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SENATE BILL NO. 837

Offered January 8, 2020

Prefiled January 8, 2020

A BILL to amend and reenact §§ 2.2-1837, 2.2-3703, 8.01-195.10, 8.01-690, 53.1-1, 53.1-31.1, 53.1-261, 53.1-262, and 53.1-265 of the Code of Virginia and to repeal §§ 53.1-263, 53.1-264, and 53.1-266 of the Code of Virginia, relating to Corrections Private Management Act; name change; private management prohibited.

 Patron—Ebbin

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1837, 2.2-3703, 8.01-195.10, 8.01-690, 53.1-1, 53.1-31.1, 53.1-261, 53.1-262, and 53.1-265 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-1837. Risk management plan for public liability.

A. Subject to the approval of the Governor, the Division shall establish a risk management plan, which may be purchased insurance, self-insurance or a combination of self-insurance and purchased insurance to provide:

1. Protection against liability imposed by law for damages resulting from any claim:

a. Made against any state department, agency, institution, board, commission, officer, agent, or employee for acts or omissions of any nature while acting in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization;

b. Made against participants, other than professional counsel, in student disciplinary proceedings at public institutions of higher education for nonmalicious acts or omissions of any nature in the course and scope of participation in the proceedings; or

c. Resulting from an authorized indemnification agreement entered into by a public institution of higher education in the Commonwealth in accordance with this subsection.

A public institution of higher education in the Commonwealth may execute an indemnification agreement if the Governor (i) considers in advance of execution (a) the institution's analysis of the relevant public benefit and risk of liability, (b) the Division's charge to be assessed against the institution for providing insurance or self-insurance coverage for the claims resulting from the indemnification agreement, and (c) the Office of the Attorney General's comments and (ii) determines that execution is necessary to further the public's best interests.

The indemnification agreement shall limit the institution's total liability to a stated dollar amount and shall notify the contractor that the full faith and credit of the Commonwealth are not pledged or committed to payment of the institution's obligation under the agreement. However, no such institution shall be authorized to enter into an indemnification agreement in accordance with this subsection to indemnify any person or entity against damages arising from a sponsored project conducted by such institution. For the purposes of this section, a "sponsored project" is a research, instruction, or service project conducted at a public institution of higher education in the Commonwealth pursuant to a grant, cooperative agreement, or other contract;

2. Protection against tort liability and incidental medical payments arising out of the ownership, maintenance or use of buildings, grounds or properties owned or leased by the Commonwealth or used by state employees or other authorized persons in the course of their employment;

3. For the payment of attorney fees and expenses incurred in defending such persons and entities concerning any claim that (i) arises from their governmental employment or authorization, that (ii) arises from their participation in such student disciplinary proceedings, or (iii) is described in any such indemnification agreement, where the Division is informed by the Attorney General's office that it will not provide a defense due to a conflict or other appropriate reason; and

4. For the payment of attorney fees and expenses awarded to any individual or entity against the Commonwealth, or any department, agency, institution, board, commission, officer, agent, or employee of the Commonwealth for acts or omissions of any nature while acting in an authorized governmental or proprietary capacity, or in reliance upon any constitutional provision, or law of the Commonwealth. It is the obligation of the Division to provide for such indemnification regardless of whether there is a request for or an award of damages associated with the award of such fees and expenses.

a. As a condition of coverage for the payment of attorney fees and expenses, the department, agency, institution, board, commission, officer, agent, or employee of the Commonwealth shall (i) promptly notify the Division of the commencement of any claim, suit, action or other proceeding prior to its

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59 settlement, (ii) provide the Division with full nonprivileged information on the matter as requested, and
60 (iii) permit the Division to participate in the investigation of such claim, suit, action or other proceeding.
61 Failure to promptly notify the Division or to reasonably cooperate may, at the Division's discretion,
62 result in no payment or a reduced payment being made.

63 b. The Division shall set the premium and administrative costs to be paid to it for providing payment
64 of attorney fees and expenses awarded pursuant to this section. The premiums and administrative costs
65 set by the Division shall be payable in the amounts, at the time and in the manner that the Division in
66 its sole discretion requires. Premiums and administrative costs shall be set to best ensure the financial
67 stability of the plan.

68 B. Any risk management plan established pursuant to this section shall provide for the establishment
69 of a trust fund or contribution to the State Insurance Reserve Trust Fund for the payment of claims
70 covered under the plan. The funds shall be invested as provided in § 2.2-1806 and interest shall be
71 added to the fund as earned. The trust fund shall also provide for payment of administrative costs,
72 contractual costs, and other expenses related to the administration of such plan.

73 C. The risk management plan for public liability shall be submitted to the Governor for approval
74 prior to implementation.

75 D. The risk management plan established pursuant to this section shall provide protection against
76 professional liability imposed by law as provided in § 24.2-121, resulting from any claim made against a
77 local electoral board, any of its members, any general registrar, or any employee of or paid assistant to a
78 registrar for acts or omissions of any nature while acting in an authorized governmental or proprietary
79 capacity and in the course and scope of employment or authorization, regardless of whether or not the
80 civil action requests monetary damages, subject to the limitations of the risk management plan.

81 E. The risk management plan established pursuant to this section shall provide protection against any
82 claim made against any soil and water conservation district, director, officer, agent or employee thereof,
83 (i) arising out of the ownership, maintenance or use of buildings, grounds or properties owned, leased or
84 maintained by any such district or used by district employees or other authorized persons in the course
85 of their employment or (ii) arising out of acts or omissions of any nature while acting in an authorized
86 governmental or proprietary capacity and in the course and scope of employment or authorization.

87 F. The risk management plan established pursuant to this section shall provide protection against
88 professional liability imposed by law for damages resulting from any claim made against a local school
89 board selection commission or local school board selection commission members for acts or omissions
90 of any nature while acting in an authorized governmental or proprietary capacity and in the course and
91 scope of authorization, subject to the limitations of the risk management plan.

92 G. The risk management plan established pursuant to this section shall provide coverage for any
93 matter that involves or could involve an action or proceeding against a judge, the nature of which is
94 designed to determine whether discipline or other sanction of the judge for malfeasance or misfeasance
95 is appropriate or to otherwise determine the fitness of the judge to hold office or to continue his
96 employment. No coverage or indemnification shall be made pursuant to this subsection when the
97 Supreme Court of Virginia finds that the judge should be censured or removed from office pursuant to
98 Section 10 of Article VI of the Constitution of Virginia or statutes enacted pursuant thereto.

99 H. The risk management plan established pursuant to this section shall provide protection against
100 claims made against chaplains by persons incarcerated in a state correctional facility, *or* a juvenile
101 correctional center, ~~or a facility operated pursuant to the Corrections Private Management Act~~
102 ~~(§ 53.1-261 et seq.)~~ arising out of services provided by the chaplains to such incarcerated persons,
103 regardless of whether such services were provided on a volunteer basis or for compensation. For the
104 purposes of this subsection, chaplains shall include only those persons, who, at the time any claim may
105 arise, were acting pursuant to, and in compliance with, an agreement between the chaplain, or an
106 organization to which the chaplain belongs, and the Department of Corrections, *or* the Department of
107 Juvenile Justice, ~~or an operator of a facility operated pursuant to the Corrections Private Management~~
108 ~~Act.~~

109 **§ 2.2-3703. Public bodies and records to which chapter inapplicable; voter registration and**
110 **election records; access by persons incarcerated in a state, local, or federal correctional facility.**

111 A. The provisions of this chapter shall not apply to:

112 1. The Virginia Parole Board, except that (i) information from the Virginia Parole Board providing
113 the number of inmates considered by the Board for discretionary parole, the number of inmates granted
114 or denied parole, and the number of parolees returned to the custody of the Department of Corrections
115 solely as a result of a determination by the Board of a violation of parole shall be open to inspection
116 and available for release, on a monthly basis, as provided by § 2.2-3704; (ii) all guidance documents, as
117 defined in § 2.2-4101, shall be public records and subject to the provisions of this chapter; and (iii) all
118 records concerning the finances of the Virginia Parole Board shall be public records and subject to the
119 provisions of this chapter. The information required by clause (i) shall be furnished by offense, sex,
120 race, age of the inmate, and the locality in which the conviction was obtained, upon the request of the

party seeking the information. The information required by clause (ii) shall include all documents establishing the policy of the Board or any change in or clarification of such policy with respect to grant, denial, deferral, revocation, or supervision of parole or geriatric release or the process for consideration thereof, and shall be clearly and conspicuously posted on the Board's website. However, such information shall not include any portion of any document reflecting the application of any policy or policy change or clarification of such policy to an individual inmate;

2. Petit juries and grand juries;

3. Family assessment and planning teams established pursuant to § 2.2-5207;

4. Sexual assault response teams established pursuant to § 15.2-1627.4, except that records relating to (i) protocols and policies of the sexual assault response team and (ii) guidelines for the community's response established by the sexual assault response team shall be public records and subject to the provisions of this chapter;

5. Multidisciplinary child sexual abuse response teams established pursuant to § 15.2-1627.5;

6. The Virginia State Crime Commission; and

7. The records maintained by the clerks of the courts of record, as defined in § 1-212, for which clerks are custodians under § 17.1-242, and courts not of record, as defined in § 16.1-69.5, for which clerks are custodians under § 16.1-69.54, including those transferred for storage, maintenance, or archiving. Such records shall be requested in accordance with the provisions of §§ 16.1-69.54:1 and 17.1-208, as appropriate. However, other records maintained by the clerks of such courts shall be public records and subject to the provisions of this chapter.

B. Public access to voter registration and election records shall be governed by the provisions of Title 24.2 and this chapter. The provisions of Title 24.2 shall be controlling in the event of any conflict.

C. No provision of this chapter or Chapter 21 (§ 30-178 et seq.) of Title 30 shall be construed to afford any rights to any person (i) incarcerated in a state, local, or federal correctional facility, whether or not such facility is ~~(a) located in the Commonwealth or (b) operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.)~~, or (ii) civilly committed pursuant to the Sexually Violent Predators Act (§ 37.2-900 et seq.). However, this subsection shall not be construed to prevent such persons from exercising their constitutionally protected rights, including, but not limited to, their right to call for evidence in their favor in a criminal prosecution.

§ 8.01-195.10. Purpose; action by the General Assembly required; definitions.

A. The purpose of this article is to provide directions and guidelines for the compensation of persons who have been wrongfully incarcerated in the Commonwealth. Compensation for wrongful incarceration is governed by Article IV, Section 14 of the Constitution of Virginia, which prohibits the General Assembly from granting relief in cases in which the courts or other tribunals may have jurisdiction and any individual seeking payment of state funds for wrongful incarceration shall be deemed to have waived all other claims. The payment and receipt of any compensation for wrongful incarceration shall be contingent upon the General Assembly appropriating funds for that purpose. This article shall not provide an entitlement to compensation for persons wrongfully incarcerated or require the General Assembly to appropriate funds for the payment of such compensation. No estate of or personal representative for a decedent shall be entitled to seek a claim for compensation for wrongful incarceration.

B. As used in this article:

"Incarceration" or "incarcerated" means (i) confinement in a local or regional correctional facility, juvenile correctional center, state correctional facility, *or* residential detention center, or (ii) *confinement in a facility operated pursuant to the Corrections Private Management Services Act (§ 53.1-261 et seq.) prior to July 1, 2023.*

"Wrongful incarceration" or "wrongfully incarcerated" means incarceration for a felony conviction for which ~~(i)~~ (a) the conviction has been vacated pursuant to Chapter 19.2 (§ 19.2-327.2 et seq.) or 19.3 (§ 19.2-327.10 et seq.) of Title 19.2, or the person incarcerated has been granted an absolute pardon for the commission of a crime that he did not commit, ~~(ii)~~ (b) the person incarcerated must have entered a final plea of not guilty, or regardless of the plea, any person sentenced to death, or convicted of a Class 1 felony, a Class 2 felony, or any felony for which the maximum penalty is imprisonment for life, and ~~(iii)~~ (c) the person incarcerated did not by any act or omission on his part intentionally contribute to his conviction for the felony for which he was incarcerated.

§ 8.01-690. Applicability provisions.

The provisions of this chapter shall apply to all pro se civil actions for money damages brought under the laws of this Commonwealth, or for injunctive, declaratory, or mandamus relief, brought by prisoners incarcerated in any state or local correctional facility; ~~or operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.)~~.

§ 53.1-1. Definitions.

As used in this title unless the context requires otherwise or it is otherwise provided:

"Board" or "State Board" means the State Board of Corrections.

"Community correctional facility" means any group home, halfway house or other physically unrestricting facility used for the housing, treatment or care of adult offenders established or operated with funds appropriated to the Department of Corrections from the state treasury and maintained or operated by any political subdivision, combination of political subdivisions or privately operated agency within the Commonwealth.

"Community supervision" means probation, parole, postrelease supervision, programs authorized under the Comprehensive Community Corrections Act for local responsible offenders, and programs authorized under Article 7 (§ 53.1-128 et seq.) of Chapter 3 of this title.

"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.

"Department" means the Department of Corrections.

"Deputy sheriff" means a duly sworn officer appointed by a sheriff pursuant to § 15.2-1603 whose normal duties include, but are not limited to, maintaining immediate control, supervision and custody of prisoners confined in any local correctional facility and may include those duties of a jail officer.

"Director" means the Director of the Department of Corrections.

"Jail officer" means a duly sworn employee of a local correctional facility, except for deputy sheriffs, whose normal duties relate to maintaining immediate control, supervision and custody of prisoners confined in any local correctional facility. This definition in no way limits any authority otherwise granted to a duly sworn deputy sheriff whose duties may include those of a jail officer.

"Local correctional facility" means any jail, jail farm or other place used for the detention or incarceration of adult offenders, excluding a lock-up, which is owned, maintained or operated by any political subdivision or combination of political subdivisions of the Commonwealth.

"Lock-up" means a facility whose primary use is to detain persons for a short period of time as determined by the Board.

"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.~~ This term shall include "penitentiary" whenever used in this title or other titles of the Code.

§ 53.1-31.1. Transportation of prisoners.

A. Notwithstanding any other provision of law, the Department shall provide all transportation to and from court for any prisoner in connection with a crime committed within a state correctional facility, ~~or a facility operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.),~~ unless the affected sheriff and the Department agree on other transportation. Auxiliary police forces established under § 15.2-1731 who have met the training requirements of § 9.1-102, with the concurrence of the sheriff or other chief law-enforcement officer as appropriate, are specifically authorized to provide such transportation.

B. Authorized corrections personnel from any other state, the United States, and any political subdivisions thereof who transport a prisoner through the Commonwealth, deliver a prisoner to the Commonwealth, or take custody of a prisoner in the Commonwealth for transport to another jurisdiction are deemed to have lawful custody of such prisoner while in the Commonwealth.

C. Authorized Virginia corrections personnel who have a need to travel with a prisoner through or to another state are authorized to travel through such state and retain authority over such prisoner as allowed by such state.

CHAPTER 15.

CORRECTIONS PRIVATE MANAGEMENT SERVICES ACT.

§ 53.1-261. Definitions.

As used in this chapter, unless the context requires otherwise ~~or it is otherwise provided a different meaning:~~

"Correctional services" means the following functions, services, and activities when provided within a prison or otherwise:

1. ~~Operation of facilities, including management, custody of inmates and provision of security;~~
2. Food services, commissary, medical services, transportation, sanitation or other ancillary services;
2. Development and implementation assistance for classification, management information systems, or other information systems or services;
3. Education, training, and employment programs;
4. Recreational, religious, and other activities; and
5. Counseling, special treatment programs, or other programs for special needs.

"Prison" or "facility" or "prison facility" means any institution operated by or under authority of the Department and shall include, whether obtained by purchase, lease, construction, reconstruction, restoration, improvement, alteration, repair, or other means, any physical betterment or improvement

related to the housing of inmates or any preliminary plans, studies, or surveys relative thereto; land or rights to land; and any furnishings, machines, vehicles, apparatus, or equipment for use in connection with any prison facility.

"Prison contractor" or "contractor" means any entity, including a local government, entering into or offering or proposing to enter into a contractual agreement to provide any correctional services to inmates under the custody of the Commonwealth or federal inmates under the custody of the prison contractor, while in the Commonwealth of Virginia.

§ 53.1-262. State correctional facilities; private contracts.

The Director, subject to any applicable regulations ~~which~~ *that* may be promulgated by the Board pursuant to § 53.1-266 and subject to the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.), is hereby authorized to enter into contracts with prison contractors for the financing, site selection, acquisition, construction, maintenance, ~~or leasing, management or operation~~ of prison facilities, or any combination of those services, subject to the *following* requirements and limitations ~~set out~~ below:

1. Contracts entered into under the terms of this chapter shall be with an entity submitting an acceptable response pursuant to a request for proposals. An acceptable response shall be one ~~which~~ *that* meets all the requirements in the request for proposals. However, no contract for correctional services may be entered into unless the private contractor demonstrates that it has:

a. The qualifications, experience, and management personnel necessary to carry out the terms of this contract;

b. The financial resources to provide indemnification for liability arising from prison ~~management~~ projects;

c. Evidence of past performance of similar contracts, which shall include the experience of persons in management with such entity and may include the experience of the parent of such entity; and

d. The ability to comply with all applicable federal and state constitutional standards; federal, state, and local laws; court orders; and correctional standards.

2. Contracts awarded under the provisions of this chapter, including contracts for the provision of correctional services or for the lease or use of public lands or buildings for use in the operation of facilities, may be entered into for a period of up to ~~thirty~~ 30 years, subject to the requirements for annual appropriation of funds by the Commonwealth.

3. Contracts awarded under the provisions of this chapter shall, at a minimum, comply with the following:

a. Provide for internal and perimeter security to protect the public, employees and inmates;

b. Provide inmates with work or training opportunities while incarcerated; however, the contractor shall not benefit financially from the labor of inmates;

c. Impose discipline on inmates only in accordance with applicable regulations; and

d. Provide proper food, clothing, housing and medical care for inmates.

4. No contract for correctional services shall be entered into unless the following requirements are met:

a. The contractor provides audited financial statements for the previous five years or for each of the years the contractor has been in operation, if fewer than five years, and provides other financial information as requested; and

b. The contractor provides an adequate plan of indemnification, specifically including indemnity for civil rights claims. The indemnification plan shall be adequate to protect the Commonwealth and public officials from all claims and losses incurred as a result of the contract. Nothing herein is intended to deprive a prison contractor or the Commonwealth of the benefits of any law limiting exposure to liability or setting a limit on damages.

~~5-~~ 4. No contract for correctional services shall be executed by the Director nor shall any funds be expended for the contract unless:

a. The proposed contract complies with any applicable regulations ~~which~~ *that* may be promulgated by the Board pursuant to § 53.1-266;

b. An appropriation for the services to be provided under the contract has been expressly approved as is otherwise provided by law;

c. The correctional services proposed by the contract are of at least the same quality as those routinely provided by the Department to similar types of inmates; and

d. An evaluation of the proposed contract demonstrates a cost benefit to the Commonwealth when compared to alternative means of providing the services through governmental agencies.

6- 5. A site proposed by a contractor for the construction of a prison facility shall not be subject to the approval procedure set forth in § 53.1-19. However, no contract for the construction ~~and operation~~ of a ~~private~~ correctional facility shall be entered into nor shall any funds be expended for the contract unless the local governing body, by duly adopted resolution, consents to the siting and construction of

305 such facility within the boundaries of the locality.

306 **§ 53.1-265. Powers and duties not delegable to contractor.**

307 No contract for correctional services shall authorize, allow, or imply a delegation of authority or
308 responsibility of the Director to a prison contractor for any of the following:

309 1. Developing and implementing procedures for calculating inmate release and parole eligibility
310 dates;

311 2. Developing and implementing procedures for calculating and awarding sentence credits;

312 3. Approving inmates for furlough and work release;

313 4. Approving the type of work inmates may perform and the wages or sentence credits ~~which~~ *that*
314 may be given the inmates engaging in such work;

315 5. Granting, denying, or revoking sentence credits;

316 6. Classifying inmates or placing inmates in less restrictive custody or more restrictive custody;

317 7. Transferring an inmate; however, the contractor may make written recommendations regarding the
318 transfer of an inmate or inmates;

319 8. Formulating rules of inmate behavior, violations of which may subject inmates to sanctions;
320 however, the contractor may propose such rules to the Director for his review and adoption, rejection, or
321 modification as otherwise provided by law or regulation; ~~and~~

322 9. Disciplining inmates in any manner ~~which~~ *that* requires a discretionary application of rules of
323 inmate behavior or a discretionary imposition of a sanction for violations of such rules; *and*

324 10. *Operating a prison facility, including management, custody of inmates, or provision of security.*

325 **2. That §§ 53.1-263, 53.1-264, and 53.1-266 of the Code of Virginia are repealed.**

326 **3. That the first and second enactments of this act shall become effective on July 1, 2023.**

327 **4. That the Department of Corrections shall develop and implement a plan to ensure that all**
328 **prisons are in compliance with the provisions of this act by July 1, 2023.**