole and no testimony, either written or oral, is received from the victim within at least 45 days of the date of the Board's notification, the Board shall render its decision based on information available to it in accordance with subsection A. The definition of "victim" in § 19.2-11.01 shall apply to this section.

Although any information presented by the victim of a crime for which the prisoner is incarcerated shall be retained in the prisoner's parole file and considered by the Board, such information shall not infringe on the Board's authority to exercise its decision-making authority.

C. Notwithstanding the provisions of subsection A, if a physical or mental examination of a prisoner eligible for parole has been conducted within the last 12 months, and the prisoner has not required medical or psychiatric treatment within a like period while incarcerated, the prisoner may be released on parole by the Parole Board directly from a local correctional facility.

§ 53.1-165.8. Minimum period of supervision and participation in residential community program prior to final release.

A. Persons who are released on parole shall be subject to a minimum of six months' supervision and an additional period of parole ending on the date upon which the parolee would have served the maximum term of confinement, or any period the Board otherwise seems appropriate in accordance with § 53.1-165.9. Such persons shall also be subject to such terms and conditions prescribed by the Board in accordance with §53.1-165.10.

B. The Department may give prisoners eligible for parole under this article who have been sentenced to serve a term of imprisonment of at least three years the opportunity to participate in a residential community program, work release, or a community-based program approved by the Secretary of Public Safety within six months of such prisoner's projected release date. The Secretary shall prescribe guidelines to govern the residential community programs, work release, or community-based programs.

Any wages earned pursuant to this section by a prisoner may be paid to the director or administrator of the program after standard payroll deductions required by law. Distribution of such wages shall be made for the following purposes:

1. To pay an amount to defray the cost of his keep;

2. To pay travel and other such expenses made necessary by his work release, employment, or participation in a residential community program or a community-based program;

3. To provide support and maintenance for his dependents or to make payments to the local department of social services or the Commissioner of Social Services, as appropriate, on behalf of dependents who are receiving public assistance as defined in § 63.2-100; or

4. To pay any fines, restitution, or costs as ordered by the court.

Any balance at the end of his sentence shall be paid to the prisoner upon his release.

§ 53.1-165.9. Period of parole; not counted as part of term.

The period of parole that shall be fixed by the Board may be greater than the unserved portion of the sentence actually imposed upon the paroled prisoner by the court or jury that fixed his sentence. It shall not exceed, however, the difference between the time actually served in confinement by the paroled

prisoner, without regard to good conduct credit, and the maximum term established by law as punishment for the offense or offenses of which the prisoner was convicted. The time during which a parolee is at large on parole shall not be counted as service of any part of the term of imprisonment for which he was sentenced upon his conviction.

§ 53.1-165.10. Parolees or felons serving a period of postrelease supervision to comply with terms; furnishing copies.

Each parolee or felon serving a period of postrelease supervision while on parole or period of postrelease supervision shall comply with such terms and conditions as may be prescribed by the Board. When any prisoner is released on parole or postrelease period of supervision, the Board shall furnish the parolee and the probation and parole officer having supervision of the parolee or felon serving a period of postrelease supervision a copy of the terms and conditions of the parole or postrelease period of supervision and any changes that may from time to time be made therein.

§ 53.1-165.11. Release of prisoner subject to parole.

The Director of the Department shall release into the custody of the Parole Board, any of its probation and parole officers, or the Chairman any prisoner subject to parole under the laws of the Commonwealth whenever directed so to do by the Parole Board or by the Chairman.

§ 53.1-165.12. Arrest and return of parolee or felon serving a period of postrelease supervision; warrant; release pending adjudication of violation.

The Chairman or any member of the Board may at any time, upon information or a showing of a violation or a probable violation by any parolee or felon serving a period of postrelease supervision of any of the terms or conditions upon which he was released on parole or postrelease period of supervision, issue or cause to be issued a warrant for the arrest and return of the parolee or felon serving a period of postrelease supervision to the institution from which he was paroled, or to any other correctional facility that may be designated by the Chairman or member. However, a determination of whether a parolee or felon serving a period of postrelease supervision returned to a correctional facility pursuant to this section shall be returned to a state or local correctional facility shall be made based on the length of the parolee's original sentence as set forth in § 53.1-20 or the period of postrelease supervision as set at sentencing. Each such warrant shall authorize all officers named therein to arrest and return the parolee to actual custody in the facility from which he was paroled, or to any other facility designated by the Chairman or member.

In any case in which the parolee or felon serving a period of postrelease supervision is charged with the violation of any law, the violation of which caused the issuance of such warrant, upon request of the parolee or his attorney, the Chairman or member shall as soon as practicable consider all the circumstances surrounding the allegations of such violation, including the probability of conviction thereof, and may, after such consideration, release the parolee, pending adjudication of the violation charged.

§ 53.1-165.13. Arrest of parolee or felon serving a period of postrelease supervision without warrant; written statement.

Any probation and parole officer may arrest a parolee or felon serving a period of postrelease supervision without a warrant or may deputize any other officer with power of arrest to do so by a written statement setting forth that the parolee or felon serving a period of postrelease supervision has, in the judgment of the probation and parole officer, violated one or more of the terms or conditions of his parole or postrelease period of supervision. Such a written statement by a probation and parole officer delivered to the officer in charge of any state or local correctional facility shall be sufficient warrant for the detention of the parolee or felon serving a period of postrelease supervision. Any officer deputized upon receipt of the written statement shall, in accordance with § 19.2-390, enter, or cause to be entered, the person's name and other appropriate information required by the Department of State Police into the "information systems" known as the Virginia Criminal Information Network (VCIN), established and maintained by the Department of State Police pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Such information shall be deemed a warrant authorizing the arrest of the person anywhere in the Commonwealth.

§ 53.1-165.14. Parolee considered as escapee after issuance of warrant.

Any parolee for whose arrest a warrant has been issued by the Board or by the Chairman shall after the issuance of the warrant be treated as an escaped prisoner. The time from the issuing of such warrant to the date of his arrest shall not be counted as any part of the time to be served under his sentence.

§ 53.1-165.15. Procedure for return of parolee or felon serving a period of postrelease supervision.

When any parolee or felon serving a period of postrelease supervision is returned to any facility in accordance with the provisions of § 53.1-165.12, he shall be held in accordance with rules of the Board of Corrections and subject to further action of the Parole Board. The officer in charge of the facility shall see that the Parole Board is notified promptly of each such parolee's or felon's return.

§ 53.1-165.16. Revocation of parole or postrelease supervision; hearing; procedure for parolee or felon serving period of postrelease supervision in another state; appointment of attorney.

A. Whenever any parolee or felon serving a period of postrelease supervision is arrested and recommitted as provided herein, a preliminary hearing to determine probable cause that such parolee has violated one or more of the terms or conditions upon which he was released on parole or postrelease period of supervision shall be held by any hearing officer who has been designated as such by the Director of the Department to conduct such hearings. However, if a nolle prosequi is to be entered in a case where a parole violation is alleged, no preliminary hearing shall be required.

Upon request of the hearing officer, the attorney for the Commonwealth of the jurisdiction within which such hearings are to be held shall request the circuit court of such jurisdiction to appoint one or more discreet attorneys-at-law to represent parolees in any proceedings held before him. Each attorney so appointed shall be available to serve upon request of the hearing officer. The term of each attorney's appointment shall continue until such time as a successor may be appointed. A hearing officer shall be authorized to issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers, and other documents before him and to administer oaths and to take testimony thereunder.

Upon a finding of probable cause by the hearing officer, the Board or its authorized representative shall conduct a hearing, consider the case, and act with reference thereto within a reasonable time thereafter. Upon request of the Board, the attorney for the Commonwealth of the jurisdiction within which such hearings are to be held shall request the circuit court of that jurisdiction to appoint one or more discreet attorneys-at-law to represent parolees in proceedings held or to be held before the Board. Each attorney shall be available to serve upon request of the Board. The term of each attorney's appointment shall continue until such time as a successor may be appointed. The Board, in its discretion, may revoke the parole and order the reincarceration of the prisoner for the unserved portion of the term of imprisonment originally imposed upon him, or it may reinstate the parole either upon such terms and conditions as were originally prescribed, or as may be prescribed in addition thereto or in lieu thereof. When a parole violation is based on a new felony conviction for which the individual has been sentenced to two or more years, excluding any time of said sentence which has been suspended, any individual Board member, so authorized by the Board, may after such hearing revoke the individual's parole as otherwise provided herein.

B. In cases in which a parolee or felon serving a period of postrelease supervision is in another state, any hearing officer who has been designated as such by the Director of the Department may be sent to that state to conduct a preliminary hearing to determine probable cause that the parolee has violated one or more of the terms and conditions upon which he was released upon parole.

C. Any attorney-at-law appointed pursuant to this section shall be paid as directed by the court making the appointment, from funds appropriated for court costs and expenses, reasonable compensation on an hourly basis, and necessary expenses, based upon a report to be furnished to it by such attorney. In the event an attorney-at-law is appointed in another state, he shall be paid out of funds appropriated to the Department.