

VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

CHAPTER 836

An Act to amend and reenact § 53.1-133.03 of the Code of Virginia, relating to exchange of offender medical and mental health information and records.

[H 1328]

Approved April 7, 2020

Be it enacted by the General Assembly of Virginia:

1. That § 53.1-133.03 of the Code of Virginia is amended and reenacted as follows:

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

A. Whenever a person is committed to a local or regional 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, 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 and local probation 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 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 that govern confidentiality of such records. Medical and mental health information concerning a prisoner 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.

E. Except for any information and records not subject to this section or not permitted to be disclosed pursuant to subsection B, any health care provider as defined in § 32.1-127.1:03 who has provided services within the last two years to a person committed to a local or regional correctional facility shall, upon request by the local or regional correctional facility, disclose to the local or regional correctional facility where the person is committed any information necessary to ensure the continuity of care of the person committed. Any health care provider who discloses medical and mental health information and records pursuant to this section shall be immune from civil liability resulting from such disclosure, including any liability under the federal Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.), absent bad faith or malicious intent.