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SENATE BILL NO. 1063

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee
on February 25, 2017)

(Patrons Prior to Substitute—Senators Deeds and Cosgrove [SB 942])

A BILL to amend and reenact §§ 53.1-2, 53.1-5, and 53.1-127 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 53.1-69.1, relating to State Board of Corrections; membership; powers and duties; review of deaths of inmates in local correctional facilities.

Be it enacted by the General Assembly of Virginia:

1. That §§ 53.1-2, 53.1-5, and 53.1-127 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 53.1-69.1 as follows:

§ 53.1-2. Appointment of members; qualifications; terms and vacancies.

There shall be a State Board of Corrections which shall consist of nine residents of the Commonwealth appointed by the Governor and subject to confirmation by the General Assembly. In making appointments the Governor shall endeavor to select appointees of such qualifications and experience that the membership of the Board shall include persons suitably qualified to consider and act upon the various matters under the Board's jurisdiction. *Members of the Board shall be appointed as follows: (i) one former sheriff or one former warden, superintendent, administrator, or operations manager of a state or local correctional facility; (ii) one individual employed by a public mental health services agency with training in or clinical, managerial, or other relevant experience working with individuals subject to the criminal justice system who have mental illness; (iii) one individual with experience overseeing a correctional facility's or mental health facility's compliance with applicable laws, rules, and regulations; (iv) one physician licensed in the Commonwealth; (v) one individual with experience in administering educational or vocational programs in state or local correctional facilities; (vi) one individual with experience in financial management or performing audit investigations; (vii) one citizen member who represents community interests; and (viii) two individuals with experience in conducting criminal, civil, or death investigations.*

Members of the Board shall serve at the pleasure of the Governor and shall be appointed for terms of four years. A vacancy other than by expiration of term shall be filled by the Governor for the unexpired term.

No person shall be eligible to serve more than two full consecutive four-year terms.

§ 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;

5. *To develop and implement policies and procedures for the review of the death of any inmate that the Board determines warrants review that occurs in any local, regional, or community correctional facility. Such policies and procedures shall incorporate the Board's authority under § 53.1-6 to ensure the production of evidence necessary to conduct a thorough review of any such death;*

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

6. 7. 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.

§ 53.1-69.1. Review of death of inmates in local correctional facilities.

A. *The Board shall have the power to review the death of any inmate who was incarcerated in a local correctional facility at the time of his death in order to determine (i) the circumstances surrounding the inmate's death, including identifying any act or omission by the facility or any employee or agent thereof that may have directly or indirectly contributed to the inmate's death, and (ii) whether the facility was in compliance with the regulations promulgated by the Board.*

B. *Any review conducted pursuant to this section shall be conducted in accordance with the policies and procedures for such review developed and implemented by the Board in accordance with subdivision 5 of § 53.1-5. In conducting a review pursuant to this section, the Board may exercise its*

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60 power under § 53.1-6 to hold and conduct hearings, issue subpoenas, and administer oaths and take
61 testimony thereunder. If the Board determines that it cannot adequately conduct any particular review
62 pursuant to this section because of the conduct by the Board of another ongoing review, the Board may
63 request that the Department assist in the conduct of such review. Department staff conducting a review
64 pursuant to this section shall be considered agents of the Board.

65 C. If the Board determines during the conduct of any review pursuant to this section that it is
66 necessary to review the operation of an entity other than the local correctional facility in order to
67 complete the review, the Board shall request that the Office of the State Inspector General review the
68 operation of such entity if such entity falls within the authority vested in the Office of the State Inspector
69 General pursuant to Chapter 3.2 (§ 2.2-307 et seq.) of Title 2.2. Nothing in this section shall limit the
70 authority of the Office of the State Inspector General to exercise any of the powers and duties set forth
71 in Chapter 3.2 (§ 2.2-307 et seq.) of Title 2.2.

72 D. Upon completion of any review conducted pursuant to this section, the Board shall prepare a
73 detailed report of the findings of any review, which shall be submitted to the Governor, the Speaker of
74 the House of Delegates, and the President pro tempore of the Senate. Such report may contain
75 recommendations for changes to the minimum standards for the construction, equipment, administration,
76 and operation of local correctional facilities in order to prevent problems, abuses, and deficiencies in
77 and improve the effectiveness of such facilities. In addition, the Board may issue any order authorized
78 under § 53.1-69 to correct any failure by the facility to comply with the Board's regulations. Except as
79 otherwise required by law, the Board shall maintain the confidentiality of any confidential records or
80 information obtained from a facility during the course of a review in accordance with state and federal
81 law.

82 **§ 53.1-127. Who may enter interior of local correctional facilities; searches of those entering.**

83 A. Members of the local governing bodies ~~which~~ that participate in the funding of a local
84 correctional facility may go into the interior of that facility. Agents of the Board may go into the
85 interior of any local correctional facility. In addition, Department of Corrections staff and state and local
86 health department staff shall, in the performance of their duties, have access to the interior of any local
87 correctional facility subject to the standards promulgated pursuant to *subsections A and B* of § 53.1-68 ~~A~~
88 ~~and B~~. Attorneys shall be permitted in the interior of a local correctional facility to confer with prisoners
89 who are their clients and with prisoners who are witnesses in cases in which they are involved. Except
90 for the announced or unannounced inspections authorized pursuant to *subsections A and B* of § 53.1-68
91 ~~A and B~~ or a review conducted pursuant to § 53.1-69.1, the sheriff, jail administrator, or other person in
92 charge of the facility shall prescribe the time and conditions under which attorneys and other persons
93 may enter the local correctional facility for which he is responsible.

94 B. Any person seeking to enter the interior of any local correctional facility shall be subject to a
95 search of his person and effects. Such search shall be performed in a manner reasonable under the
96 circumstances and may be a condition precedent to entering a local correctional facility.