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SENATE BILL NO. 851

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Militia, Police and Public Safety
on February 23, 2018)

(Patron Prior to Substitute—Senator Marsden)

A 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 9.1-512, relating to creation of Correctional Officer Procedural Guarantee Act.

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 9.1-512, 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 non-probationary 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.

§ 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:

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.

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.

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 Human Resource Management 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 at the hearing.

C. The hearing shall be conducted by a panel consisting of one member from within the agency selected by the grievant, one member from within the agency appointed by the agency head, and a third member selected by the other two members. These members shall be security officers of no more than three ranks above the rank of the grievant. If there is no agreement on a third member, the third member shall be chosen by the chief circuit court judge of the circuit where the correctional officer is

60 employed. The hearing panel may issue subpoenas to compel witness testimony at the request of either
61 the correctional officer or the agency. The hearing panel shall rule on the admissibility of evidence. A
62 record shall be made of the hearing.

63 D. At the option of the agency, it may, in lieu of complying with the provisions of § 9.1-509, (i) give
64 the correctional officer a written statement of the charges and the basis for them, and the action that
65 may be taken, and (ii) provide a hearing as provided for in this section prior to dismissing, demoting,
66 suspending, or transferring the correctional officer for disciplinary reasons.

67 E. 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 F. 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. Immediate suspension.**

73 Nothing in this chapter shall prevent the immediate suspension without pay of any correctional
74 officer whose continued presence in the workplace may be harmful to the correctional officer, other
75 employees, contractors, volunteers, prisoners, or the public; makes it impossible for the agency to
76 conduct business; may hamper an internal investigation into the correctional officer's alleged
77 misconduct; may hamper an investigation being conducted by law enforcement; or may constitute
78 negligence in regard to the agency's duties to the public, other employees, contractors, volunteers, or
79 prisoners. Further, nothing in this chapter shall prevent the suspension of a correctional officer for
80 refusing to obey a direct order issued in compliance with the agency's written and disseminated policies.
81 In such a case, the correctional officer shall, upon request, be afforded the rights provided under this
82 chapter within a reasonable amount of time set by the agency.

83 **§ 9.1-512. Informal counseling not prohibited.**

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