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SENATE BILL NO. 851

Senate Amendments in [] — January 23, 2018

33A BILL to amend the Code of Virginia by adding in Title 9.1 a chapter numbered 5.1, consisting of sections numbered 9.1-508 through 9.1-511, relating to creation of Correctional Officer Procedural Guarantee Act.

Patron Prior to Engrossment—Senator Marsden

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 9.1 a chapter numbered 5.1, consisting of sections numbered 9.1-508 through 9.1-511, as follows:

CHAPTER 5.1.

CORRECTIONAL OFFICER PROCEDURAL GUARANTEE ACT.

§ 9.1-508. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Correctional officer" means a duly sworn employee of the Department of Corrections whose normal duties relate to maintaining immediate control, supervision, and custody of prisoners confined in any state correctional facility.

"State correctional facility" means any correctional center or correctional field unit used for the incarceration of adult offenders established and operated by the Department of Corrections or operated under contract pursuant to § 53.1-262.

§ 9.1-509. Conduct of investigation; notice of charges.

A. Whenever an investigation focuses on matters that could lead to the dismissal, demotion, suspension, or transfer for punitive reasons of a correctional officer [not in his first year of probationary employment] :

1. Any questioning shall take place at a reasonable time and place, preferably when the correctional officer under investigation is on duty; and

2. Prior to the questioning of the correctional officer, he shall be informed of (i) the name and job title of the investigator, (ii) the name and job title of any other individual to be present during the questioning, and (iii) the nature of the investigation. The correctional officer shall also be afforded the right to have a representative or other person of his choice present during such questioning only as an observer.

B. After questioning pursuant to subsection A but before any dismissal, demotion, suspension, or transfer for punitive reasons may be imposed, the following rights shall be afforded:

1. The correctional officer shall be notified in writing of all charges, the basis therefor, and the action that may be taken;

2. The correctional officer shall be given an opportunity, within a reasonable time limit after the date of receipt of the written notice required by subdivision 1, to respond orally and in writing to the charges. The time limit shall be determined by the Department of Corrections, but in no event shall it be less than three calendar days unless agreed to by the correctional officer; and

3. In making his response, the correctional officer may be assisted by counsel at his own expense or by a representative of his choice.

C. The correctional officer shall also be given written notification of his right to initiate a grievance under the grievance procedure established by the Department of Corrections or his right to request a hearing under this chapter. A copy of the grievance procedure, as well as instructions on how to proceed to a hearing under this chapter, shall be provided to the correctional officer upon his request.

D. No provision of this section shall apply to any person conducting a criminal investigation or to any correctional officer under investigation for criminal conduct.

§ 9.1-510. Hearing; recommendations.

A. Whenever a correctional officer is dismissed, demoted, suspended without pay, or transferred for punitive reasons, he may, within a reasonable amount of time following such action, as set by the agency, request a hearing. If such request is timely made, a hearing shall be held within a reasonable amount of time set by the agency. The hearing shall be set no later than 14 calendar days following the date of request, unless a later date is agreed to by the correctional officer.

B. At the hearing, the correctional officer and the agency shall have the opportunity to present evidence and to examine and cross-examine witnesses. The correctional officer shall also be given the opportunity to be represented by counsel or a representative of his choice at the hearing.

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60 C. The hearing shall be conducted by a panel consisting of one member from within the agency
61 selected by the grievant, one member from within the agency appointed by the agency head, and a third
62 member selected by the other two members. These members shall be security officers of no more than
63 three ranks above the rank of the grievant. If there is no agreement on a third member, the third
64 member shall be chosen by the chief circuit court judge of the circuit where the correctional officer is
65 employed. The hearing panel may issue subpoenas to compel witness testimony at the request of either
66 the correctional officer or the agency. A record shall be made of the hearing.

67 D. The recommendations of the hearing panel and the reasons therefor shall be made in writing and
68 transmitted promptly to the correctional officer or his counsel and to the agency. Such recommendations
69 shall be advisory only but shall be accorded significant weight.

70 E. No provision of this section shall apply to correctional officers dismissed, demoted, suspended
71 without pay, or transferred for punitive reasons as a result of a criminal conviction.

72 **§ 9.1-511. Informal counseling not prohibited.**

73 Nothing in this chapter shall be construed to prohibit the informal counseling of a correctional
74 officer by a supervisor in reference to a minor infraction of policy or procedure that does not result in
75 disciplinary action being taken against the correctional officer.