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SENATE BILL NO. 1361

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee
on February 25, 2023)

(Patron Prior to Substitute—Senator Morrissey)

*A BILL to amend and reenact §§ 2.2-3703, 53.1-136, 53.1-154, and 53.1-155 of the Code of Virginia, relating to Parole Board; eligibility determinations; reports.***Be it enacted by the General Assembly of Virginia:****1. That §§ 2.2-3703, 53.1-136, 53.1-154, 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.

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

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

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

2. Adopt, subject to approval by the Governor, rules providing for the granting of parole to those

60 prisoners who are eligible for parole pursuant to § 53.1-165.1 on the basis of demonstrated maturity and
61 rehabilitation and the lesser culpability of juvenile offenders;

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

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

68 c. Notify the Department of Corrections of its decision to grant discretionary parole or conditional
69 release to an inmate. The Department of Corrections shall set the release date for such inmate no sooner
70 than 30 business days from the date that the Department of Corrections receives such notification from
71 the Chairman of the Board, except that the Department of Corrections may set an earlier release date in
72 the case of an inmate granted conditional release pursuant to § 53.1-40.02. In the case of an inmate
73 granted parole who was convicted of a felony and sentenced to a term of 10 or more years, or an
74 inmate granted conditional release, the Board shall notify the attorney for the Commonwealth in the
75 jurisdiction where the inmate was sentenced (i) by electronic means at least 21 business days prior to
76 such inmate's release that such inmate has been granted discretionary parole or conditional release
77 pursuant to § 53.1-40.01 or 53.1-40.02 or (ii) by telephone or other electronic means prior to such
78 inmate's release that such inmate has been granted conditional release pursuant to § 53.1-40.02 where
79 death is imminent. Nothing in this section shall be construed to alter the obligations of the Board under
80 § 53.1-155 for investigation prior to release on discretionary parole;

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

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

92 5. Issue final discharges to persons released by the Board on parole when the Board is of the opinion
93 that the discharge of the parolee will not be incompatible with the welfare of such person or of society.
94 *Final discharges granted prior to the expiration of a period of parole shall be granted only upon*
95 *approval by a majority of Board members. The Board shall publish an annual report regarding final*
96 *discharges issued by the Board during the previous 12 months. The report shall include (i) the name of*
97 *each prisoner granted final discharge, (ii) the offense of which the prisoner was convicted, (iii) the*
98 *jurisdiction in which such offense was committed, (iv) the length of the prisoner's sentence and the date*
99 *such sentence was imposed, (v) the amount of time the prisoner has been on parole or postrelease*
100 *supervision in the community, (vi) the basis for the final discharge, and (vii) the vote of each Board*
101 *member;*

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

104 7. Publish a statement *by the fifteenth day of each month* regarding the ~~action~~ actions taken by the
105 Board on the parole of prisoners ~~within 30 days of such action during the prior month~~. The statement
106 shall list (i) the name of each prisoner considered for parole, (ii) the offense of which the prisoner was
107 convicted, (iii) the jurisdiction in which such offense was committed, (iv) the length of the prisoner's
108 sentence and the date such sentence was imposed, (v) the amount of time the prisoner has served, (vi)
109 whether the prisoner was granted or denied parole, ~~and~~ (vii) ~~the basis individualized reasons~~ for the
110 grant or denial of parole, ~~and~~ (viii) ~~the final vote and the names of the Board members who voted in~~
111 ~~favor of granting parole and those who voted against~~. However, in the case of a prisoner granted parole,
112 the information set forth in clauses (i) through ~~(vii)~~ (viii) regarding such prisoner shall be included in
113 the statement published in the month immediately succeeding the month in which notification of the
114 decision to grant parole was given to the attorney for the Commonwealth and any victims; ~~and~~

115 8. *Publish an annual report regarding actions taken by the Board on the parole of prisoners during*
116 *the prior year. Such report shall contain each monthly statement published by the Board pursuant to*
117 *subdivision 7 and a summary that identifies (i) the total number of prisoners considered for parole, (ii)*
118 *the number of persons granted parole, (iii) the number of persons denied parole, and (iv) the most*
119 *common reasons for which parole was granted or denied;*

120 9. 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, *individualized* reasons for such denial to such inmate; and

10. Convene a public meeting, either in person or via video conference, when conducting the final deliberation and vote regarding whether the Board will grant parole to a prisoner. The prisoner being considered for parole or his attorney shall be permitted to attend such meeting either, in the Board's discretion, in person or via video conference. The victim shall be permitted to attend and participate in such meeting either, in the Board's discretion, in person or via video or phone conference or to provide written or recorded testimony. No decision to grant discretionary parole shall be made by the Board unless such decision was discussed and debated at a meeting at which a majority of the Board members were present. Whether the Board grants or denies discretionary parole to an inmate, each Board member shall identify his reasoning for such decision at the time such member's vote is cast.

§ 53.1-154. Times at which Virginia Parole Board to review cases.

The Virginia Parole Board shall by regulation divide each calendar year into such equal parts as it may deem appropriate to the efficient administration of the parole system. Unless there be reasonable cause for extension of the time within which to review and decide a case, the Board shall review and decide the case of each prisoner no later than that part of the calendar year in which he becomes eligible for parole, and at least annually thereafter, until he is released on parole or discharged, except that upon any such review the Board may schedule the next review as much as three years thereafter, provided there are ten years or more or life imprisonment remaining on the sentence in such case. Such reviews shall include a live interview of the prisoner by a Board member or a staff member designated by the Board. Such interviews may be conducted in person or by videoconference or telephone at the discretion of the Board. Absent imminent death of the prisoner or other extraordinary circumstances, which shall be documented by the Board in the prisoner's file, the Board shall not grant parole to any prisoner who has not received a live interview within the prior calendar year. Notwithstanding any other provision of this article, in the case of a parole revocation, if such person is otherwise eligible for parole, the Board shall review and decide his case no later than that part of the calendar year one year subsequent to the part of the calendar year in which he was returned to a facility as provided in § 53.1-161. Thereafter, his case shall be reviewed as specified in this section. The Board, in addition, may review the case of any prisoner eligible for parole at any other time and may review the case of any prisoner prior to that part of the year otherwise specified. In the discretion of the Board, interviews may be conducted by the Board or its representatives and may be either public or private.

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

A. No person shall be released on parole by the Board until a thorough investigation has been made into the prisoner's history, physical and mental condition and character, and his conduct, employment, and attitude while in prison. All information collected through such investigation shall be made available to the prisoner or his attorney, provided that (i) neither the prisoner nor his attorney shall further disclose, reproduce, copy, or disseminate such information in any way and (ii) the Board shall redact all personal information of the victim. The Board shall also determine that his release on parole will not be incompatible with the interests of society or of the prisoner. The provisions of this section shall not be applicable to persons released on parole pursuant to § 53.1-159.

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

183 of victim in § 19.2-11.01 shall apply to this section.

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

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

191 The Department shall offer each prisoner to be released on parole or under mandatory release who
192 has been sentenced to serve a term of imprisonment of at least three years the opportunity to participate
193 in a transition program within six months of such prisoner's projected or mandatory release date. The
194 program shall include advice for job training opportunities, recommendations for living a law-abiding
195 life, and financial literacy information. The Secretary of Public Safety and Homeland Security shall
196 prescribe guidelines to govern these programs.

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