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SENATE BILL NO. 1245

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 20, 2023)

(Patron Prior to Substitute—Senator Obenshain)

*A BILL to amend and reenact §§ 18.2-10, 19.2-295.2, 53.1-136, 53.1-145, 53.1-157, 53.1-161, 53.1-162, 53.1-164, and 53.1-165 of the Code of Virginia, relating to revocation of probation.***Be it enacted by the General Assembly of Virginia:****1. That §§ 18.2-10, 19.2-295.2, 53.1-136, 53.1-145, 53.1-157, 53.1-161, 53.1-162, 53.1-164, and 53.1-165 of the Code of Virginia are amended and reenacted as follows:****§ 18.2-10. Punishment for conviction of felony; penalty.**

The authorized punishments for conviction of a felony are:

(a) For Class 1 felonies, imprisonment for life and, subject to subdivision (g), a fine of not more than \$100,000. Any person who was 18 years of age or older at the time of the offense and who is sentenced to imprisonment for life upon conviction of a Class 1 felony shall not be eligible for (i) parole, (ii) any good conduct allowance or any earned sentence credits under Chapter 6 (§ 53.1-186 et seq.) of Title 53.1, or (iii) conditional release pursuant to § 53.1-40.01 or 53.1-40.02.

(b) For Class 2 felonies, imprisonment for life or for any term not less than 20 years and, subject to subdivision (g), a fine of not more than \$100,000.

(c) For Class 3 felonies, a term of imprisonment of not less than five years nor more than 20 years and, subject to subdivision (g), a fine of not more than \$100,000.

(d) For Class 4 felonies, a term of imprisonment of not less than two years nor more than 10 years and, subject to subdivision (g), a fine of not more than \$100,000.

(e) For Class 5 felonies, a term of imprisonment of not less than one year nor more than 10 years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.

(f) For Class 6 felonies, a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.

(g) Except as specifically authorized in subdivision (e) or (f), the court shall impose either a sentence of imprisonment together with a fine, or imprisonment only. However, if the defendant is not a natural person, the court shall impose only a fine.

For any felony offense committed (i) on or after January 1, 1995, the court may, and (ii) on or after July 1, 2000, shall, except in cases in which the court orders a suspended term of confinement of at least six months, impose an additional term of incarceration of not less than six months nor more than three years, which shall be suspended conditioned upon successful completion of a period of ~~post-release supervision~~ *probation* pursuant to § 19.2-295.2 and compliance with such other terms as the sentencing court may require. However, such additional term may only be imposed when the sentence includes an active term of incarceration in a correctional facility.

For a felony offense prohibiting proximity to children as described in subsection A of § 18.2-370.2, the sentencing court is authorized to impose the punishment set forth in that section in addition to any other penalty provided by law.

§ 19.2-295.2. Probation of felons sentenced for offenses committed on and after January 1, 1995, and on and after July 1, 2000.A. At the time the court imposes sentence upon a conviction for any felony offense committed (i) on or after January 1, 1995, the court may, and (ii) on or after July 1, 2000, shall, in addition to any other punishment imposed if such other punishment includes an active term of incarceration in a state or local correctional facility, except in cases in which the court orders a suspended term of confinement of at least six months, impose a term of incarceration, in addition to the active term, of not less than six months nor more than three years, as the court may determine. Such additional term shall be suspended and the defendant shall be ordered to be placed ~~under postrelease supervision~~ *on probation pursuant to § 19.2-303* upon release from the active term of incarceration. The period of ~~supervision~~ *probation* shall be established by the court; however, such period shall not be less than six months nor more than three years. Periods of ~~postrelease supervision~~ *probation* imposed pursuant to this section upon more than one felony conviction may be ordered to run concurrently. Periods of ~~postrelease supervision~~ *probation* imposed pursuant to this section may be ordered to run concurrently with any period of probation the defendant may also be subject to serve.B. The period of ~~postrelease supervision~~ shall be under the supervision and review of the Virginia Parole Board. The Board shall review each felon prior to release and establish conditions of ~~postrelease~~

60 ~~supervision. Failure~~ Any failure to successfully abide by such terms and conditions complete the period
61 of probation imposed pursuant to subsection A shall be grounds to terminate the period of postrelease
62 supervision and recommit the defendant to the Department of Corrections or to the local correctional
63 facility from which he was previously released subject to revocation pursuant to §§ 19.2-306 and
64 19.2-306.1. Procedures for any such termination and recommitment shall be conducted in the same
65 manner as procedures for the revocation of parole.

66 C. Postrelease supervision programs shall be operated through the probation and parole districts
67 established pursuant to § 53.1-141.

68 D. Nothing in this section shall be construed to prohibit the court from exercising any authority
69 otherwise granted by law.

70 **§ 53.1-136. Powers and duties of Board; notice of release of certain inmates.**

71 In addition to the other powers and duties imposed upon the Board by this article, the Board shall:

72 1. Adopt, subject to approval by the Governor, general rules governing the granting of parole and
73 eligibility requirements, which shall be published and posted for public review;

74 2. Adopt, subject to approval by the Governor, rules providing for the granting of parole to those
75 prisoners who are eligible for parole pursuant to § 53.1-165.1 on the basis of demonstrated maturity and
76 rehabilitation and the lesser culpability of juvenile offenders;

77 3. a. Release on parole for such time and upon such terms and conditions as the Board shall
78 prescribe, persons convicted of felonies and confined under the laws of the Commonwealth in any
79 correctional facility in Virginia when those persons become eligible and are found suitable for parole,
80 according to those rules adopted pursuant to subdivisions 1 and 2;

81 b. Establish the conditions of postrelease supervision authorized pursuant to § 18.2-10 and subsection
82 A of § 19.2-295.2;

83 e. Notify the Department of Corrections of its decision to grant discretionary parole or conditional
84 release to an inmate. The Department of Corrections shall set the release date for such inmate no sooner
85 than 30 business days from the date that the Department of Corrections receives such notification from
86 the Chairman of the Board, except that the Department of Corrections may set an earlier release date in
87 the case of an inmate granted conditional release pursuant to § 53.1-40.02. In the case of an inmate
88 granted parole who was convicted of a felony and sentenced to a term of 10 or more years, or an
89 inmate granted conditional release, the Board shall notify the attorney for the Commonwealth in the
90 jurisdiction where the inmate was sentenced (i) by electronic means at least 21 business days prior to
91 such inmate's release that such inmate has been granted discretionary parole or conditional release
92 pursuant to § 53.1-40.01 or 53.1-40.02 or (ii) by telephone or other electronic means prior to such
93 inmate's release that such inmate has been granted conditional release pursuant to § 53.1-40.02 where
94 death is imminent. Nothing in this section shall be construed to alter the obligations of the Board under
95 § 53.1-155 for investigation prior to release on discretionary parole;

96 d. c. Provide that in any case where a person who is released on parole or postrelease supervision
97 has been committed to the Department of Behavioral Health and Developmental Services under the
98 provisions of Chapter 9 (§ 37.2-900 et seq.) of Title 37.2 the conditions of his parole or postrelease
99 supervision shall include the requirement that the person comply with all conditions given him by the
100 Department of Behavioral Health and Developmental Services and that he follow all of the terms of his
101 treatment plan;

102 4. Revoke parole and any period of postrelease and order the reincarceration of any parolee or felon
103 serving a period of postrelease supervision or impose a condition of participation in any component of
104 the Statewide Community-Based Corrections System for State-Responsible Offenders (§ 53.1-67.2 et
105 seq.) on any eligible parolee, when, in the judgment of the Board, he has violated the conditions of his
106 parole or postrelease supervision or is otherwise unfit to be on parole or on postrelease supervision;

107 5. Issue final discharges to persons released by the Board on parole when the Board is of the opinion
108 that the discharge of the parolee will not be incompatible with the welfare of such person or of society;

109 6. Make investigations and reports with respect to any commutation of sentence, pardon, reprieve or
110 remission of fine, or penalty when requested by the Governor;

111 7. Publish a statement regarding the action taken by the Board on the parole of prisoners within 30
112 days of such action. The statement shall list (i) the name of each prisoner considered for parole, (ii) the
113 offense of which the prisoner was convicted, (iii) the jurisdiction in which such offense was committed,
114 (iv) the length of the prisoner's sentence and the date such sentence was imposed, (v) the amount of
115 time the prisoner has served, (vi) whether the prisoner was granted or denied parole, and (vii) the basis
116 for the grant or denial of parole. However, in the case of a prisoner granted parole, the information set
117 forth in clauses (i) through (vii) regarding such prisoner shall be included in the statement published in
118 the month immediately succeeding the month in which notification of the decision to grant parole was
119 given to the attorney for the Commonwealth and any victims; and

120 8. Ensure that each person eligible for parole receives a timely and thorough review of his suitability
121 for release on parole, including a review of any relevant post-sentencing information. If parole is denied,

the basis for the denial of parole shall be in writing and shall give specific reasons for such denial to such inmate.

§ 53.1-145. Powers and duties of probation and parole officers.

In addition to other powers and duties prescribed by this article, each probation and parole officer shall:

1. Investigate and report on any case pending in any court or before any judge in his jurisdiction referred to him by the court or judge;

2. Supervise and assist all persons within his territory placed on probation, secure, as appropriate and when available resources permit, placement of such persons in a substance abuse treatment program which may include utilization of acupuncture and other treatment modalities, and furnish every such person with a written statement of the conditions of his probation and instruct him therein; if any such person has been committed to the Department of Behavioral Health and Developmental Services under the provisions of Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, the conditions of probation shall include the requirement that the person comply with all conditions given him by the Department of Behavioral Health and Developmental Services, and that he follow all of the terms of his treatment plan;

3. Supervise and assist all persons within his territory released on parole or ~~postrelease supervision~~, secure, as appropriate and when available resources permit, placement of such persons in a substance abuse treatment program which may include utilization of acupuncture and other treatment modalities, and, in his discretion, assist any person within his territory who has completed his parole, ~~postrelease supervision~~, or has been mandatorily released from any correctional facility in the Commonwealth and requests assistance in finding a place to live, finding employment, or in otherwise becoming adjusted to the community;

4. Arrest and recommit to the place of confinement from which he was released, or in which he would have been confined but for the suspension of his sentence or of its imposition, for violation of the terms of probation, post-release supervision pursuant to § 19.2-295.2 or parole, any probationer, person subject to post-release supervision or parolee under his supervision, or as directed by the Chairman, Board member or the court, pending a hearing by the Board or the court, as the case may be;

5. Keep such records, make such reports, and perform other duties as may be required of him by the Director and the court or judge by whom he was authorized;

6. Order and conduct, in his discretion, drug and alcohol screening tests of any probationer, person subject to post-release supervision pursuant to § 19.2-295.2 or parolee under his supervision who the officer has reason to believe is engaged in the illegal use of controlled substances or marijuana, or the abuse of alcohol. The cost of the test may be charged to the person under supervision. Regulations governing the officer's exercise of this authority shall be promulgated by the Director;

7. Have the power to carry a concealed weapon in accordance with regulations promulgated by the Director and upon the certification of appropriate training and specific authorization by a judge of a circuit court;

8. Provide services in accordance with any contract entered into between the Department of Corrections and the Department of Behavioral Health and Developmental Services pursuant to § 37.2-912;

9. Pursuant to any contract entered into between the Department of Corrections and the Department of Behavioral Health and Developmental Services, probation and parole officers shall have the power to provide intensive supervision services to persons placed on conditional release, regardless of whether the person has any time remaining to serve on any criminal sentence, pursuant to Chapter 9 (§ 37.2-900 et seq.);

10. Determine by reviewing the Department of Forensic Science DNA data bank sample tracking system upon intake and again prior to release whether a blood, saliva, or tissue sample is stored in the data bank for each person placed on probation or parole required to submit a sample pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of Title 19.2 and, if a person's sample is not stored in the data bank, require the person placed on probation or parole to submit a sample for DNA analysis;

11. For every offender accepted pursuant to the Interstate Compact for the Supervision of Adult Offenders (§ 53.1-176.1 et seq.) who has been convicted of an offense that, if committed in Virginia, would require the offender to submit a sample pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of Title 19.2, take a sample or verify that a sample has been taken and accepted into the data bank for DNA analysis in the Commonwealth;

12. Monitor the collection and payment of restitution to the victims of crime for offenders placed on supervised probation;

13. Prior to the release from supervision of any offender on probation as of July 1, 2019, review the criminal history record of the offender at least 60 days prior to release from supervision, or immediately if the offender is scheduled to be released from supervision within less than 60 days, to determine whether all offenses for which the offender is being supervised appear on such record and, if any such

offense that is required to be reported to the Central Criminal Records Exchange pursuant to § 19.2-390 does not appear, (i) take and provide fingerprints and a photograph of the offender to the Central Criminal Records Exchange to be classified and filed as part of the criminal history record information pursuant to subsection D of § 19.2-390 and (ii) provide written or electronic notification to the Central Criminal Records Exchange within the Department of State Police that such offense does not appear on the offender's criminal history record; and

14. Upon intake of any offender on or after July 1, 2019, (i) take and provide fingerprints and a photograph of the offender to the Central Criminal Records Exchange to be classified and filed as part of the criminal history record information pursuant to subsection D of § 19.2-390, (ii) review the criminal history record of the offender to determine whether all offenses for which the offender is being supervised appear on such record, and (iii) if any such offense that is required to be reported to the Central Criminal Records Exchange pursuant to § 19.2-390 does not appear, provide written or electronic notification to the Central Criminal Records Exchange within the Department of State Police that such offense does not appear on the offender's criminal history record.

Nothing in this article shall require probation and parole officers to investigate or supervise cases before general district or juvenile and domestic relations district courts.

§ 53.1-157. Parolees to comply with terms; furnishing copies.

Each parolee ~~or felon serving a period of postrelease supervision~~ while on parole ~~or period of postrelease supervision~~ shall comply with such terms and conditions as may be prescribed by the Board. When any prisoner is released on parole ~~or postrelease period of supervision~~, the Board shall furnish the parolee and the probation and parole officer having supervision of the parolee ~~or felon serving a period of postrelease supervision~~ a copy of the terms and conditions of the parole ~~or postrelease period of supervision~~ and any changes which may from time to time be made therein.

§ 53.1-161. Arrest and return of parolee; warrant; release pending adjudication of violation.

The Chairman or any member of the Board may at any time upon information or a showing of a violation or a probable violation by any parolee ~~or felon serving a period of postrelease supervision~~ of any of the terms or conditions upon which he was released on parole ~~or postrelease period of supervision~~, issue or cause to be issued, a warrant for the arrest and return of the parolee ~~or felon serving a period of postrelease supervision~~ to the institution from which he was paroled, or to any other correctional facility which may be designated by the Chairman or member. However, a determination of whether a parolee ~~or felon serving a period of postrelease supervision~~ returned to a correctional facility pursuant to this section shall be returned to a state or local correctional facility shall be made based on the length of the parolee's original sentence as set forth in § 53.1-20 ~~or the period of postrelease supervision as set at sentencing~~. Each such warrant shall authorize all officers named therein to arrest and return the parolee to actual custody in the facility from which he was paroled, or to any other facility designated by the Chairman or member.

In any case in which the parolee ~~or felon serving a period of postrelease supervision~~ is charged with the violation of any law, the violation of which caused the issuance of such warrant, upon request of the parolee or his attorney, the Chairman or member shall as soon as practicable consider all the circumstances surrounding the allegations of such violation, including the probability of conviction thereof, and may, after such consideration, release the parolee, pending adjudication of the violation charged.

§ 53.1-162. Arrest of parolee without warrant; written statement.

Any probation and parole officer may arrest a parolee ~~or felon serving a period of postrelease supervision~~ without a warrant or may deputize any other officer with power of arrest to do so by a written statement setting forth that the parolee ~~or felon serving a period of postrelease supervision~~ has, in the judgment of the probation and parole officer, violated one or more of the terms or conditions of his parole ~~or postrelease period of supervision~~. Such a written statement by a probation and parole officer delivered to the officer in charge of any state or local correctional facility shall be sufficient warrant for the detention of the parolee ~~or felon serving a period of postrelease supervision~~. Any officer deputized upon receipt of the written statement shall, in accordance with § 19.2-390, enter, or cause to be entered, the person's name and other appropriate information required by the Department of State Police into the "information systems" known as the Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Such information shall be deemed a warrant authorizing the arrest of the person anywhere in the Commonwealth.

§ 53.1-164. Procedure for return of parolee.

When any parolee ~~or felon serving a period of postrelease supervision~~ is returned to any facility in accordance with the provisions of § 53.1-161, he shall be held in accordance with rules of the Director and subject to further action of the Parole Board. The officer in charge of the facility shall see that the Parole Board is notified promptly of each such parolee's ~~or felon's~~ return.

§ 53.1-165. Revocation of parole; hearing; procedure for parolee supervised in another state;

appointment of attorney.

A. Whenever any parolee ~~or felon serving a period of postrelease supervision~~ is arrested and recommitted as provided herein, a preliminary hearing to determine probable cause that such parolee has violated one or more of the terms or conditions upon which he was released on parole ~~or postrelease period of supervision~~ shall be held by any hearing officer who has been designated as such by the Director of the Department to conduct such hearings. However, if a nolle prosequi is to be entered in a case where a parole violation is alleged, no preliminary hearing shall be required.

Upon request of the hearing officer, the attorney for the Commonwealth of the jurisdiction within which such hearings are to be held shall request the circuit court of such jurisdiction to appoint one or more discreet attorneys-at-law to represent parolees in any proceedings held before him. Each attorney so appointed shall be available to serve upon request of the hearing officer. The term of each attorney's appointment shall continue until such time as a successor may be appointed. A hearing officer shall be authorized to issue subpoenas requiring the attendance of witnesses and the production of records, memoranda, papers and other documents before him and to administer oaths and to take testimony thereunder.

Upon a finding of probable cause by the hearing officer, the Board or its authorized representative shall conduct a hearing, consider the case and act with reference thereto within a reasonable time thereafter. Upon request of the Board, the attorney for the Commonwealth of the jurisdiction within which such hearings are to be held shall request the circuit court of that jurisdiction to appoint one or more discreet attorneys-at-law to represent parolees in proceedings held or to be held before the Board. Each attorney shall be available to serve upon request of the Board. The term of each attorney's appointment shall continue until such time as a successor may be appointed. The Board, in its discretion, may revoke the parole and order the reincarceration of the prisoner for the unserved portion of the term of imprisonment originally imposed upon him, or it may reinstate the parole either upon such terms and conditions as were originally prescribed, or as may be prescribed in addition thereto or in lieu thereof. When a parole violation is based on a new felony conviction for which the individual has been sentenced to two or more years, excluding any time of said sentence which has been suspended, any individual Board member, so authorized by the Board, may after such hearing revoke the individual's parole as otherwise provided herein.

Upon revocation of parole for any felony offense, the Board or its authorized representative shall order that the Department of Corrections take fingerprints and a photograph of the person for each offense and transmit such information to the Central Criminal Records Exchange pursuant to subsection D of § 19.2-390.

B. In cases in which a parolee ~~or felon serving a period of postrelease supervision~~ is in another state, any hearing officer who has been designated as such by the Director of the Department may be sent to that state to conduct a preliminary hearing to determine probable cause that the parolee has violated one or more of the terms and conditions upon which he was released upon parole.

C. Any attorney-at-law appointed pursuant to this section shall be paid as directed by the court making the appointment, from funds appropriated for court costs and expenses, reasonable compensation on an hourly basis and necessary expenses, based upon a report to be furnished to it by such attorney. In the event an attorney-at-law is appointed in another state, he shall be paid out of funds appropriated to the Department.

2. That the provisions of this act shall become effective on July 1, 2024.

3. That the provisions of this act shall apply to an offense that occurs on or after July 1, 2024.