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SENATE BILL NO. 1361

Offered January 11, 2023

Prefiled January 11, 2023

A BILL to amend and reenact §§ 2.2-3703, 53.1-134, 53.1-136, and 53.1-155 of the Code of Virginia, relating to Parole Board; membership; eligibility determinations; reports.

Patrons—Morrissey and Reeves

Referred to Committee on Rules

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3703, 53.1-134, 53.1-136, and 53.1-155 of the Code of Virginia are amended and reenacted as follows:

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

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

1. The Virginia Parole Board (the Board), except that (i) information from the Board providing the number of inmates considered by the Board for discretionary parole, the number of inmates granted or denied parole, and the number of parolees returned to the custody of the Department of Corrections solely as a result of a determination by the Board of a violation of parole shall be open to inspection and available for release, on a monthly basis, as provided by § 2.2-3704; (ii) all guidance documents, as defined in § 2.2-4101, shall be public records and subject to the provisions of this chapter; (iii) all records concerning the finances of the Board shall be public records and subject to the provisions of this chapter; and (iv) individual Board member votes shall be public records and subject to the provisions of this chapter. The information required by clause (i) shall be furnished by offense, sex, 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. 2. Family assessment and planning teams established pursuant to § 2.2-5207;

4. 3. 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. 4. Multidisciplinary child sexual abuse response teams established pursuant to § 15.2-1627.5;

6. 5. The Virginia State Crime Commission; and

7. 6. 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.

§ 53.1-134. Creation of Parole Board; appointment of members.

There shall be a Parole Board which that shall consist of up to five 10 members to be appointed as follows: four members to be appointed by the Governor and, subject to confirmation by the General Assembly, if in session when such appointment is made, and if not in session, then at its next

59 succeeding session during the year of his inauguration; three members to be appointed by the House  
 60 Committee on Public Safety at the outset of the third year of the Governor's term; and three members to  
 61 be appointed by the Senate Committee on Rehabilitation and Social Services at the outset of the third  
 62 year of the Governor's term. At least one member of the The Parole Board shall be a representative of  
 63 include no less than (i) two members who are a representative of a crime victims' organization or a  
 64 victim of crime as defined in subsection B of § 19.2-11.01, (ii) two members who represent a prisoner  
 65 advocacy organization, and (iii) two persons with expertise in long-term correctional rehabilitation  
 66 programming and evaluation.

67 ~~The members of the Parole Board shall serve at the pleasure of the Governor.~~

68 *The term of each member shall be four years. If any Board member vacates his position prior to the*  
 69 *expiration of his term, such position shall be filled within the same calendar year in the same manner of*  
 70 *the original appointment.*

71 **§ 53.1-136. Powers and duties of Board; notice of release of certain inmates.**

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

73 1. Adopt, subject to approval by the Governor, general rules governing the granting of parole and  
 74 eligibility requirements, which shall be published and posted for public review. *Such eligibility rules*  
 75 *shall require a public safety and scientific risk assessment and consideration of the prisoner's*  
 76 *demonstrated rehabilitation, economic and educational development, commitment to prosocial behavior,*  
 77 *and community and family supports;*

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

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

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

87 c. Notify the Department of Corrections of its decision to grant discretionary parole or conditional  
 88 release to an inmate. The Department of Corrections shall set the release date for such inmate no sooner  
 89 than 30 business days from the date that the Department of Corrections receives such notification from  
 90 the Chairman of the Board, except that the Department of Corrections may set an earlier release date in  
 91 the case of an inmate granted conditional release pursuant to § 53.1-40.02. In the case of an inmate  
 92 granted parole who was convicted of a felony and sentenced to a term of 10 or more years, or an  
 93 inmate granted conditional release, the Board shall notify the attorney for the Commonwealth in the  
 94 jurisdiction where the inmate was sentenced (i) by electronic means at least 21 business days prior to  
 95 such inmate's release that such inmate has been granted discretionary parole or conditional release  
 96 pursuant to § 53.1-40.01 or 53.1-40.02 or (ii) by telephone or other electronic means prior to such  
 97 inmate's release that such inmate has been granted conditional release pursuant to § 53.1-40.02 where  
 98 death is imminent. Nothing in this section shall be construed to alter the obligations of the Board under  
 99 § 53.1-155 for investigation prior to release on discretionary parole;

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

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

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

113 6. Make investigations and reports with respect to any commutation of sentence, pardon, reprieve or  
 114 remission of fine, or penalty ~~when requested by the Governor~~ *within two years of the submission of the*  
 115 *petition for such commutation;*

116 7. Publish a statement by the ~~fifteenth day of each month~~ *regarding the action* actions taken by the  
 117 Board on the parole of prisoners ~~within 30 days of such action~~ *during the prior month.* The statement  
 118 shall list (i) the name of each prisoner considered for parole, (ii) the offense of which the prisoner was  
 119 convicted, (iii) the jurisdiction in which such offense was committed, (iv) the length of the prisoner's  
 120 sentence and the date such sentence was imposed, (v) the amount of time the prisoner has served, (vi)

121 whether the prisoner was granted or denied parole, and (vii) ~~the basis~~ *individualized reasons* for the  
122 grant or denial of parole, and (viii) *the final vote and the names of the Board members who voted in*  
123 *favor of granting parole and those who voted against.* However, in the case of a prisoner granted parole,  
124 the information set forth in clauses (i) through ~~(vii)~~ (viii) regarding such prisoner shall be included in  
125 the statement published in the month immediately succeeding the month in which notification of the  
126 decision to grant parole was given to the attorney for the Commonwealth and any victims; ~~and~~

127 8. *Publish an annual report regarding actions taken by the Board on the parole of prisoners during*  
128 *the prior year. Such report shall contain each monthly statement published by the Board pursuant to*  
129 *subdivision 7 and a summary that identifies (i) the total number of prisoners considered for parole, (ii)*  
130 *the number of persons granted parole, (iii) the number of persons denied parole, (iv) the most common*  
131 *reasons for which parole was granted or denied, and (v) the extent to which the Board relied on*  
132 *prisoner participation in prison programs when granting parole;*

133 9. Ensure that each person eligible for parole receives a timely and thorough review of his suitability  
134 for release on parole, including a review of any relevant post-sentencing information. If parole is denied,  
135 the basis for the denial of parole shall be in writing and shall give specific, *individualized reasons* for  
136 such denial to such inmate. *The Board shall provide to a prisoner who is denied parole steps the*  
137 *prisoner may take to improve his likelihood of being granted parole at the next hearing and shall at the*  
138 *next hearing consider whether the prisoner has taken such steps; and*

139 10. *Convene a public meeting, either in person or via video conference, when conducting the final*  
140 *deliberation and vote regarding whether the Board will grant parole to a prisoner. The prisoner being*  
141 *considered for parole or his attorney shall be permitted to attend such meeting either, in the Board's*  
142 *discretion, in person or via video conference and to address the Board prior to the final vote.*

143 **§ 53.1-155. Investigation prior to release; transition assistance.**

144 A. No person shall be released on parole by the Board until a thorough investigation has been made  
145 into the prisoner's history, physical and mental condition and character, and his conduct, employment,  
146 and attitude while in prison. *All information collected through such investigation shall be made*  
147 *available to the prisoner or his attorney; however, the Board shall redact all personal information of*  
148 *the victim.* The Board shall also determine that his release on parole will not be incompatible with the  
149 interests of society or of the prisoner. The provisions of this section shall not be applicable to persons  
150 released on parole pursuant to § 53.1-159.

151 B. An investigation conducted pursuant to this section shall include notification that a victim may  
152 submit to the Virginia Parole Board evidence concerning the impact that the release of the prisoner will  
153 have on such victim. This notification shall be sent to the last address provided to the Board by any  
154 victim of a crime for which the prisoner was incarcerated. If additional victim research is necessary,  
155 electronic notification shall be sent to the attorney for the Commonwealth and the director of the  
156 victim/witness program, if one exists, of the jurisdiction in which the offense occurred. The Board shall  
157 endeavor diligently to contact the victim prior to making any decision to release any inmate on  
158 discretionary parole. The victim of a crime for which the prisoner is incarcerated may present to the  
159 Board oral or written testimony concerning the impact that the release of the prisoner will have on the  
160 victim, and the Board shall consider such testimony in its review. Once testimony is submitted by a  
161 victim, such testimony shall remain in the prisoner's parole file and shall be considered by the Board at  
162 every parole review. The victim of a crime for which the prisoner is incarcerated may submit a request  
163 in writing or by electronic means to the Board to be notified of (i) the prisoner's parole eligibility date  
164 and mandatory release date as determined by the Department of Corrections, (ii) any parole-related  
165 interview dates, and (iii) the Board's decision regarding parole for the prisoner. The victim may request  
166 that the Board only notify the victim if, following its review, the Board is inclined to grant parole to the  
167 prisoner, in which case the victim shall have ~~forty-five~~ 45 days to present written or oral testimony for  
168 the Board's consideration. If the victim has requested to be notified only if the Board is inclined to grant  
169 parole and no testimony, either written or oral, is received from the victim within at least ~~forty-five~~ 45  
170 days of the date of the Board's notification, the Board shall render its decision based on information  
171 available to it in accordance with subsection A. The definition of victim in § 19.2-11.01 shall apply to  
172 this section.

173 Although any information presented by the victim of a crime for which the prisoner is incarcerated  
174 shall be retained in the prisoner's parole file and considered by the Board, such information shall not  
175 infringe on the Board's authority to exercise its decision-making authority.

176 C. Notwithstanding the provisions of subsection A, if a physical or mental examination of a prisoner  
177 eligible for parole has been conducted within the last ~~twelve~~ 12 months, and the prisoner has not  
178 required medical or psychiatric treatment within a like period while incarcerated, the prisoner may be  
179 released on parole by the Parole Board directly from a local correctional facility.

180 The Department shall offer each prisoner to be released on parole or under mandatory release who  
181 has been sentenced to serve a term of imprisonment of at least three years the opportunity to participate

**182** in a transition program within six months of such prisoner's projected or mandatory release date. The  
**183** program shall include advice for job training opportunities, recommendations for living a law-abiding  
**184** life, and financial literacy information. The Secretary of Public Safety and Homeland Security shall  
**185** prescribe guidelines to govern these programs.