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SENATE BILL NO. 611

Offered January 11, 1995

Prefiled November 29, 1994

A BILL to amend and reenact §§ 19.2-299 and 53.1-155 of the Code of Virginia, relating to investigation prior to release on parole.

Patron—Gartlan

Referred to the Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:**1. That §§ 19.2-299 and 53.1-155 of the Code of Virginia are amended and reenacted as follows:**

§ 19.2-299. Investigations and reports by probation officers in certain cases.

A. When a person is tried upon a felony charge and is adjudged guilty of such charge, the court may, or on the motion of the defendant shall, before imposing sentence direct a probation officer of such court to thoroughly investigate and report upon the history of the accused, including a report of the accused's criminal record as an adult and available juvenile court records, and all other relevant facts, to fully advise the court so the court may determine the appropriate sentence to be imposed. The probation officer, after having furnished a copy of this report at least five days prior to sentencing to counsel for the accused and the attorney for the Commonwealth for their permanent use, shall submit his report in advance of the sentencing hearing to the judge in chambers, who shall keep such report confidential. The probation officer shall be available to testify from this report in open court in the presence of the accused, who shall have been advised of its contents and be given the right to cross-examine the investigating officer as to any matter contained therein and to present any additional facts bearing upon the matter. The report of the investigating officer shall at all times be kept confidential by each recipient, and shall be filed as a part of the record in the case. Any report so filed shall be sealed upon the entry of the sentencing order by the court and made available only by court order, except that such reports or copies thereof shall be available at any time to any criminal justice agency, as defined in § 9-169, of this or any other state or of the United States; to the community corrections resources board, as defined in § 53.1-183, where the accused has been referred by the court for placement in a community diversion program; and to any agency where the accused is referred for treatment by the court or by probation and parole services, and shall be made available to counsel for any person who has been indicted jointly for the same felony as the person subject to the report. Any report prepared pursuant to the provisions hereof shall without court order be made available to counsel for the person who is the subject of the report if that person is charged with a felony subsequent to the time of the preparation of the report. The presentence report shall be in a form prescribed by the Department of Corrections. In all cases where such report is not ordered, a simplified report shall be prepared on a form prescribed by the Department of Corrections.

B. As a part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted involved a crime against the person, the court probation officer shall advise any victim of such offense in writing that he may submit to the Virginia Parole Board a written request (i) to be given the opportunity to submit to the Board a written statement in advance of or at the time of any parole hearing describing the impact of the offense upon him and his opinion regarding the defendant's release and (ii) to receive copies of such other notifications pertaining to the defendant as the Board may provide.

C. As part of any presentence investigation conducted pursuant to subsection A when the offense for which the defendant was convicted was a felony drug offense set forth in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, the presentence report shall include any known association of the defendant with illicit drug operations or markets.

§ 53.1-155. Investigation prior to release.

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. 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 to any victim of a crime for which the prisoner was incarcerated who has requested notice of the prisoner's pending release or discharge pursuant to § 53.1-160 that such victim may submit to the Parole Board evidence concerning the impact that the release of the prisoner will have on the victim. *The victim of a crime for*

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SB611

60 which the prisoner is incarcerated may submit to the Board evidence concerning the impact that the
61 release of the prisoner will have on the victim, and the Board shall consider such evidence in its review.
62 Once evidence is submitted by a victim, such evidence shall remain in the prisoner's parole file and
63 shall be considered by the Board at every parole review. The victim of a crime for which the prisoner is
64 incarcerated may submit a written request to the Board to be notified either in advance of or at the time
65 of the Board's review and decision concerning the granting of parole to the prisoner. If the victim elects
66 to be notified at the time of the Board's review, the Board shall notify the victim only if there is a
67 substantial possibility that parole will be granted.

68 The Board shall send such notification by registered or certified mail to the victim. A victim shall
69 have thirty days from the date that the letter was mailed to submit evidence to the Board, and the
70 prisoner shall not be released or discharged until thirty days have passed from the date the letter was
71 mailed. The definition of victim in § 19.2-299.1 shall apply to this section.

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