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**HOUSE BILL NO. 1958**

Offered January 14, 2015

Prefiled January 13, 2015

*A BILL to amend and reenact §§ 53.1-5 and 53.1-10 of the Code of Virginia, relating to powers and duties of the Board and Director of the Department of Corrections; prohibiting inmate possession of obscene materials.*

Patrons—Landes and Cole

Referred to Committee on Militia, Police and Public Safety

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

**1. That §§ 53.1-5 and 53.1-10 of the Code of Virginia are amended and reenacted as follows:**

**§ 53.1-5. Powers and duties of Board.**

The Board shall have the following powers and duties:

1. To develop and establish operational and fiscal standards governing the operation of local, regional and community correctional facilities;

2. To advise the Governor and Director on matters relating to corrections;

3. To make, adopt and promulgate such rules and regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth pertaining to local, regional and community correctional facilities;

4. To ensure the development of programs to educate citizens and elicit public support for the activities of the Department; ~~and~~

5. To establish and promulgate regulations regarding the provision of educational and vocational programs within the Department; *and*

6. *To adopt and promulgate regulations and require the Director and Department to enforce regulations prohibiting the possession of obscene materials, as defined and described in Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2, by prisoners incarcerated in state correctional facilities.*

**§ 53.1-10. Powers and duties of Director.**

The Director shall be the chief executive officer of the Department and shall have the following duties and powers:

1. To supervise and manage the Department and its system of state correctional facilities;

2. To implement the standards and goals of the Board as formulated for local and community correctional programs and facilities and lock-ups;

3. To employ such personnel and develop and implement such programs as may be necessary to carry out the provisions of this title, subject to Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2, and within the limits of appropriations made therefor by the General Assembly;

4. To establish and maintain a general system of schools for persons committed to the institutions and community-based programs for adults as set forth in §§ 53.1-67.7 and 53.1-67.8. Such system shall include, as applicable, elementary, secondary, post-secondary, career and technical education, adult, and special education schools.

a. The Director shall employ a Superintendent who will oversee the operation of educational and vocational programs in all institutions and community-based programs for adults as set forth in §§ 53.1-67.7 and 53.1-67.8 operated by the Department. The Department shall be designated as a local education agency (LEA) but shall not be eligible to receive state funds appropriated for direct aid to public education.

b. When the Department employs a teacher licensed by the Board of Education to provide instruction in the schools of the correctional centers, the Department of Human Resource Management shall establish salary schedules for the teachers which endeavor to be competitive with those in effect for the school division in which the correctional center is located.

c. The Superintendent shall develop a functional literacy program for inmates testing below a selected grade level, which shall be at least at the twelfth grade level. The program shall include guidelines for implementation and test administration, participation requirements, criteria for satisfactory completion, and a strategic plan for encouraging enrollment in college or an accredited vocational training program or other accredited continuing education program.

d. For the purposes of this section, the term "functional literacy" shall mean those educational skills necessary to function independently in society, including, but not limited to, reading, writing, comprehension, and arithmetic computation.

e. In evaluating a prisoner's educational needs and abilities pursuant to § 53.1-32.1, the

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59 Superintendent shall create a system for identifying prisoners with learning disabilities.

60 5. a. To make and enter into all contracts and agreements necessary or incidental to the performance  
61 of the Department's duties and the execution of its powers under this title, including, but not limited to,  
62 contracts with the United States, other states, and agencies and governmental subdivisions of this  
63 Commonwealth, and contracts with corporations, partnerships, or individuals which include, but are not  
64 limited to, the purchase of water or wastewater treatment services or both as necessary for the expansion  
65 or construction of correctional facilities, consistent with applicable standards and goals of the Board;

66 b. Notwithstanding the Director's discretion to make and enter into all contracts and agreements  
67 necessary or incidental to the performance of the Department's duties and the execution of its powers  
68 under this title, upon determining that it shall be desirable to contract with a public or private entity for  
69 the provision of community-based residential services pursuant to Chapter 5 (§ 53.1-177 et seq.), the  
70 Director shall notify the local governing body of the jurisdiction in which the facility is to be located of  
71 the proposal and of the facility's proposed location and provide notice, where requested, to the chief  
72 law-enforcement officer for such locality when an offender is placed in the facility at issue;

73 6. To accept, hold and enjoy gifts, donations and bequests on behalf of the Department from the  
74 United States government and agencies and instrumentalities thereof, and any other source, subject to the  
75 approval of the Governor. To these ends, the Director shall have the power to comply with such  
76 conditions and execute such agreements as may be necessary, convenient or desirable, consistent with  
77 applicable standards and goals of the Board;

78 7. To collect data pertaining to the demographic characteristics of adults, and juveniles who are  
79 adjudicated as adults, incarcerated in state correctional institutions, including, but not limited to, the race  
80 or ethnicity, age, and gender of such persons, whether they are a member of a criminal gang, and the  
81 types of and extent to which health-related problems are prevalent among such persons. Beginning July  
82 1, 1997, such data shall be collected, tabulated quarterly, and reported by the Director to the Governor  
83 and the General Assembly at each regular session of the General Assembly thereafter. The report shall  
84 be submitted as provided in the procedures of the Division of Legislative Automated Systems for the  
85 processing of legislative documents and reports;

86 8. To make application to the appropriate state and federal entities so as to provide any prisoner who  
87 is committed to the custody of the state a Department of Motor Vehicles approved identification card  
88 that would expire 90 days from issuance, a copy of his birth certificate if such person was born in the  
89 Commonwealth, and a social security card from the Social Security Administration;

90 9. To forward to the Commonwealth's Attorneys' Services Council, updated on a monthly basis, a list  
91 of all identified criminal gang members incarcerated in state correctional institutions. The list shall  
92 contain identifying information for each criminal gang member, as well as his criminal record;

93 10. To give notice, to the attorney for the Commonwealth prosecuting a defendant for an offense that  
94 occurred in a state correctional facility, of that defendant's known gang membership. The notice shall  
95 contain identifying information for each criminal gang member as well as his criminal record; ~~and~~

96 11. To designate employees of the Department with internal investigations authority to have the same  
97 power as a sheriff or a law-enforcement officer in the investigation of allegations of criminal behavior  
98 affecting the operations of the Department. Such employees shall be subject to any minimum training  
99 standards established by the Department of Criminal Justice Services under § 9.1-102 for  
100 law-enforcement officers prior to exercising any law-enforcement power granted under this subdivision.  
101 Nothing in this section shall be construed to grant the Department any authority over the operation and  
102 security of local jails not specified in any other provision of law. The Department shall investigate  
103 allegations of criminal behavior in accordance with a written agreement entered into with the  
104 Department of State Police. The Department shall not investigate any action falling within the authority  
105 vested in the Office of the State Inspector General pursuant to Chapter 3.2 (§ 2.2-307 et seq.) of Title  
106 2.2 unless specifically authorized by the Office of the State Inspector General; *and*

107 12. *To enforce and direct the Department to enforce regulatory policies promulgated by the Board*  
108 *prohibiting the possession of obscene materials, as defined in Article 5 (§ 18.2-372 et seq.) of Chapter 8*  
109 *of Title 18.2, by prisoners incarcerated in state correctional facilities.*