

LD4018661

SENATE BILL NO. 611

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services
on January 20, 1995)

(Patron Prior to Substitute—Senator Gartlan)

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.*

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. (Effective July 1, 1995) 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; 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 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 pursuant to subsection B of § 53.1-155.

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 which the prisoner is incarcerated may present to the Board verbal or written testimony concerning the prisoner's suitability for early release and 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 written

60 or verbal request to the Board to be notified of (i) the prisoner's parole eligibility date and mandatory
61 release date as determined by the Department of Corrections, (ii) any parole-related interview dates,
62 and (iii) the Board's decision regarding parole for the prisoner. The victim may request that the Board
63 only notify the victim if, following its review, the Board is inclined to grant parole to the prisoner, in
64 which case the victim shall have forty-five days to present written or verbal testimony for the Board's
65 consideration. If the victim has requested to be notified only if the Board is inclined to grant parole and
66 no information, either written or verbal, is received from the victim within at least forty-five days of the
67 date of the Board's notification, the Board shall render its decision based on information available to it
68 in accordance with subsection A. The definition of victim in § 19.2-299 shall apply to this section.

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

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.