

19103028D

HOUSE BILL NO. 1942

Offered January 9, 2019

Prefiled January 6, 2019

A BILL to amend and reenact §§ 53.1-40.10, 53.1-68, and 53.1-133.03 of the Code of Virginia, relating to behavioral health services; exchange of medical and mental health information and records; correctional facilities.

Patrons—Bell, Robert B., Kory, Murphy, Simon and Tyler

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 53.1-40.10, 53.1-68, and 53.1-133.03 of the Code of Virginia are amended and reenacted as follows:

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

A. Whenever a person is committed to a state correctional facility, the following shall be entitled to obtain medical and mental health information and records concerning such person from a health care provider, even when such person does not provide consent or consent is not readily obtainable:

1. The person in charge of the facility, or his designee shall be entitled to obtain medical records concerning such person from a health care provider. In addition, 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, when such information and records are necessary (i) for the provision of health care to the person committed, (ii) to protect the health and safety of the person committed or other residents or staff of the facility, or (iii) to maintain the security and safety of the facility. Such information and records may be exchanged among administrative personnel for the facility in which the person is imprisoned as 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 security and safety 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.

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 services 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.

B. 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.

C. 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 that govern confidentiality of such records. Medical and mental health information concerning a prisoner which that has been exchanged pursuant to this section may be used only as provided herein and shall otherwise remain confidential and protected from disclosure.

§ 53.1-68. Minimum standards for local correctional facilities and lock-ups; health inspections, behavioral health services inspections, and personnel.

A. The Board shall establish minimum standards for the construction, equipment, administration, and operation of local correctional facilities, whether heretofore or hereafter established. However, no minimum standard shall be established that includes square footage requirements in excess of accepted

INTRODUCED

HB1942

59 national standards. The Board or its agents shall conduct at least one unannounced inspection of each
60 local facility annually. However, in those years in which a certification audit of a facility is performed
61 and the facility is in compliance with all the standards, the Board may elect to suspend the unannounced
62 inspection based upon that certification audit and the history of compliance of the facility with the
63 standards promulgated in accordance with this section, except in any year in which there is a change in
64 the administration of a local or regional jail. The Board shall also establish minimum standards for the
65 construction, equipment, and operation of lock-ups, whether heretofore or hereafter established.
66 However, no minimum standard shall be established that includes square footage requirements in excess
67 of accepted national standards.

68 B. Standards concerning sanitation in local correctional facilities and procedures for enforcing these
69 standards shall be promulgated by the Board with the advice and guidance of the State Health
70 Commissioner. The Board, in conjunction with the Board of Health, shall establish a procedure for the
71 conduct of at least one unannounced annual health inspection by the State Health Commissioner or his
72 agents of each local correctional facility. The Board and the State Health Commissioner may authorize
73 such other announced or unannounced inspections as they consider appropriate.

74 C. *The Board shall establish minimum standards for behavioral health services in local correctional*
75 *facilities and procedures for enforcing such minimum standards, with the advice of and guidance from*
76 *the Commissioner of Behavioral Health and Developmental Services and the State Inspector General.*
77 *Such standards shall include forensic discharge planning services and regulations directing the sharing*
78 *of medical and mental health information and records in accordance with § 53.1-133.03.*

79 *Such standards shall include procedures for the conduct of at least one unannounced annual*
80 *inspection of each local correctional facility by the Board or its agents to determine compliance with*
81 *the standards for behavioral health services established pursuant to this subsection and such other*
82 *announced or unannounced inspections as the Board may deem necessary to ensure compliance with the*
83 *standards for behavioral health services established pursuant to this subsection.*

84 *Such standards shall also include a procedure by which a community services board that provides*
85 *behavioral health services in the local correctional facility may bill the sheriff or superintendent for the*
86 *provision of such services and by which the sheriff or superintendent shall pay for such behavioral*
87 *health services if provided by the community services board in accordance with § 53.1-126.*

88 *As used in this subsection, "forensic discharge planning services" means the (i) screening and*
89 *assessment of psychiatric, medical, social services, employment, and residential needs, as well as risk*
90 *factors, upon entry into a local correctional facility for all incarcerated persons; (ii) provision of*
91 *appropriate behavioral health services to incarcerated persons to reflect the assessed needs of such*
92 *person; (iii) development of a discharge plan for those persons who have been assessed as requiring*
93 *behavioral health services that will provide such person with a continuum of care after being released*
94 *from the local correctional facility; and (iv) coordination of care with community providers and*
95 *community supervision agencies as provided by the discharge plan for those persons who have been*
96 *assessed as needing behavioral health services when released from incarceration, including the*
97 *exchange of treatment records, communication of treatment needs, and linkage of those recently released*
98 *persons with a local community services board or other available services and support options. Forensic*
99 *discharge planning services shall begin as soon as possible upon entry into the local correctional*
100 *facility and shall continue after a person has been released from incarceration for a period of 30 days*
101 *or until the individual has started to receive appropriate services and support by a provider identified in*
102 *the discharge plan, whichever is sooner. A discharge plan for those offenders who have been assessed*
103 *as requiring behavioral health services shall be developed as soon as possible after a person has been*
104 *assessed.*

105 D. The Department of Criminal Justice Services, in accordance with § 9.1-102, shall establish
106 minimum training standards for persons designated to provide courthouse and courtroom security
107 pursuant to the provisions of § 53.1-120 and for persons employed as jail officers or custodial officers
108 under the provisions of this title. The sheriff shall establish minimum performance standards and
109 management practices to govern the employees for whom the sheriff is responsible.

110 E. The superintendent of a regional jail or jail farm shall establish minimum performance
111 standards and management practices to govern the employees for whom the superintendent is
112 responsible.

113 **§ 53.1-133.03. Exchange of medical and mental health information and records.**

114 ~~Notwithstanding any other provision of law relating to disclosure and confidentiality of patient~~
115 ~~records maintained by a health care provider, whenever~~ A. Whenever a person is committed to a local or
116 regional correctional facility, the following shall be entitled to obtain medical and mental health
117 information and records concerning such person from a health care provider, even when such person
118 does not provide consent or consent is not readily obtainable:

119 1. The person in charge of the facility, or his designee shall be entitled to obtain medical records
120 concerning such person from a health care provider. In addition, 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, when such information and records are necessary (i) for the provision of health care to the person committed, (ii) to protect the health and safety of the person committed or other residents or staff of the facility, or (iii) to maintain the security and safety of the facility. Such information and records of any person committed to jail and transferred to another correctional facility may be exchanged among 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 security and safety 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.

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 services 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.

B. 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.

C. 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~~ that govern confidentiality of such records. Medical and mental health information concerning a prisoner ~~which~~ that has been exchanged pursuant to this section may be used only as provided herein and shall otherwise remain confidential and protected from disclosure.

D. 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.